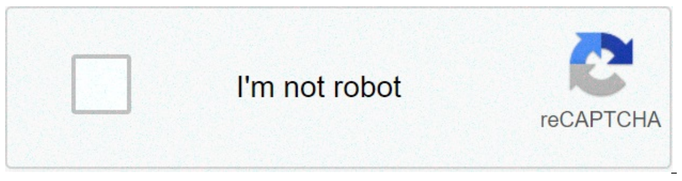

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Llb law of evidence notes pdf

DISCLAIMER The following notes are adapted to the teaching module of Kenyatta University, UoN and Moi, and students are invited to take note of the various legal and judicial reforms that may have been ocassioned by the adaptation of the module. laws and statutes may also be changed or repealed and students must be careful and consult the various statutes reffered in this area RELEVANCE & ADMISSIBILITY 'Res Gestae', has been said, is a phrase adopted to provide a respectable legal coat for a variety of cases to which no precision formula can be applied. The words themselves simply mean a transaction. According to the common law doctrine of inclusion of Res Gestae, a fact or an opinion that is so closely associated in time, place and circumstances with some act or event that is in question that can be said to form a part of the same transaction of the act or event in question, is itself admissible in evidence. The justification given for receiving such tests is the light it throws on the act or event in question: in its absence, the transaction in question cannot be fully or truly understood and may also seem useless, inexplicable and intelligible. The importance of doctrine, for current purposes, is its provision for the admissibility of statements relating to the execution, event or existence of any act, event or state of things that is in question. Such statements may be received, except for the judgment rule. Res Gestae is part of the feeling. A girl lived with her boyfriend until the relationship turned into harsh. The boy cut her throat. She managed to escape even with a slit throat and managed to say ‘see what Harry (Bedingfield) did to me’. The problem has arisen in the Chamber if this statement can be submitted to the test. Lord Justiceit was emphatic that could not be admitted. He said it wasn't part of the transaction, transaction,was said after the transaction is over. (The transaction is the cut of the throat) The judge felt that it was not admissible as part of the Res Gestae since it was something declared by her after it was all over.” The girl said after everything was over. Under the Law on Provence, this would have been admitted. 33. The statements, written or oral, of admissible facts made by a dead person, or which cannot be found, or which has become unable to give evidence or whose presence cannot be procured, or whose presence cannot be obtained without a delay or expense amount which in the circumstances of the case seems to be attributable to the judge, are themselves eligible in the following cases — (a) When the statement is made by a person like The prosecution pointed out that a few minutes earlier, the accused had been seen attacking the deceased’s brother with a dagger and had pronounced words that “I ended up with you, now I will take care of your brother”. The question was whether this statement was admissible as an integral part of the transaction. It's part of the same murder transaction. It was the words spoken part of the same transaction. It was believed that they were part of the same transactionwhen two acts of an accused are so interwoven to form part of the same transaction, it is not correct to turn off the evidence of one of the acts, although it may involve the introduction of evidence of the commission of another offence. A girl lived in the village with her parents and was allegedly raped by the accused. After the rape incident, he unlocked the door and ran into his parents' house, a few steps away from the accused's house. He took his father's hand and took him to the house he accused. He referred to the accused person and said 'papapapa, this is Bwana' and the question was whether this statement was part of the transaction. The transaction here is rape, which is already over when he calls his father. Is it admissible? The judge felt it was not part of the transaction. The transaction was already over. The different courts have a different conception of what is part of the transaction. The tribunal in this case of rape adopted a conservative view of what formed the transaction. In that case there was a fire someplace and a house was burning and the lady was heard to ask someone who seemed accused a few minutes after "your house is burning and running away" the question was whether this statement was part of the transaction as the fact in question is being Arson. It was considered part of the transaction. The accused was convicted of assault indecent to a boy. The boy gave evidence without notice in which he described the assault and identified the accused, but did not refer to any previous identification. The House of Lords, with the majority of five to two, felt that both the mother of the boy and a conestable had been properly allowed to prove that shortly after the alleged act they saw the boy approaching the accused, touching his sleeve and identifying him saying:is man.” The proof of the previous identification was admissibleof the witness’s consistency, “to prove that the witness was able to identify at the moment” and “to exclude the idea that the identification of the prisoner in the basin was a rethinking or a mistake. this case had to deal with statements made by participants or event observers. So in this case it was decided that what a wife said immediately after the pain was received and before it had time to devise or contrive nothing for its own advantage was considered admissible in the tests. all the above causes have something to do with leither the statement is part of the fact of in issue. Ratten was accused of his wife's murder. offered the defense of the accident. He said he was cleaning his gun and accidentally went out to hurt his spouse. There was no one else at the scene of the crime or at the point where this incident occurred and the prosecution tried to keep proof of a girl who worked with the telephone exchange that said a call was made by the house accused about the time of the murder. the girl said that the voice on the phone betrayed emotion, she was praying to call the police and before the operator could connect the woman with the police the phone hang on the side of the woman. the question was, is the statement by the telephone operator admissible in the context of the transaction? Has it happened at the same time as the facts in question? the judge stated that the evidence of the telephone operator was admissible and explaining why the privileges council explained that the important thing was not if the words were part of the transaction. the important thing was if the words were pronounced during the drama. the court also said that the particular evidence of the operator marked the evidence that was at the point that the only phone call outside his house during the murderJust a call for an ambulance. Section 7 “7. Facts that are the occasion, the cause orimmediate or otherwise, of relevant facts or facts in question, or that constitute the state of the things in which they happened or that they offered an opportunity for their occurrence or transaction are relevant.” the occasion may not be a fact in question, but it helps us to understand the fact in question or relevant facts. the defendant in this case was accused of the murder of a boy on whom he was on site relatives (father of the master) a. in his defense the defendant prevented the deceased being epileptic trying to explain the wounds of the boy and how they occurred. medical evidence showed that the boy had died due to severe bleeding in the head and a doctor testified that there were blood clots in the head of the boy who had opened causing a lot of blood to flow from the head of the deceased and therefore the occasion of his death. The prosecution provided evidence that the accused had previously beaten this boy and previously was convicted of beating this boy and threatened the boy with further plague because he was convicted. the question was whether evidence of a previous beating was admissible. Did the judge think the evidence of the previous plagues was admissible under the circumstances? Could the court admit the evidence of past jokes? the tribunal considered that the plagues of previous beats were admissible because having taken evidence of blood clots to the head, it was important to know the cause of blood clots and the evidence of the previous plagues were admissible as a fact that leads to bleeding and definitive death. the cause of relevant things or facts or facts in question will be admitted to explain the cause of death. for example opening blood clots and losing a lot of blood. I'll give you thepestations have shown us the cause and are therefore admissible, so the cause of things and the cause of relevant issues will beThey explain the cause of death as in this case. In this case there was a charge of corruption and the prosecution tried to lead evidence of a previous obsession in which the two people involved whose conduct was in question. The question was whether the evidence was relevant. The judge considered that evidence of previous shading reports was relevant because he gave the status of the things under which corruption was given. He explained the status of the things in which the transaction occurred. The transaction that is the fact in question. The case shows that the accused had the opportunity to commit the murder. This case is about Res Gestae. The deceased had been killed with a dagger, and the evidence was admitted to the trial that shortly before the death of the deceased the accused had attacked the deceased's brother with a dagger and had proffered threats against the deceased. He thought the accused had an opportunity, he used the dagger only a few minutes before using it to commit the murder. Section 8. Any fact is relevant that it shows or constitutes a reason or preparation for any relevant fact or fact.” The facts concerning motive, preparation or conduct of any matter in question will be relevant. Reason is what a person does to do something special or to act in a particular way. For example, a person who is accused of rape may be motivated by lust or desire. A person who says they killed in self-defense will be motivated by fear. The motive is what influences the acts or conduct of a person. For all voluntary acts, there will be a motivation and it is necessary to look at the conduct of a person to explain away the motivation. Similarly, any fact which would constitute the preparation of a fact in question will also be admissible. The planning or organization of means and measures necessary to commit an act orSomething. If it is a crime, it will be the kind of measures you take forto reach the commitment of that crime. For example, if you intend to steal, there will be surveillance involved. Assumption of necessary tools to commit crime. Similarly, any evidence of the conduct of any part of the proceedings is relevant. Section 8 (4) 8. (4) The word “conduct” in this section does not include statements, unless such statements accompany and explain acts other than statements.” The declarations are expressly excluded. We do not speak of statements, but of preparation. Under Section 8 it is about things that people do and not things that people do. If you want to bring in a statement, it should be associated with an act. Section 9 9. The facts necessary to explain or introduce a matter in question or in fact relevant, or whether they support or reproach an inference suggested by that fact, or that they establish the identity of anything or person whose identity is relevant, or fix the time or place where any fact in question or its happened, or show the relationship of parts from which this fact has been transposed, are relevant to the extent that they are necessary for this purpose.” The facts, which explain or introduce facts in question, are relevant. It is only section 9 phrasology that differs from factors that have been explained in section 6,7 and 8. 10. If there is reason to believe that two or more people have conspired together to commit a feasible offence or wrong, anything he says, done or written by one of these people in relation to their common intention, after the moment when such intention was held by one of them, is a relevant fact as against each of the people who believed to be so conspiring, as well as in order to demonstrate the existence of conspiracy as for the person. It is said that the legislator acted as an Ex Abundante Cautella. Out of aof caution. This section deals with conspiracies. If there are reasonable reasons to believe that there is a conspiracy, then whatever is said or done by any person in relation to their common intention, after the moment when such intention has been formed, is a significant fact. What's a conspiracy? is where people sit and agree and form a common intention to do something. the common intention is the determining factor of conspiracy. It is important to show that it is a conspiracy; and to prove that people were parts of the conspiracy. It is stated with reference to s. 10 that a person who adheres to a conspiracy in law is responsible for all acts of his conjuncts made in advance of the conspiracy, be done before during or after his participation. is only after the common intention is established. here the court said that “A person who joins a conspiracy is responsible in law for all acts of his conspiracy companions made in favor of conspiracy, be done before, during or after his participation.” the time when, by act or declaration, the reference is made to the common intention is not important until it is after that time when the intention is first entertained by one of the conspirators. The defendants were accused of a conspiracy to assert a lawful purpose by unlawful means, as they visited the neighborhood in a truck to recruit the work for the company sugar works, and that, acting together, they made on various occasions to force people with the or of force and threats of force to enter the truck and submit to be taken away to it for work at the sugar works. the defense claimed that intimidating the work in employment was not a crime known to the criminal law of the Uganda, and it did not constitute, therefore, “half unjust”. However, the court found that a cake that nota criminal offence is sufficient to satisfy the provision of "illegal" "illegal"and supported the convictions. Section 11 - The facts that are in contrast with or affecting the likelihood of other facts. 11. The facts not otherwise relevant are relevant — (a) if they are in contrast with any relevant fact or fact; o (b) whether alone or in connection with other facts make the existence or existence of any fact in question or of factually highly probable or unlikely. What kind of facts are relevant S. 11 (b) is the epitome of all that is relevant in a fact in question. Read S. 5 together with S. 11. Section 12 12 12. In cases where damage is claimed, any fact that will allow the judge to determine the amount of damage they must be assigned is relevant.” Section 12 – Deal with the facts that affect quantum damage. This section is a boon for ambulance chasers. For example, negligence your participation affects the amount of damage you receive. If the plaintiff in a civil case claims damage as compensation for the wounds suffered, the amount of damage that will naturally compensate him becomes a matter in question. The evidence that helps the judge determine the amount of damage is relevant. The following cases show various types of facts that the courts have considered to achieve an assessment. “Seeking in private person arrest on suspected crime. Psychological factors of mating and “compensators” taken into consideration, as well as aggravating damage from element of injury to reputation.” “The deceased was an African child and the court considered the amount of damage to the loss of service to the mother and grandparents, the father died.” Section 13. 13. If the existence of a right or habit is in question, the following facts are relevant —a) any transaction fromthe right or custom in question was created, claimed, modified, recognized, asserted or denied, or that it was in contrast with its existence; o (b) special cases, in which the right or custom has been claimed, recognized or exercised, or in which its exercise has been contested, affirmed or deceased. If what you have in question is your right in custom, 13 (a) factors that show when customs were created, if it is relevant and what sorts of arguments were made for custom. (Locus classicus) SIMILAR FACTS EVIDENCE detection and admissibility: The definition of similar facts can only be done if there are similar facts to those considered. There must be substantial connection or similarity of what the person has done. Does the court have a number of questions to ask relevant? Can the crime be tried without such evidence? What other purpose does the evidence serve besides causing prejudice against the person accused? Section 14 and 15 treat similar evidence. Section 14 and 15. 14. (1) The facts that show the existence of any state of mind, such as intention, knowledge, good faith, negligence, anger, ill-will or good will towards any particular person, or showing the existence of any state of body or body feeling, are relevant, when the existence of such a state of mind or body or body feeling is in question or relevant. 15. (2) An important fact in accordance with subsection (1), as shown by the existence of a state of mind must show that the state of mind exists, not in general, but in relation to the particular matter in question. (3) When, at the time of proof of a person accused of a crime, the former commission of the accused of a crime is relevant under subsection (1), the former conviction of that person is also relevant. 1. We can postponesomething was done by humans because similar accidents were caused by humans in the past? Can we exclude natural occurrence when something happens because similar things happened before? 2. Is it legitimate to deduce that the accused person committed the act of investigation simply because it proves that he did similar things in the past? It is known that when it comes to similar facts, the general principle of the law is that it is not legitimate to deduce that an accused committed a particular offense only because he had committed a similar offence in the past. The reason is because in the first place there is the policy of consideration of equity to the accused person. Second, similar evidence is evidence that can lead to a lot of prejudice to the person accused. Thirdly, the burden that an accused person has when he comes to court is that they must be ready to defend all life. The proof of similar facts can be conducted if there is a substantial connection between such similar accidents and that in question. You can't just conduct evidence to show the connection. There must be a substantial connection in the likeness in what a person has done. The judge must ask whether the evidence of such a fact is relevant; The crime can be demonstrated without similar evidence; There is a purpose that is served by different evidence to cause prejudice against the accused person. The similar factual evidence helps to establish intention and can also be used to exclude defense as honest intention. Even then a judge has the discretion to keep away the proof of similar facts if it is detrimental to the person accused. The classic locus on evidence of similar facts is Makin and his wife were accused of killing a child. It has been shown that the mortal remains of the child were found buried in the Makins garden. There was no evidence that they killed the baby, butIt was proof that the Makins had adopted this child from their parents. There was also evidence that the Makins had also adopted other children who were not related to this. They were paid after adopting the children. There was also evidence that children were never seen by their parents after being adopted by the Makins. The investigators found deadly remains of children in the gardens of the houses where the Makins had lived before. The question was, it's this evidence of houses and yards relevant in the trial for the murder of a specific murder. The evidence was allowed even though there was no direct evidence to prove that the Makins had actually killed the children. There has been a substantial link between the activities of the adoption of other children and the ongoing investigation. There were surprising similarities between cases and the Makins had the opportunity to kill the children, but proof of their relations with other children was taken into account because of the similarities that the investigators had found. In this case, 2 fundamental principles were established and reiterated in the case of John Makindi V. R. The principles were as follows: You cannot conduct such evidence only to show the provision charged with committing a crime. Lord Herschell says as follows: “It is certainly not competent for the prosecution to conduct evidence that the accused has been guilty of criminal acts other than those covered by the prosecution to bring to the conclusion that the accused is a likely person from his criminal behaviour/chaptim of committing the crime for which he is being tried.” The provision should not be the motivation to conduct similar evidence. On the other hand, the simple fact that the evidence adopted tends to show the commission of other crimes does not make it inadmissible if it is relevant to a problem before the jury and can be so relevantIt raises the question whether the acts which were supposed to constitute the offending offense were designed or accidental or to challenge a defence that would otherwise be open to the accused. Basically, the Makin case set the parameters to admit evidence of similar facts. Similar facts cannot be used only to show disposition. The second proposition that defines evidence of similar facts is found in the S. 15 of the Law on Tests 16. When there is a question whether an act has been accidental or intentional, or done with a particular knowledge or intention, the fact that such act has been part of a series of similar events, in each of which the person who does the act was interested, is relevant. After Makin got up the question if the prosecution should have waited until a defense was raised or they could wait for such evidence. The question arises if the defence should wait for a defence to lift evidence of similar facts or if they could lift it to prevent the accused from even thinking of raising a defence. He had Lord Herschell only given the direction on which the successive courts could build and in Harris V DPP AC. 394 Visconte Simmons solved the issue. “It was a mistake to draw a closed list of circumstances when proof of similar facts were admissible. He rejected the notion that Lord Herschell one did not have to wait until the accused person raised a defense of accused or error for one to carry the defense before introducing such evidence. Lord Herschell gave the instance only when similar evidence could be raised and that Lord Herschell only raised instances. In this case it was considered that, although the prosecution had not had to wait until the accused raised a defence; the judge had the faculty to exclude similar evidence if his probe value was out weighedPreliminary ruling. It was always an act of balancing which aims at the service of testswhich cause prejudice. The accused was accused of killing his wife by poisoning. There was no evidence that he had given the poison, but the prosecution tried to induce evidence that the accused had another dead wife because of poisoning in circumstances that suggested that the accused had drawn his wife to take poison as a cure for a toothache. the defendant was convicted, but by appeal, the appeal was allowed for the reason that the evidence permitted by the court of the trial was very detrimental to the accused. In the words of the judge, the probative value was exceeded by the prejudicial effect, although the evidence was technically admissible. similar evidence must have a strong probative value weighed against prejudices. discussing further probative value than the prejudice effect, Lord Scarman stated in this case: “The probative value is not provided by the simple repetition of similar facts. there must be some features in the tests that tried to be adopted that provided a link below. The existence of such a bond must not be referred to by the mere resemblance of facts which are themselves so common that they cannot provide any safe foundation to say that they point to the commission by the accused of the crime in consideration.” The proof of similar facts must have its own persuasive value and not only having probative value does not depend only on coincidence. the similar admissible tests fall into 3 categories which depend on what is directed towards. 1. similar facts try to establish the state of mind with which it has been shown that some acts have been made that is what motivated the act; 2. similar facts prove the identity of the guilty or the doer of an act; 3. Similar facts show that the commission of the act itself is established and therefore exclude an act of nature or miracle. UniversityLAW XXX LLB II 2003 LAW FACULTED NAIROBI LAW OF EVIDENCE 3 Lesson First, the question of similar facts proves to establish the state of mind – the accused may admit that he has committed an act but his state of mind is not discernible. Looking at the evidence is overwhelming that the accused committed the crime, but it is unclear what his mood was. Under this circumstance, it may be the case that he was not going to do what he did. For example, a person may have killed a human being, but the case may be that he killed the human being thinking he's an animal. If the accused person had done similar actions in which the state of mind was clear, then it can be deduced that the present act was done with the same state of mind as the previous ones. However, if the state of mind in previous actions is not clear, the very nature of those acts granted together with the present may lead to a interference on what the state of mind was. For example, if a student should be caught during the exams by copying from the law on evidence and in defense says that he did not know that it was wrong to copy from the law, if there is evidence that such student was previously caught in another subject doing the same and was reprimanded for it, then evidence would go to prove that he is not innocent, the evidence can be used to defer. Francis was accused of trying to get money from another person by presenting a certain ring to be a diamond ring. He said he didn't know that the ring he was claiming to sell was not a diamond ring and it was worth nothing. There was evidence that he had previously approached other people who had refused to give him money for the ring when he realized that the ring was not a diamond ring. The question was whether proof of previous transaction with other people where these people hadto give him money for the ring, realizing that the ring was useless pertinent. the judge stated that it was pertinent to challenge the defense of lack of knowledge. the evidence of the experience of Franciscans with other people was relevant for lack of knowledge. the evidence of francesco with other people was relevant here not to know. similar factual evidence in John Makindi was admitted on the ground that illustrated hostility and ill-will between John Makindi and his adopted child. on state of mind one of the results explained the cause of blood loss and the other evidence showed that it had previously been taken in court and had threatened the child with further plague due to having sent him to prison. similar evidence can be used to show the intention in which an act was made. You can blame the act on a person because they admitted, but you may not be able to determine what the state of their mind was. or evidence of similar facts to explain that a person had fraudulent intentions. Armtrong was accused of killing his wife by administering arsenic poison on her. this poison was actually found in his house tied into packages containing a fatal dose. Armtrong claimed he oated the poison to kill weeds as a help for gardening. There was no evidence that he gave the poison to his wife. The prosecution tried to conduct evidence that a few weeks after the death of armstrong's wife tried to kill another man by giving him arsenic poison. the question was whether this evidence was admissible. the defence raised the objection that the evidence was biased and irrelevant. the court stated that the evidence was admissible and in the words of Lord Hewart “... the fact that armstrong was subsequently found not only in possession, but in reality using for such a mortal purpose thehimself that caused his wife's death was proof from which the jury couldthat the poison was not in its possession on the previous date for an innocent purpose.” Dr. Bond was accused of using some tools for a woman with the intent of getting an abortion. He denied the intent, said he was not using the tool to get an abortion, but the tools were to examine the woman. The prosecution however tried to conduct evidence that the doctor had used the same tools in another woman who had had had occasion to an abortion and the girl on which he was accused in the use of the tools testified that the doctor had said the words to the effect that he had made dozens of girls happy and could do the same to her. The defense opposed this evidence for the reason that it was harmful and irrelevant, but it was admitted for the reason that it showed the doctor’s intention in claiming to examine the woman and rejected the statement of doctors who were using it to examine the woman. Reaching was a permanent secretary who had an invocation account and was accused of stealing 76,000/- from that account. His defense was that he was not going to defraud and intend to take into account the money, but he was prematurely arrested. However, the accusation brought evidence that on six previous occasions, Achieng’ had taken money from his bankruptcy account and had never taken it into account. The question was whether the evidence of previous occasions was admissible and the judge felt it was admissible because he rejected his defence of intention to take account of the money. The two accused were accused of conspiracy to defraud the commune. The case for the accusation was that, according to an agreement between the two accused, one of them was an engineer of the City Council and the other an excavator, the first accused, the payments certified as because of the second society accused for the digging of hard rock that the first accused knew was enormously superior to what had beenThe first accused had hadcaused an excessive payment from the City Council to contractors. The prosecution said that this was fraudulent and that it had not just made an honest mistake in the estimate of the rocks. The prosecution has actually led to the evidence that there was a case in which the same accused had overestimated the amounts due to the 2nd accused an event that had occurred in 1953. The court stated that the 1953 transaction rejected an honest error defense. He basically shows the mental state he acted with. Mortimer was accused of killing a female cyclist, destroying her. He claimed it was an inevitable accident. The prosecution has however brought evidence that Mortimer had on previous occasions knocked down other female cyclists. It was believed that this evidence of the previous incidence was admissible to prove that he meant what he had done. It wasn't an accident. The nature of the event as a whole has excluded the coincidence and the conclusion has been caught by watching the transaction as a whole. SIMILAR ACTIVITIES TO IDENTIFICATE THE PERPERTRATOR OR DOER OF A ACTIVITY If it is shown that a particular act has been made, but no one knows of course who has been, if so happens that other acts of distinctive similarity have occurred with the one in question and that a particular person has been involved, then one can draw an inference that was the doer of the act in question. However, it is not possible that, for this inference to draw the likeness should be very distinct to guarantee propensity alone should not be used to judge a person. For example if the bags disappear and it is known that they disappear during the break and this time a person is caught on foot with a bag and then it turns out that this person never returns to lesson after the break and a modus operandi is designed that this person is taking the bags and the person has a liking for abag type. bag.You are looking for similarities. In this case a young girl was found strangled on the side of the street and was clear from the examination of her that there had been no attempt of sexual violence on her person. Straffen had been seen around the crime scene, but there was no evidence that it was directly or indirectly connected with the murder. It was established as a fact that Straffen had strangled two girls in a different place two months before and had also left their bodies on the side of the road. It was also clear that there was no attempt at sexual assault on these girls. Straffen had been engaged in a psychiatric hospital for the crime and at the moment the girl whose murder had been considered had been killed; Straffen had escaped from the mental hospital and was in general. When the police went to interview him he also said before he was questioned ‘I didn’t kill the girl’. He was convicted on the basis of evidence from the other two girls. Once again it was established that he had the opportunity to kill the girl having escaped from the mental hospital and the fact that he had been seen near the scene had the opportunity and the propensity was so distinct. Thompson had carnal knowledge of two boys and gave him a date 3 days later. He described the place of the date as a street outside a public bathroom. Thompson met the two boys at the time. After noticing the presence of strangers, Thompson gave the boys money and asked them to leave. It turned out that these strange people were police and when Thompson approached, he told them they had the wrong man. In search of Thompson he was found in possession of some bottles of chemicals and further research of his house produced photos of naked boys. The judges relied on this trial and its use as alleged by the boys. Ithey said what the chemical was used for. In the words of the court, being gay had characteristics that were easily recognizable. Recognizable.it has aroused a distinct propensity and was therefore a reliable means of identification. Paul was accused of the murder of Joy Adamson, a famous Conservative. His defense was an alibi (alibi is to say that he is not at the locus quo). Ekai said he was in Isiolo to be with his grandmother. The proof was that in the material night, one of the 3 trunks of boxes in the deceased tent, including that containing the box of cash had been forced to open by a person using a bar that had been taken from the laboratory to the field. The intruder had escaped using the animal wrap. The prosecution proved that 3 weeks earlier, there was a robbery at the camp and on that occasion the box containing the box had been forced open with the bar taken from the workshop field. The intruder on that previous occasion had come out through the animal closet. When Paul was arrested after the murder, he was found in possession of some stolen clothing from the camp on the previous occasion. Paul was the worker of the deceased and had a good knowledge of the field and taking into account all these factors he thought that proof of the previous theft was admissible in attempts to prove the murder because the acts showed a distinct modus operandi. Proofs similar in fact can be conducted to demonstrate the commission of an act This applies in situations where it is not clear whether the act was done or happened miraculously. If it proves that such an act has been caused by human intervention, this is a good reason to emphasize that a particular act has actually been done contrary to it only happening miraculously. This is normally in situations where if you look at the acts in isolation, you can fire the human act and attribute them to nature, but when you look at the acts together you can see that they had help. Smith married his first wife. He took an insurance policy for his life.Your favor. He made his representation representationdoctor that his wife was epileptic, a few months after his wife's body was found floating in the bathtub and a few months after the insurance paid. Smith continued to marry another woman, exercised an insurance policy on her in her favor and made claims that she was epileptic and she was also found dead in the tub and continued to collect the insurance and married another whose body was found dead. He was accused of killing his wife no. 1 on the basis of subsequent deaths of wives 2 and 3 in similar circumstances. In the words of the court the coincidence was too great to be credible and this of course excluded the possibility that the annexation of women in the bathroom was an accident. In the words of the court the act was done by human hands and the motive was clear therefore it was not an act of God. The question arises if the death of the children adopted by the Makins was coincident. Bull. Boll remained with his sister as a husband and wife when incest was not a crime and also had a son together when incest was not a crime. After the parliament committed a crime, the two were accused of having an incestuous relationship, but they continued to live together as a man and wife. Even after the incest had been made a crime, they continued to live together as a man and wife and the question was whether evidence of the former cohabitation as a man and wife could be used against them. They were convicted of incest because their previous association excluded the innocence of their subsequent association. The logic was that if two people lived previously as husband and wife, unless they separate themselves from living under separate roofs they continue to live as a husband and wife. The burden is to make them rebuke this presumption and they were not able to do so. To sum up evidence of similar facts we should examine the sectionof the law on evidence “When there is a question if a particular, particular act has been made,the existence of any business course, according to which of course it would be done, is relevant.” For example, if you are trying to determine if people had lived as a husband and wife if you can show the previous cause of dealing where they lived as a man and wife that would be admissible. Admission of similar evidence is the exception to the general rule and will be admitted only when it has a strong probative value. What is the evidence of fact similar and when it is admissible? Section 15 and 16 Judges and Cases. The judicial notice is defined as what the judges see or the freedom granted to a judicial official acting as such to recognize the existence or existence of certain facts or phenomena without requiring evidence. On what basis will be allowed the judicial communication: 1. The habit or customs of the court and this concerns the authenticity for example of some signatures. You don’t have to prove authenticity whenever they come to court. Seals of the court you do not have to prove their authenticity because the court usually uses the seal. The names and official designation of senior officials of the past and present degree; International relations of a country if Kenya is at war with a country judge are required to know; 2. Where the statutes decide that certain things are known, for example, certain certificates that the judges decreed must be made judicial notice of; 3. It is necessary to make things workable, such as the practice of the court, as the tribunal leads itself is taken judicial notice. Ordinary rules of reasoning do not need proof to be demonstrated. 4. The judicial notice base is that of questions that are known by all, for example, judges would know that if you are imbibe some liquids you can get inebriated this is commonly known. It cannot be assumed that the judges are so ignorant that theyYou know what others know. The effects of the judicial notice Section 59 of the Law on Tests “It is not necessary to demonstrate any fact that the judge acknowledges. The judicial notice is refusing proof. Section 60 lists the questions referred to by the judge. 60. (1) The courts take note of the following facts: a) All written laws, and all laws, rules and principles, written or unwritten, which have the power of law, whether in force or have such force as predicted before, a or after the beginning of this act, in any part of Kenya; (b) The general course of proceedings and privileges of Parliament, but not operations in their journals;before it; (k) The rule of the road on land or in the sea or in the air; (l) The ordinary course of nature; Preston Jones V. Preston Jones – Preston Jones went abroad and stayed there for 9 months and therefore did not have wedding relations with his wife. 3 months after his return, a child was born to his wife completely mature. She asked for divorce for adultery reasons. Considering the evidence that the ordinary course of nature i.e. that the period of human gestation was 9 months and not 12 or 3 months. The judge stated that the adultery's marriage offence was not demonstrated. In the words of the judges “even if the court took judicial notice of the normal life of the human gestation period, it was not completely excluded that there could be abnormal periods of human gestation. (m) The meaning of English words; (n) All questions of general or local notoriety; (what everyone knows) (or) All other matters of which it is directed by any written law to take judicial notice. Should we take a judicial note of the usual right? The problem arises if in a dispute involving the usual right if the usual right must be taken judicial act. The judges were of the opinion that the party who seeks to rely on custom should prove that the usual law actually calling expert witnesses. This is because of the difficulty of establishing what the usual law is at any time given as it is not written. Section 18 of the law magistrates is authorized to take the Judgement Notice of custom law without having to ask for proof for it and if there is a dispute, then it will have to be established for proof. If the usual law is a disputed tenet, then there is a need for proof. If there are any disputes then the proof will have to be called. Section 60 (1) (b) Judicial noticethe procedure and privileges of parliament, but not transactions in their magazines. The judge must not seek proof of the privileges granted to parliament. These provisions are, however, exempt from judicial communication operations in parliamentary journals. Whatever is registered in the Hanselard will not be taken judicial notice. Section 60 (1) (c) - Judicial notice must be taken of war articles for the Armed Forces. Section 60 (1) the seals of all the courts of Kenya; and all seals that any person is authorized by any written law to use; Section 60 (1) (f) - Access to offices, names, titles, functions and signatures of public officials if the fact of their appointment is notified in the Gazette; Section 60 (1) (g) the existence, title and national flag of each State and the Sovereign recognized by the government; Section 60 (1) (h) Natural and artificial divisions of time, and geographical divisions of the world, and holidays; Section 60 (1) (1) the extent of the territories including the common wealth; Section 60 (1) (j) the beginning, continuation and cessation of hostilities between Kenya and any other State or body of persons; Section 60 (1) (k) the names of members and officers of the court and their deputies, officers and assistants, and all officers acting in execution of his trial, and also of all the advocates and other persons authorized by the law to appear or act PRESTON JONES VS PRESTON Prestonabroad and stayed there for 9 months and therefore did not have wedding relations with his wife. 3 months after his return, a child was born to his wife completely mature. She asked for divorce for adultery reasons. Relying the evidence that the ordinary course of nature, human gestation was 9 months not 12 months or 3 months. The judge stated that the adultery's marriage offence was not demonstrated. According to the judges, “although the court has taken judicial notice of the normal life of human gestation, it has not been completely excluded that there may be abnormal periods of human gestation. King Oxford Poor Rate Case: In this case Crichton J. interrupted the conventional recognition of damages for the loss of life expectancy to the wife of a dead criminal after taking note of the fact that “the life of a criminal is unhappy.” It is a matter of inferences that a judge can draw, can draw or should draw. Presumptions are devices that allow a court to pronounce on a particular problem, despite the fact that there is no evidence or there is no insufficient evidence. The inference that the judge can draw could be affirmative or dis-affirmative (yes or not) presumptions to allow a judge to find a fact of existence or to find a fact of not exist. Essentially, the assumptions will have effect on the burden of proof. If we're saying that the assumptions will help the court find a certain fact of existence, it will have an effect on which test charges a person will have. There are 3 categories of assumptions: 1. FACTS PRESENTATIONs are inferences that can be drawn on the establishment of a basic fact. The word in these assumptions is ‘may’. When you find a basic fact to exist, you areto come to court. There is an invitation to the court to draw a certain inference. 2. REQUIREMENTS They are inferences that must be taken in the absence of conclusive evidence on the contrary. A good example is the presumption of innocence, that every person accused of a crime is innocent until proven otherwise. Until there is no conclusive evidence that despised the innocence of the accused person. Essentially, these assumptions are declared mandatory until you have no other conclusive evidence. 3. IREPROVED RESEARCH OF LAWS: These must be traced no matter how much evidence exists on the contrary. Once the basic fact is established regarding the presumption, it is necessary to draw the inference that will dispel that presumption. They will usually be taken from statutory provisions. They are public policy pronunciations, which decree that in the interest of the public some issues are decreed as a certain way, for example an 8-year-old child is not capable of carnal knowledge. Section 4 of the Law on Proofs defines the presumptions of facts and objectionable presumptions of law (1) "When it is provided by the law that the judge may presume a fact, he may consider a fact as evidenced, unless and until he is denied, or may ask for proof of it." (2) Whenever he is directed by the law that the judge assumes a fact, he considers that fact as evidenced, unless and until he is left." (3) When a fact is declared by the law to be a conclusive proof of another, the judge, in evidence of a fact, considers the other as demonstrated, and does not allow to provide evidence for the purpose of denying it. PRESENTATIONS OF THE ACTS: (PROCREATE PRESENTATION) They are inferences that can be drawn. Section 4 (1). Section 77(2) The judge may assume thatto any such document is authentic and that the person who signed it held the office and the qualifications that he professed to hold at the time of signature". The judge is entitled to assume and is looming to the person who claims otherwise to prove their case. Section 92. The judge may assume that any document which provides for a copy of a judgment or a judicial register of any country which does not belong to the Commonwealth is authentic and accurate, and that such judgment or minutes has been pronounced or recorded by a competent court of jurisdiction, if the document claims to be certified in any way that is certified by a Kenyan Consular Officer or a diplomatic representative in this country or to be the commonly used way in that country for copies of judgments. Section 93. The judge may assume that any book, to which he may refer for information on matters of public or general interest, and that any published map or chart, whose statements are admissible facts and which is produced for his control, was written and published by the person and at the time and place from which or to which he claims to have been written or published. There are certain things that are not counterprotected and you should not waste the time of the courts trying to prove them. Section 113 of this section was used to help in the matter of succession, but once the law of succession has been set up it has been repealed. This was important when it comes to death test within 30 years. Section 119. The Court may assume that any fact which it considers likely has happened, as regards the common course of natural events, human conduct and public and private affairs, in relation to the facts of the particular case. (Presumption of probable facts) We are talking about an inference that can be drawn forconcerns natural events, human conduct and the common course of natural events. You refer to what you dolf a person is caught with stolen goods, it is assumed that he stole them or that he knows who stole them. if they fail to explain adequately how they came to own stolen goods, then the impending of the test is upon them to say how the owner came to lose the goods. the ability of the judge to draw a presumption of guilty knowledge inference. from experience we can deduce that a woman who is in possession of stolen goods after the theft and cannot give account of such goods is either the thief or received them knowing that they are stolen. We're talking about possession recently. a zus v. the Uganda raised the question, the court here refused to apply the doctrine of the recent possession after the accused was found in possession of a stolen bicycle 7 months after he had been registered lost. the tribunal had actually applied that doctrine to condemn the thief of the theft and receive stolen goods because the accused had not given any reasonable explanation from how he had come on a bicycle. the appeal court has stated that 7 months cannot be described as recent and consequently the court of appeal has annulled the conviction for theft, claiming the conviction for receiving stolen goods. presentation of the activities' likely s. 119 (immutability of third parties) a thing or a state of things that has been shown to exist in a shorter period than that within which such things or the state of things usually cease to exist is presumed to be still in existence. an example is given in the case of kanji & kanji v. 1961 E.A 411 C.A in this case the arm of a sisal factory employee was amputated by a sisal decorator in April 1960. an examination carried out by a Mr. Perkin in September 1960 showed that there was no barrier or fence to protect employees when feeding the machine with sisal leaves. the company has been held responsible for the failure to comply withbarriers for the protection of employees from the machine and this result was held on the basis of the assumption of the immutability of theOn appeal the factory owner claimed that there was some form of fence at the factory when the accident occurred in 1960. This barrier was not found in force in September when Mr. Perkins made his own control. The Court stated that the Magistrate was correct in considering that the machine was in the same condition in April, as it was in

September 1960. It is unlikely that in April there was a barrier that had disappeared since September, but factory owners were welcome to bring evidence to prove that there was a barrier in April. OFFICE FOR OFFICIAL ACTIVITIES AND INDIARY I am REGULARLY PERFORMED (Regulation of REGULARITY) It is based on a solid public policy which affects good faith on official and judicial conduct. The burden is on those who support irregularity to bring evidence to denial or establish irregularity. Looking at how our courts work, it may not be the way to go. For example, if your file gets lost, you will attach that the file is lost from the court. THE COMMON COURT OF BUSINESS was presented in CASI PARTICIPANTI The basis of this presumption is the practice of business. If any activity has been carried out on the basis of this common course, it is assumed that it is so unless the person who attaches otherwise carries evidence on the contrary. If you have a quarrel with the common business course, it is looming on you to show that the common business course has not been followed. The experience that could be produced and is not produced if it is not prohibited if it is not possible to be unreliable to the person who presents IT: Once again it is something that draws itself as a worldly person. If someone supports the evidence, it is assumed that the person who supports the evidence is because it is against them and is impending on the person who supports the evidence to prove that it is not so. CREDIT AGREEMENT and that their experience should not beto live the diseases that is CORROBORATE There are some witnesses that are heldand accomplices are some of these witnesses. The reasons for the unworthyness of evidence are that an accomplice is a participant in the crime and such a person would be highly tempted to exceed the dollar. Having participated in the commission of the crime an accomplice is generally an immoral person and their word should not be taken without confirmation. An accomplice will probably favor the state in the hope of a forgiveness. It is necessary to obtain independent testimony on particular materials. Davies V. DPP 1954 AC 378 The appellant together with other young people attacked another group of fists. One of the members of the other group later died of dagger wounds inflicted by a knife. Six young people, including the applicant and an L, were charged with murder, but in the end the appellant was only convicted. L and the others were convicted of joint aggression. At the applicant's trial, L gave evidence for the prosecution. Referring to an admission by the applicant of the use of a knife by him. The Judge in this case did not warn the Jury about the danger of accepting L's evidence without corroboration. On the Appeal the applicant was saying that he was mistakenly convicted because of the lack of this warning by the judge. The court stated that there was no good reason to prevent the conviction because I did not know before the murder one of his comrades had a knife. Basically, the court stated that L was not an accomplice to murder. The court here defined complicits as people who are Participes Criminis regarding the actual crime charged if as major participants before or after the fact. It included people who were procured, helped or hired in the crime commission. The Court was trying to exonerate L from being a participant. He didn't participate in the stab because he didn't know his partner had a knife.REVOLUTIONS OF THE RIGHT To cope with this presumption a conclusion is necessaryThese are presumptions decreed by law. A good example is the presumption of genuineness in a document that claims to be Kenya Gazette. There is also the presumption that a person between 8 and 12 is not responsible in a criminal way unless it can prove that he knew that his action was morally and legally wrong. Once the basic fact is established, then the person could not be exposed to criminal liability unless he carries evidence to prove that he knew that what he did was legally and morally wrong. Section 83. Requirements regarding documents “(1) The judge assumes that any document which precludes being a certificate, a certified copy or another document is — (a) declared by the law to be admissible as proof of any given fact; and (b) Substantially in the form, and which claims to be executed in the manner, directed by the law in that name; and (c) (2) The judge also assumes that any official from which such document requires the signature or certificate, To be able to deny the documents according to this act you must carry evidence. Membership of the Section of Tests 84 Whenever a document is produced before a court, which provides that it is a register or a memorandum of any evidence provided in a court proceedings or before any official authorized by the law to take such evidence, and that it requires a court or magistrate to be signed or any other agent as a foretold, the judge assumes (a) that the document is authentic; (b) that statements relating to the circumstances in which it was actually requested are made. Use of the word "share" documentssupposed to be genuine. Section 85. The production of a copy of any written law, or of a copy of the Gazette containing any written law or any communication that may be made in accordance with a written law, in which such law or notice (as the case may be) presupposes to be printed by the government printer, is first evidence facie in all courts and for all purposes of manufacture and tenor of such written or notice law. There is a public policy that such documents are authentic unless there is any conclusive evidence on the contrary. Section 86: (1) The judge assumes the authenticity of any document which precludes being — (a) London Gazette, the Edinburgh Gazette, or the Official Gazette of any Commonwealth country. b) A newspaper or a newspaper; e) a document directed by any law to be held by any person, if such document is kept in the form required by law and is produced by the correct custody. (2) It is said that the documents are in adequate custody if they are in the place where and under the care of the person with whom they would of course be; but no custody is improper if it proves to have had a legitimate origin, or if the circumstances of the particular case are such as to make that origin likely. Section 87. If a publication or part of it indicates or claims to indicate the name of any person on behalf or on the basis of which, or the place where such publication or any part of it has been conferred, it, in any proceeding for a crime of any written law or for disregard of any court, may assume, until the contrary, that such publication or part of it has been contributed, on behalf or on behalf of that case. Use of the word "slash"publications will be considered published, published, printed, in the place where they are said to have been published unless there is evidence on the contrary. Section 88: Where a document is produced before a judge, which presupposes that it is a document which, by law, if the force for the moment in England, would be admissible in proof of any particular in any Court of Justice in England, without proof of the seal or stamp or signature that it would authenticate it, or of the judicial or judicial character claimed by the authentic person from whom it declares signed, a) the Judge assumes that such a seal is a signatory. Section 89: (1) The judge assumes that maps or plans prohibiting being made or published by the government authority, or any government department, of any Commonwealth country have been made or published and are accurate. (2) The maps or plans specially made for any civil or criminal proceedings or other proceedings must be demonstrated. It speaks of maps or plans that claim to have been published by the government are presumed to be accurate unless evidence is produced otherwise. Those who emanate from the government will be presumed to be precise. Section 90. The judge assumes the veracity of each book that precludes printing or publishing under the authority of the government of any country and containing any of the laws of that country, and any book that provides for the containment of decisions of the courts of any country. Laws and judicial relations are presumed to be accurate. Section 91. The Courtto assume that every document that claims to be a power of attorney, and to have been executed before and authenticated by a public notary or commissioner for oaths or any court, judge, magistrate, or Kenya official consular or diplomatic agent, has been so executed and authenticated. Section 95 the judge assumes that each document requested and not produced after the notice of producing has been certified, stamped and executed according to the procedures required by law. You're talking about presumption for due execution. Section 92. The judge may assume that any document which provides for a copy of a judgment or a judicial register of any country which does not belong to the Commonwealth is authentic and accurate, and that such judgment or minutes has been pronounced or recorded by a competent court of jurisdiction, if the document claims to be certified in any way that is certified by a Kenyan Consular Officer or by a diplomatic representative in or for that country to be the commonly used way of judgments in that country. Section 93. The judge may assume that any book, to which he may refer for information on matters of public or general interest, and that any published map or chart, whose statements are eligible facts and which is produced for his control, has been written and published by the person and at the time and place from which or to which he claims to have been written or published. Section 94. The judge may assume that a message sent by a telegraph office to the person to whom that message presupposes to be addressed, corresponds to a message sent for transmission to the office from which the message presupposes to be sent; but the judge does not presume on the person from whom that message was transmitted for transmission. The presumption of facts is distinguished by the use ofYou can. PRESENTATION OF DEATH Section 118 (a) When proof that a person has noheard for seven years by those who expected to hear about him if he was alive, there will be a questionable assumption that he died. If a person has not been heard for 7 years by people who would hear from him, he is presumed dead. For the purposes of expulsion. It is a questionable presumption of law on the duration of a person's absence time. Seven years are arbitrary. People who can hear from such a person are members of the immediate family of the person. For the presumption of keeping people must be, 1. There are people who would probably hear from that person at that time. 2. That these people have not heard from the person; 3. All investigations have been done as appropriate under circumstances. Charging V. Chard (1956) 2 AER 259 In this case, parts of a marriage celebrated in 1933 sought nullity decrees because the husband had been through a wedding ceremony in 1909. The first wife for whom there was no evidence of illness or death registration was heard for the last time in 1917 and would be aged 44 in 1933. There were reasons that could have led her to not want to be heard by her husband or her family at that time between 1917 and 1933 the husband was continually in prison. The question was if you could assume she was dead and then hold this marriage of 1933 valid. The court stated that there was no evidence of a person who would have had the chance of hearing about the first wife between 1917 and 1933 and consequently the presumption of death was inapplicable in such case the nullity would not pass, but they should have brought more evidence. Psychological absurdity V. Edmonds This was life insurance. The problem was whether the defendant was dead or alive. The defense was that the defendant was not dead. The family gaveof not hearing from the man for more than seven years. However, his nephew had written to his mother from Australia claiming he saw him on the street in Melbourne, but he was lost in the crowd before he could talk to him. The court stated that the presumption of death could not bear in light of this evidence by the nephew. King Phenes Trusts Case of dealing with the inheritance of a person. PRESENTATION OF THE MARKET: When does the presumption of marriage arise? This occurs in two situations, 1. Where there was a wedding ceremony and later cohabited. If the parties had the ability to contract a marriage, then the law assumes that they are validly married. Establish the presumption of marriage through ceremony and coexistence. We talk about the formal validity of marriage – this is the law of the place where we claim to have married (i.e. the law of the locus or the law of celebration of marriage) once it is admitted that a marriage was celebrated between 2 people who intended to marry then the formal validity is presumed to exist. Piers V. Piers the couple married in a private house while the law required as a prerequisite for the validity of such a marriage that you get a special license. The Piers’ did not get that type of license and when the marriage became harsh, the validity of the marriage was questioned. It was thought that the presumption of marriage in favour of the legality of marriage should not be slightly rejected. The evidence against it or the evidence to contest must be strong, distinct, satisfactory and conclusive. Maherdavan V. Maherdavan She's on a wedding. Whether it is valid or invalid (formal validation or compliant with land law) 2. Essential Validity: This essentially speaks to people living together as a man and wife. This is going to prove the ceremony itself. The law here is liberal.It must not have been a ceremony at the Chancellor's office, it may have been a custom law marriage. r v. shaw (1943) times law report 344 this was a case of bigamy where there was proof of celebration of a previous marriage and the accused did not give evidence to contest this evidence. the man who denied has not brought evidence to reproach. 3. cohabitation: here is where a man and a woman live together and are held as a man and wife to all those with whom they interact. There is a presumption that they are married. At some point they got married. King taplin mary njoki v. john kinyanjui mutheru & other ca 71 of 194 mary njoki was a girl of the deceased from his university days and his at the law school. were to be seen together during the holidays. He would have saved some money from his allowance and sent you to campus. after their graduation they lived together in different places and then the deceased expired. njoki looked for a part of the deceased estate. This move was contrary to the deceased's brothers who claimed he was not a wife. the court stated that the presumption of marriage could not be maintained here. the judges stressed the need for quantitative and qualitative cohabitation. long and with substance. They gave examples of how to have children together, in the purchase of goods together that would move a relationship from the kingdom of concubinage to marriage. aronegary v. sembecutty is believed that where it has been shown that a man and a woman have crossed a form of marriage, the law will assume if it does not prove the opposite, that they lived together as a result of a valid marriage and not in a state of concubination. cause v. ruguru [1970] E.A. 55 where plaintiff a white man was living with the defendant after a while the relationship became harsh. the plaintiff alleged that the plaintiff brought an action for the avoidance of the defender in violation of the domicile and histhe plaintiff calledwho had actually been married to a white woman in 1996 and marriage had not been dissolved. He admitted he lived with the defender for some time and paid Kshs 3,000/= as dowry. The evidence showed that Kshs 3,000/= was not dowry and that no ram had been slaughtered as required by customs. The judge held that as a mere licensor the defender was responsible for avoiding the offender. HOTTENSIAH WANJIKU YAWE V. A. 13 of 76 Yawe, a person living in Uganda in Nairobi, was killed in a road accident in Uganda in 1972. He was a pilot with East African Airways and lived in Nairobi West. After his death, the recurring Wanjiku claimed to be his widow and claimed to have four children. Some Ugandan suitors denied that he was his wife and that the deceased was not married. The evidence was called that they showed that the deceased lived with the appellant as a wife and even when he asked for a job that he had called the recurring as a wife and the two were considered a man and wife and lived as a man and wife for over 9 years. The Court stated that long-term cohabitation as a man and wife gives rise to the presumption of marriage and only the evidence conferred on the contrary could reject this presumption. WANJIKU V. MACHARIA [1968] Wanjiku requested the maintenance from Macharia by calling to his help a marriage certificate. The two married in 1963, they remained together as a husband and wife until the relationship became sour. He had witnessed the oath that he had been married to another man in 1953 or around. The court stated that they would not presume marriage because all that was necessary to contest the presumption of marriage by cohabitation was a proof that leads the court to doubt the validity of marriage. In the words of the court, Wanjiku had no validity of the marriage. KIZITO CHARLES MORAA V. MRS MARY ROSE VERNOURRosemary moraa. C.A. No 61, 1984. the appealing has sued for violation and various acts of restlessness and a statement that theHe was never his wife. the respondent had been married to a Mr. Vernour who had father one of his sons and had married in a marriage of convenience. She was a principal and a pregnancy would embarrass her. Vernour departed for the land where he moved to be with the informer for 4 years and had 3 children. problems began when they had a mentally delayed child. was argued in court in his name that a presumption of marriage is held. the court stated that no marriage could be held and marriage between you and Mr. Vernour had not been finished, had no capacity to marry and his cohabitation was adulterous that he had unfortunately brought children. irrebutable presentation of the right presumption of legitimacy section 118 the fact that a person was born during the continuation of a marriage valid between his mother and any man, or within two hundred and eighty days (280) after his dissolution, the unmarried mother, will be the conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to marriage had no access to each other at any time in which he could be fired. gordon v. gordon (1903) a c 141 the husband proposed a divorce proceedings against his wife for reasons of adultery. divorce was granted and custody of children was given to the husband. the wife asked for variation because one of the children was not the natural son of the father, but a son of the correspondent. the court felt that the sexual intercourse between a man and a wife must be presumed and nothing can destroy a child born in wedlock. poulet peerage (1903) ac 395 (presumption of legitimacy) when there is an unconfudible presumption of the law, no evidence can be brought here, a child under the age of 8 can not commit a crime and a boy under 12 years can not know acarnally. The reason you've got some assumptions is to save your legal time. on the other hand, part,are some things that should not be brought under court inquisition. The difference between law and assumptions of facts. LAW XXX LLB II 2003 LAW OF EVIDENCE: Lesson 5 In the context of the Law on Proves, an admission is defined as an oral or written declaration that suggests an inference to a fact in question or to a relevant fact made by one of the parties to the proceedings. Permissions are classified in 1. 2. Computer admissions; computer admissions are those admissions that are made before proceedings are provided and this is covered in Section 17-24 of the Test Act. formal admissions are carried out in the context of specific proceedings and the effect of formal admissions is that they issue with proof regarding being done. They will be made in response to a warning to admit and could also be made by Affidavit. The distinction between formal admissions is that formal admissions are carried out against proceedings, while informal are made with regard to the procedures envisaged. In the field of criminal law, admissions will be under confession. Sections 25-32 deal with confessions. According to Section 24 admissions are not a conclusive proof of the issues they admit, but could operate as estoppels and many writers on S. 24 wonder why lawmakers put such provision knowing that in Common Law Admissions if admitted is conclusive evidence. But basically we're saying even if they're not conclusive that they're estoppel. The idea of estoppel in admission is to prevent a person from asserting things that are in variance with the things they had admitted before. Section 61 deals with the facts admitted in civil procedures is the effect that is not necessarythe main principle is that once you admit certain facts, it will not be required to prove such facts, but unless the judge can at discretion request that such facts be proven. ESTOPPEL: What are the Estoppels? Estoppel refers to a law rule where a party to litigation is stopped by to assert or deny a fact. It is a rule of exclusion that makes the evidence better or denied than an inadmissible fact. It is said that there is an estoppel when you are forbidden in law to speak against your act or action, even if that person is trying to tell the truth. For this reason Estoppel is a disability that prevents the parties from attaching or demonstrating illegal proceedings that a fact is different from what has been done to appear from the issue giving rise to disability. Essentially at the conceptual level estoppel will stop a person to bring in information, which should be in variance with the actions that this person has committed in the first. Estoppel has different aspects. You can look from adjective or procedure. The factual aspect is like a test rule and in this ability to grasp the procedural realm, makes the evidence inadmissible. The second aspect which is still a rule of procedure is in front of the law of folds. The party that proposes to rely on estoppel must raise it in the proceedings. If the person fails to lift estoppel in the folds, it may amount to a waiver of the Estoppel. This case is the authority for the proposal that you have to beg your estoppel. Plaintiffs a finance company, was a member of an organization, HP Information Ltd (HPI), created to prevent fraud in relation to purchase-intake agreements. Finance companies will inform HPI of any rental purchase agreement they had entered into with a car so that in case of a car dealer for sale, the dealer may contact HPI to find out ifsubject to a rental-purchase contract. Plaintiff left a carRental-purchase in M. With some unidentified or supervised errors by plaintiffs, HPI was not informed of the agreement. M, falsely stating that he was the owner of the machine, offered him for sale to the defendant, a car dealer. The defendant contacted HPI, who informed him that the car was not registered with them. The defendant bought the car and then sold it. The plaintiffs cited the defendant for his conversion. Most of the House of Lords felt that the plaintiffs were in no legal obligation to register or take reasonable care to register with HPI the rental purchase agreement in question and consequently that an estoppel from negligence could not arise to prevent them from showing their claim against the defendant. The third aspect of estoppel is as a matter of substantial law and can be defensive that prevents the plaintiff from showing some essential facts to his case. Our law on trials does not define Estoppel and the definitions of Estoppel that we have drawn from the jurisprudence and the original source of the word Estoppel that is drawn from the French word that means stop! The case illustrates Estoppel as a test rule and cannot be used to find an action. It can only be used as a shield and not as a sword. It is a substantial right that can cheat a plaintiff to bring into a fact; Some principles from estoppel! 1. Estoppel must be mutual or reciprocal and therefore must bind both sides; An unknown cannot take advantage of or be bound by Estoppel. 2. Estoppel cannot be used to bypass the law so that it cannot invoke estoppel to make an act invalid or vice versa. 3. Estoppels must be certain and this is to say that the statement that constitutes the basis of an estoppel should be clear and unequivocal. It should be unable to be read inOne way. That's true. Yes, I do.lead a person to one conclusion. 4. It is intangible if the make-up of the statement or the representative believes that it is true or false, that is, if you make an incautious statement that leads people to make statements messed up to them, you will be expelled. 5. The representation that is the basis of an estoppel must be a statement or representation of the fact that it existed in the past or that it is existing at the time of drafting the statement or representation. It should not be a promise in the future 6. It is not essential that the intention to deceive or defraud should be there to estoppel be there. Suffice it you did the representation and a person changed their statement, then estoppel will rise. The effect of estoppel is to bind a party and prevent them from relying on certain facts and denying certain facts. A good example is the case of Moorgate V. Twitchings where a property owner entrusted his property to the care of another person. With his conduct that the other party had, although unintentionally, from his behavior led a third party to believe that the owner had no title to the property. The third party acted on the basis of this belief and the owner was held blocked by asserting his title against that third party who had acted in the belief that the owner had no title because of the representation through the conduct of the owner who had been left responsible for the property. This person acted on the best evidence he had. Only the person responsible for the property would know better. And the court stated that the owner was torn The actor owned a piece of land that had access to point A on a road owned by the defendants. And the plaintiff also had a right away from that point A along this road. To allow to sell his land in two parts, the plaintiff hasfrom the defendant a second point of access and also wantedFurther exit right from point B. at a meeting of the site held between the plaintiff, his architect and a representative of the defender, the additional point B was agreed. Later the defendants fenced the border between their road and the land of the plaintiff erection led to B and A. after the plaintiff sold part of his land along with the right of access to A and also going with the right of road on the road, the defendants removed the doors to B and fenced the gaps. Basically, which blocked links between A and B Plaintiff caused a statement and injunction claiming that Defendors were expelled from their behavior from denying him a right to access B and a right to road along the way. The court stated that in the absence of a certainty defined by the defendant, estoppel issues could not arise. There were no guarantees that he would always have the right of road to B., so the action of the plaintiff was rejected. On the appeal of the plaintiff, it was believed that the defendants who knew the plaintiff's intention to sell his land in portions separated from their representations prompted the plaintiff to believe that he would be granted a right of access to B and to erect the gate and not to have abused his belief encouraged the plaintiff to act on his harm. Equity must be satisfied by granting the plaintiff a right of access to the B and a right of road. In view of the sterilization of the plaintiff's ground for a considerable period from the proceedings of the defendant, the right must be granted without any payment from the plaintiff. There are 4 general classifications of Estoppel 1. Estoppel from Record 2. Estoppel by Deed 3. Estoppel from agreement 4. Estoppel by Conduct. ESTOPPEL: RECORD Arises mostly out of judgments and is preached on the premisein the interest of the public there should be an end to litigation. It is important that once a matter is judged, the parties do not live in fear of its being subsequently raised. After a judgment has been announced by a court of competent jurisdiction, the unsuccessful party cannot contest this judgment by raising the same point in another action against the successful party. The prerequisites for which it is necessary to escape in writing is that the question would be judged by a competent court of jurisdiction and cannot be reopened a question of competent jurisdiction. The registers refer to both proceedings and judgments and the outcome of the judgment must be unacceptable so as to escape or record when a matter of fact has been definitively determined between the parties by a competent court and the same question is directly in question in the subsequent proceedings between the parties. For Estoppel's purposes, Record is divided into two. 1. Judgments in Rem 2. Judgments of person A judgment in this regard is a judgment on the status of person or of a thing and examples of judgments in this regard will be judgments in divorce proceedings, in succession proceedings, in bankruptcy proceedings. All these have implications for the state of people or things. Section 44 (1) of the Law on Testing defines the judgments in this regard. Basically, judgments are a conclusive proof of the issues they support against all people in the world. Not as against any person specified but absolutely. And as between the parties to the case is conclusive evidence for the reasons of the decision. Judgments in person are those which do not fall within the definition in S. 44 i.e. do not affect the status of person or thing, for example, the judgments involving contracts or torts. They are a conclusive proof of prejudice and reasons forJudgment between the parties to the proceedings. They do not bind the whole world, but only the parties to the process. Both reviews in rem and in personm give rise to 2 types of estoppels 1. Cause of Estoppel Action 2. Problem Estoppel Action course, once a problem has been judged the same people cannot relaunch the Estoppel Action Course is based on the notion that an action course is faced on a sentence and so the parties to the action will be prevented from affirming or denying compared to what was found so that if a given course of action has been found to exist or not exist, the same parts will not be allowed to review the same problem. But note that it should have been the same parts. The parties can be wounded by the purpose of this course of action.. a good example is the case of In this case the plaintiff had received the decision on a course of action deriving from the violation of the defendant of a guarantee to build a house in a good and worker as way. It was believed that the plaintiff was removed from making a claim for further losses (the plaintiff had already been paid damage) for the same breach of the guarantee that he had suffered after the original litigation. PURSER V. JACKSON [1977] Q If a contract provides for arbitration for disputes such as and when a previous arbitration submission occurs does not prevent the submission to arbitration of a dispute which subsequently arises. The previous presentation operates as estoppel only with regard to the issues it has actually covered. If the parties agree that they will present their complaints when they arise the fact that you have given the matter to arbitration. The arrest only operates as an estoppel on issues that have been covered in the folds so that you can still bring other issues. There are 3 main distinctions Estoppel Problem applies only to issuesand actuallyin the previous proceedings. It cannot arise where a party came in possession of fresh evidence. However, with regard to the estoppel action course, it can actually apply not only to matters that a court has been called to decide, but also the questions that the plaintiff who exercises due diligence or reasonable diligence could have carried out against the defendant. All questions or complaints against the defendants that the actor exercising diligent powers could have carried out. Only these will be the base of the Estoppel. Whether it is estoppel or estoppel action course the requirement of record estoppel are the same apart from the nuances that you go to remain a final judgement, the same parts in cause in the same capacity and the same issues. When talking about the same parts estoppel only operates when the parts are the same as the parts in the original cause. It doesn't have to be them in person, but it could also be their agents. A plaintiff sustained damage to the wounds he sustained while driving his father's car that ran into the defendant's truck. In the previous proceedings brought by the father against the defendant, regarding the damage to the car that the defendant had succeeded on a reason for negligence of contributions by the son who had been active as an agent of the father. The law at that time was that the tax negligence was a complete defense. On a reason for the defendant or course of action Estoppel was held that the parties to the 2 different actions, the plaintiff was not prevented from denying his negligence. A record Estoppel may arise only when the parties of the proceedings contend the same capacity they have made in their previous proceedings. There was a collision between Marginson's car led by his wife as his agent and an omnibus led by Blackburn servo. Marginson's wife died, Marginson was wounded and severalwere damaged as a result ofaccident. the owners of the houses managed to a previous action for damages against marginson and blackburn. It was believed that both marginson and blackburn were vicariously responsible for the negligence of their respective drivers who were equally judged to blame. estoppel was supposed and it was thought that marginson was prevented from denying the wife's negligence in relation to the claim. as his personal representative was not stopped by denying his lenient negligence because he appeared in a capacity other than that he had already contested before. Finally, on these issues, estoppel will only work if the question with the procedure in question is the same in what has been declared. the judge will refer to the disputed cases and the reasons for the judgment. millimeters v. cooper [1967] 2 Q.B. 459 henderson v. henderson [1843 – 1860] aer 310 1. marriage cases: marriage causes are not entirely opponents. essentially estoppels in a marriage cause will bind the parties to the marriage cause, but not the court. thomson v. thomson: Lord denning “Once a matter of double crime has been disputed between the parties and decided by a competent court, none of the parties can claim as a right to reopen the problem and contend it again if the other party object. However, the divorce court has the right and duty in an appropriate case to reopen the problem or to allow a part to reopen it despite the objection of the other party.” If the party opposes the reopening of the case, you cannot open the problem without going to court. in criminal cases the estoppel action course will be declared by the accusation of autre fois absolt (precisely it was previously acquitted) and autre fois convicted (precisely it was previously convicted.) the accused is prevented from denying his guilt or wrong in a subsequent process in which the problem arisesThis is provided for in Section 47 a) In both casesunderlined that in civil and criminal proceedings, the accused is expelled from denying the conclusive nature of his sentence, i.e. if an accused is guilty of dangerous driving, then a subsequent action if submitted for negligent behavior the accused is expelled from denying. A judgment in a civil case is not a conclusive evidence of the issues decided in a criminal case. It would be allowed pertinent to the problem, but the standard test will be much higher. ESTOPPEL DA DEED: The principle underlined here is that people who make solemn statements or commitments under seal must be bound by such commitments. Start to a formally executed and sealed act and their deprives from any less formal and solemn proof. This role is subject to: 1. It applies only between the parties of deprives at act and only in proceedings on the act. 2. No Estoppel will arise on recitals or intangible or untied descriptions (there will be cases where a recital ...) 3. No Estoppel arises where the act is contaminated by fraud or illegality. For an action to form the basis of estoppel da deed, it must contain: - unequivocal declaration of facts; There was a contract following the unequivocal statement; The statement is on both sides; There must be an action that comes from it. Late Justice Channan Singh considered the recitals for the basis ... “A ‘considering’ above all the one concerning the history of the relationship and the reasons for entering into an agreement, is not a term of contract, even if ambiguity in the operational part a ‘considering’ can be used to solve the parts of such ambiguity.” The plaintiff referred to the defendant on a mini-consumer contract for the supply of electricity, on the basis of which the defendant committed to paying the minimum annual charge of KShs. 12.840/- for a period of 46 months from 1st January to 1st January1965. the defendant did not dispute the agreement, but argued that it was empty and unenforceable for the following reasons: 1. there was no consideration; 2. was illegal and not in accordance with the charging provisions of the electric power act; 3. plaint has not revealed any cause of action because the plaintiff had at the moment no material license under that act; 4. the plaintiff claimed that the defender was expelled from denying the consideration that was declared in the agreement as a request from the defendants that the supply company to supply some electrical consumption the defendant challenged the actor's proof of a license to generate or supply electricity. In fact, the actor has not authorized original licenses or renewals of the license. The judge stated that there was no estoppel that worked to prevent the defendant from contesting the considerations referred to in the recitals of the Agreement, but on the evidence that the plaintiff had shown that there was a good consideration. and there was no evidence to support the presumption that the license granted to the plaintiff company was renewed at the right time, place and proper procedure. (presumption of regulation.) judgment of the Russell judge on recitals as the basis for estoppel. university' of the nairobi faculties of law xxx llb ii 2003 6 is a test rule in which two or more people have expressly or implicitly agreed that their legal relations are based on the hypothesis that there is a particular state of facts. Such parties are excluded from denying the existence of the facts assumed. an example of this type of estoppel is found in s. 121 of the test lawArrest of a tenant or a licensor. It is said that no tenant is allowed to deny that at the beginning of the tenancy that his landlord had title to the property. The section deals with both tenant estoppel and licensee estoppel. This resulted in a tenancy for residential tenancy and when the landlord gave notice tenant to quit at a certain time, the tenant tried to introduce circumstances that had prevailed ten years before the start of the lease contract that incapable circumstances the landlord to rent out the premises. What the tenant was actually saying is that the landlord never had a title and could not have rented the court stated that a tenant cannot deny that the landlord had the title to grant the contract at the beginning of the tenancy if he accepts the agreement or in other words becomes a tenant person then he considers himself to absolve in the will of the title owner. Ahmed was a subtenant and managed to buy the premises for which he was a sub-inquiline. The tenant of the landlord continued to ask for Ahmed's rent and the question arised that the first tenant could insist on getting rent from Ahmed based on S. 121. The court stated that NO that the first tenant could not continue to ask for Ahmed's rent because Ahmed was not extracted from asking and showing that the title of his landlord had been determined. In the words of the Court Estoppel prevents a tenant from resigning a title of owners at the time of granting the lease not later. This fact was born from the formulation of Section 121 to the effect that ... “No tenant of real estate, or person who claims through such tenant, must, during the continuation of the tenacity, be authorized to deny that the landlord of that tenant hadof the tenacity a title to such a property; and to anyone who has come on any property with the license of the person in his possession will be allowed to deny thatthe person had the right of such possession at the time when the license was given.” There is no reason why no one has a good time for the persuasion that next week will be allowed to depose that a persomula has had a right to its property. A Licensor shall not be authorized to deny that the licensee has the right to the property to which the license was granted. (Licence is the relationship between a licensor and a licensee) Under S. 122 - there is the Acceptor Estoppel of a Bill of Exchanged S. 122. “No agreement with a bill of exchange is allowed to deny that the drawer had the authority to draw such bill or approve it: provided that the actuator of a bill of exchange may deny that the bill has actually been drafted or approved by the person from whom it claims to have been drafted or approved.” That is why no acceptor of an exchange bill may deny that the drawer has the authority to draw such a law or withdraw such law or draw it. The Buyer is the financial institution and the drawer is the person who writes the bill of exchange or other negotiable tool. It is important to note that the Bank or the financial institution may deny the fact that the check was drawn by the right person, but the acceptor should not deny the drawer the right to draw. If the Bill of Exchange is a fake, he's in the bank to prove it. S. 123 deals with a variety of estoppels by agreement. The one between the licensor and the licensee, the bailor and the bailee, the principal and the agent. No licensee may deny that the licensee has the right to ownership when the license has been granted. In this section, the judge will not be allowed to deny that the bailor was entitled to the goods at the time he had entrusted him. If you're a bailee, you won't be allowedthat the bailor had the right to the goods when they were given to you. However, bail may prove that it wasdeliver the goods to a person who had the right to them as against the bailor. The bailee may also show that the bailor without notice of the baileee obtained notice from a third party who has now claimed the goods from the baileee (in case of a court order in which the goods were disputed and the person with a higher right may have given the bailor notice that they collect the goods and if notice is not disputed then they may have the goods). There may be third parties who may have higher than the bailor. This is to the extent that if you are an agent to whom the goods have been entrusted, you will not be allowed to deny that the main has the right to the goods at the beginning of the main/agent relationship. This is provided in S. 123. If one is an agent and a person with a higher title gets and order you can be forced to give the goods to the third party. Conduct should be such as to cause or allow a person to believe something to be true and the person must have acted somehow on this belief. This person must have acted in such a belief either in doing or resigning to do something by changing his position to his harm. In this case, the judge said "where a person who the representative made a representation to another person the representative in words or acts or behaviors or having to speak or act silently or in action with actual or presumed intention and with the result of inducing the representative to alter his position at his harm the representative in any dispute which may later occur between him and the representative, the representative is substantially estoppaced as it is important to compare Lord is important to beunder this section you must not have acted at them harm, as long as they acted. The estoppel requirement for conduct can be summarized as follows 1. The representation must be made with the intention that it is agitated, it must be a vile intention. 2. Under the Hopgood Rule it would go beyond where you are under the duty to speak, act or take care, if you make a neglected statement you will be avoided to deny the truth of the statement or if you are in duty to act and you do not take any action then you would have expelled. You could make a positive representative in the sense that you expected to act or speak and you did not. This failure would be what people trusted and could give rise to estoppel. A husband and wife had a joint account in the Martins bank and the bank pledged to honor the checks signed by both signatories. Subsequently the account was closed and an account opened in the unique name of the husband the wife has no authority to draw checks on that account of the husband. Throughout this time the wife repeatedly falsified her husband's signature to the checks and pulled out the money she applied to her uses. The husband realized these forgeries, but he was persuaded by his wife not to say anything about them. She kept her calm for 8 months when she decided to report forgeries. The wife killed herself. The husband then brought a lawsuit against the bankers to recover the sums paid by the only cheque account to which his signature had been falsified. The judge held first the plaintiff had a duty to the bank defendant to disclose the falsifications when he realized how this would allow the bank to take measures to recover the money wrongly paid to the wife. Secondly, with its lack of respect for this duty, the bank has been prevented from intervened against the plaintiff and his wife forby his wife and, thirdly, he had carried out the matter only after the death of his wife. The plaintiff was removed from claiming that the cheque signatures were forgeries and consequently had no right to recover the money he was looking for from the bank. The second requirement is that representation must be clear and unequivocal. This allows the parties to know exactly the import of the situation. One of the statements made is that the level of accuracy should not be a statement of attorney. The representation must be in fact. Fourthly, representation must not have the effect of sanctioning something prohibited by law. Tax traders in income v. A.K [1964] The judge pointed out that no violation of any of his nature can operate to cancel the laws because it is a duty of law to obey the law. Chatrath v. Shah [1967] where it was stated that the doctrine that there can be no estoppel against a statute simply means that an estoppel cannot make valid something that the law invalid so that if a statute declares a transaction to be invalid or expressly declares that something should not be done, then estoppel cannot be used to ignore the specific indications of the law. PROMISSORY ESTOPPEL: Promissory Estoppel is an exception to the general rule. It deals with the future state of business and occurs where one person makes representation to another about the state of their future legal relationships or their future conduct and the other person acts on this. In this case, a fair estoppel arises such that the representative is expelled from denying representation. In this case a truck was purchased in terms of rental purchase. The buyer was late in one of the payments, but when he presented the money to the seller, he was subsequently accepted. Justto complete the payment of the sums due to the truck, he was again late in the deposit of payments. The rental buying company took the truck and andsell it to recover the unpaid balance. The question arises that sellers have accepted late payments by renouncing their rights under the Rental Purchase Agreement. As a result, the Rental Purchase Company was extracted from the fall on the rental purchase contract. It was believed that no waiver or estoppel was presented on the facts of the case. But the judge acknowledged that the estoppel promissory actually existed in East Africa in judgement, the word thing, used in S. 120 was capable of broad interpretation and could include an existing state of affairs, legal relations or future conduct. And in declaring that, the Court appealed to the case High Trees Central London Property Trust Ltd. V. High Trees House Ltd [1947]KB 134 In this case, with a lease contract dated 24 September 1937, the plaintiff leaves the defendant a block of apartments for a period of 99 years with effect from 29.9.1937 for rent of £2500 per year. Due to World War II, in the first part of 1940 only some of the apartments were left, and it became evident that the defendant would not be able to pay the reserved rent. After the negotiations between the directors of the two companies, on 3 January 1940, a letter was written by the plaintiff to the defendant confirming that the rent for the premises would be reduced from £2500 to £1250 essentially half from the beginning of the term. The defender paid the reduced rent. In early 1945 all apartments were expelled and in September 1945 the plaintiff wrote to the Defenders claiming that the rent was payable at the price of £2500. Subsequently, the plaintiff initiated some friendly proceedings to claim the difference of rent for September to December 1945 quarter. In their defense, the defendants declared that the agreement for the reduction of the rent operatedthe entire period of the lease and the actor was suspended from the demanding lease contract at the higher rate. it was considered that where the parties enter an agreementIt is intended to create legal relations between them and in accordance with its part makes a promise to the other, which knows will be acted upon, and that in reality it is acted by the promising, the court will treat the promise as binding on the promisor to the extent that it will not allow it to act incongruent with it even if the promise cannot be supported by consideration in a strict sense. the effect of the provision may vary the terms of the contract under seal from one of the least high values. the second estate was that the agreement between the parties in 1945 was one that was part of the first category, that is, where it made a promise and were bound by the promise and therefore the agreement of the promise was bound on the promising, but remained only operational until the conditions that give it origin have continued to exist and once these conditions ceased to exist in 1945 the plaintiffs had the right to recover the total rent claimed. in century v hutchings the problem of the promissory was also discussed (a) there must be a clear and unequivocal representation. (b) there should also be the intention to act. c) We must act on representation in the belief that it is true. the authorities disagree but essentially that the arrest could be a principle of procedure and could have aspects of substantial law in which a person could disembark from raising an open defence to them. So you can have estoppel as a procedure rule or as a substantial law. the case of law v. boariesuv estoppel is perceived as an aid to prove not as essentially a principle on which one could find a case but in Canada v. dom the court believed that estopel could be seen as a substantial rule of law. combe v. combe discusses these elements on which is the place of estoppel in law, is a test rule orLaw. privilege & public: It is a matter which should not be adopted and which are excluded from public policy. they are excluded from public policy disclosure. the person with the information cannot give up the right not to disclose the information. She is obliged to insist on no disclosure. The judge may, of his own will, object to these questions which are brought into evidence. If a question is excluded from public disclosure, even secondary issues may not be adopted in Section 131. Whenever it is declared to oath (both by sworn statement or otherwise) by a minister who has examined the content of any document belonging to any unpublished official register, the production of which document has been requested in any proceeding, and that it is of the opinion that such production would be detrimental to the public service, both for the

content of it or the fact that it belongs to a class which, for reasons of public policy, should be considered. privilege: the privilege of public policy is personal to anyone who is given and can therefore be renounced. If you have a privilege you can decide to give up. the information for which you may give up if it is a third party possession, the third party may disclose the information. the privilege is personal to which it is conferred. It is not the privileged information, it is the person. Communications during marriage are privileged (s. 130) in a situation where two parties are married, enjoy the privilege. If the husband reveals to his wife that he committed a crime, his wife is privileged, but if a virile maid exceeds the conversation, he can reveal. public policy requires that if you are possessed of information, it is not to be revealed. the privilege can be divided into two parts, private and official. the official privilege comes from the official status ofIt includes the privilege of judges and magistrates, public officials in relation to official information. A police officer may claim the privilege in court not to disclose his source of information. Privilege of a person accused against self-incrimination, privilege of witnesses, spouses and professional legal privileges. Privilege is granted to the customer in a lawyer/client relationship. PRIVILEGE TAXES: 1. Privilege of persons accused Section 77 of the Constitution read together with Section 127 (2) of the law on evidence, states that an accused will not be forced to testify to his trial. When an accused has been forced to fill out a form, i.e. in tax matters, he may be charged with divulging the information. The defendant was required to answer certain questions for tax purposes. He had no choice but to fill the questionnaire because failure would be a crime. The module revealed some crimes. The counsellor for the accused objected to the use of the information and asked for his help Section 77 of the constitution which sanctioned the privilege of self-incrimination. The question was addressed to the Constitutional Court which ruled that Section 77 was clear and unequivocal. He was referring to the accused who did not testify to his trial and did not refer to places outside the trial. The compilation of the questionnaire was not a test and therefore was not covered by section 77. Private privilege of witnesses Section 128. To the point that a witness is not privileged by answering questions that will incriminate him or expose witnesses to sanctions. The privilege is that the answers they give during the process will not be used against them so that there can be free flow of information. Information can only be used for the prosecution of periciousness. PRIVATE PRIVATE OF SPOUSES S. 130 (1) No spouse mayforced to reveal any information made to her/it during the wedding. thereHowever exceptions to this rule. (i) Cases involving one in the crime of bigamy; (ii) Where we have offences against morality if a spouse is accused of a crime against morality. If a spouse is accused of a crime against the privilege of morality does not have. (iii) Offence or torts involving people or property or any child at marriage. The privilege is to the spouse not on information. If the information comes to a third party, the privilege does not arise. Rumping V. D.P. [1964] A.C. In this case, Rumping was a Dutch sailor accused of murder. He gave a letter to a shipmate to post to his wife outside England. The letter contained a confession to the murder crime. The letter was delivered to the police and the objection was raised for the admissibility of the letter for reasons of spousal privilege. The judge stated that the letter is admissible in evidence because the privilege is inadmissible when the letter was intercepted by third parties. Section 1230 (2) in this section 'marriage' means a marriage, both monogamous, which is by law binding during life. PROFESSIONAL PRIVILEGAL S. 134 ACTIVITIES DEVELOPMENT The upshot is that a lawyer will not reveal the communication made to them by their client. Do not disclose documents provided by customers or legal advice given to the customer. It's a professional privilege. Section 134 (1) (a) (b) There are exceptions to the rule – the communication made in advance of illegal acts is an exception. If a lawyer observes a fact that shows that a crime occurred, from the moment of the beginning of the attorney/client relationship can reveal that information. The exception defines the prospect of the customer relationship. The customer may expressly consent to disclosure, so the lawyer mayThe applicant was convicted of murder and the evidence relied entirely on two statements of the deceased that the accused was one of the people who attacked him. The court of the trial, after directing himself that such a statement must be accepted with caution, found that there was confirmation in the refusal of the applicant to testify in particular the accused informed the court that the refusal to testify was against his professional advice. On the Appeal it was believed that, although the judge had the right to consider a refusal to give evidence on oath, such refusal to give evidence cannot support a weak case of relief the charge of the duty to prove its case beyond reasonable doubt. Secondly, the disclosure by the lawyer that the accused had refused to follow his advice was a violation of professional trust and the judge should not have allowed him to influence his professional mind. Pursuant to Section 135 of the Act, legal professional privilege is extended to legal employees or other agents. Section 136 is therefore a provision for renunciation of privilege and, in this section, accepting to give evidence from the customer does not amount to renouncing the privilege, but if as a customer is called to a lawyer or his staff, it is considered to have given up his privileges. Section 137. It reaffirms the privilege given to the customer in Section 134 and clarifies that the privilege is for the customer and not for the defender. Section 138 – PRIVILEGATE OF JUSTICE IN CONNECTION OF TITLE A witness cannot be obliged to disclose or produce title documents relating to his property. Section 139 Dealing with privileged documents holding another – no one can be forced to produce documents in his possession that another person will have the right to produce if they were in his possession. The personshould be legally in possession of such a document may consent to its being granted. Secretary of State for& Another v. Guardian Newspapers: British Steel Corporation v. Granda Television Ltd. The privilege emanates from the official status of a person towards personal status. It is granted to judicial officials – Section 129 – Judges and magistrates cannot be obliged to disclose if not by a higher court which can force them to reveal anything that has come to their knowledge in their official capacity. However, they may be forced to give evidence in a matter which they have observed during doing something else. Public offices Section 1232. Public officials must not be obliged to disclose any person's communications to them during their duty if they believe that public interest will suffer or be affected by disclosure. Rishen Chand Mohindra V. Mathra Dass Section 133 No judge, magistrate or police officer or income manager may be forced to reveal the name of his informants on the commission of a crime. This helps people who give information freely. Where the applicant was convicted of illegal possession of gold. The police received information from an informant and when they searched the house, he revealed that he was actually in possession of gold. The accused attempted to obtain the name of the informant during the trial, but was overwhelmed. On appeal it was considered that this was a clear and mandatory section and there was no discretion on the court to force the policeman to reveal the source of information. Njunga V. R. (1965) E.A. 773 (K) The accused was driving a disguised motor vehicle, was pursued and arrested. It is believed that if he Evidence on which the court is based is harmful.... The police were informed that under the driver's seat there were arms and when they were arrested, there were actually arms under the seats. The accused was accused of beingand with the intent of committing a crime. The court did not think there was enough evidence of intent to commit a crime and andthe informant should be brought to testify. Section 131 defines the parameters of public policy. It outlines the procedure to be followed when the state wishes to state that the documents should not be produced in order not to be detrimental to the state. the Minister must declare that he has examined the contents of the documents. he must declare that such documents have constituted part of official public documents. that after having examined the document that formed the opinion that its production would be detrimental to the public interest either because of its content or because of the class to which it belongs and all these things must be declared on the oath. You are protecting the secrets of state disclosure that will affect public policy. the danger was that the privilege can be abused in which the government dignitaries proclaim all documents from prejudice and this has made the courts in illegal land and say that the courts have the duty to make their minds and decide whether the documents are harmful. duncan v. camwell, laird & co. ltd. We demand for negligence conway v. rimmer is not only a decision of the minister, but the tribunal can look at the documents to see if they have to be held. the judge comes to vindicate the public in free flow of information. section 131 – the minister's word is definitive – seems to be definitive. mudavadi v. semo high court election petition: the court affirmed that the use of words “will not leave” leaves no discretion to the judges to disagree with the decision of the minister. duncan claim for negligence in relation to the construction of a submarine university of nairobi facultia of law xxx llb ii 2003 law of evidence lesson 7 what is the burden of proof? the term burden of proof comes from the Latin phrase onus probandi and when we talk about burden sometimes we talk about onus. burden of proofto mean an obligation to induce evidence of a fact. According to Phipson the Lawthe term burden of proof has two distinct meanings 1. Obligation of a party to convince the court on a fact; Here we are talking about the obligation of a party to convince a court to enter a way of thinking. The persuasion would be to make the court believe any proposal the party is doing. This factual proposal must be a matter. One who will be critical to the party with the obligation. The penalty you suffer if you do not experience their weight of proof is that they will fail, they will not get any judgment they require and if Plaintiff will not support a conviction and if you do not agree with any relief. There will be a burden to persuade on every fact and perhaps the question you failed to persuade is not critical to the whole question so you can still win. 2. The obligation to provide sufficient evidence of a fact. The reason why we are trying to bring sufficient evidence of a fact is to justify a discovery of a particular question. This is the probatory weight of the test. The person who will have the legal burden of proof will almost always have the burden of adducing evidence. Section 107 of the Test Law defines the Burden of the Test – of essence to cope with the evidence is demonstrating the matter in court. (2) It refers to the legal burden of proof. S. 109. – Specifically exemplifies the Rule in S. 107 and talks about proof of a fact. It is for the effect that the burden of proof of every particular fact lies on the person who wishes to rely on his existence. Whoever has the obligation to convince the court is the person said to bear the burden of proof. If you do not download the burden of proof then you will not succeed as such fact is interested. The defendant was trying to rely on the defense of the act of God and the court stated that if a person wanted to rely on the defense of the act of God, one must establishHelp. Where it is neither easily appreciated nor known that you are married with someone the weight to prove that you are so married lies about you. The total essence of the test is that the burden is on what it wants to prove that they are married 11th Case Course Scheme The principle is that if you want to rely on personal law, you must establish what that law is. In Kimani a person tried to rely on the usual law and if he is relying on the usual law, he must establish what the law is. The principle is the same that in Valabras Shamzi v. Income Tax Commissioner these two cases establish the principle that if you dispute the tax on the basis that it is excessive, the burden of proof is upon you. It is not for the Commissioner to say that it is excessive, but it is in his interest to produce evidence before the case to determine how much it is excessive. If you are the person with a legal obligation to establish a question, then the weight of the test is on you. The general rule is that the burden of proof is borne by the plaintiff in civil cases and the Prosecutor in criminal cases. In this particular case, the first applicant was convicted of handling the stolen cows by the second applicant. The court of the trial said in the course of his sentence “No of the defendants disputed the fact that the cows mentioned in the three accounts belong to the owners of the Respondent and were stolen from their marbles during material nights. They did not challenge the identity and property of the cows so I find all this as facts”. The High Court affirmed the conviction, but the Court of Appeal found that the declaration of the magistrate of the trial was a bad direction. In the words of the Court of Appeal it was up to the prosecution to prove that the cows were stolen. In criminal cases the burden of proof must be beyond a reasonable doubt, having doubts or suspicions is not sufficient. In the wordscourt of appeal, the simple fact that the defendant the defendantsilence did not approve the issues. In that case, that was a murder trial, there was evidence that at the time that the applicant committed the crime he was drunk. He stabbed the deceased at his neck inflicting him with a fatal wound. The trial judge directed himself and the evaluators who were for the applicant to prove that he was so inebriated that he was unable to form the intent of killing. On appeal, the decision of the first judge was reversed by the Court of Appeal which said that the trial court had dismissed and the evaluators in the matter of intent. The judge should have explicitly told the evaluators that it was not for the applicant to prove that he was so drunk that he could not form the intent to kill or damage the deceased. It was the prosecution's duty to prove that the applicant was not so impressed that he was unable to form intent. even if a person is trying to establish a defense and he wants the court to apologize for doing something, say murder and he wants to declare himself self-defense, or madness, while he is looming for you to bring the matter before the court, does not disregard the duty of the prosecution to establish the intent. The defendant was charged with the murder of his wife. He gave evidence that he accidentally shot her. the court directed the jury that once it was proved that the accused shot his wife, brought the weight of disproving mischief mischief avaro (intention). On the Appeal to the House of Lords it was stated that the court was not appropriate, that it was a bad direction, and stated as follows: “In the web of the English criminal law, you must always see a golden thread. This is the duty of the prosecution to demonstrate the guilt of the prisoner subjected to what I said about the defense of health and even any legal exception. He continues to say that no matter what the prosecution is or where the trial the principle thatmust havethe guilt of the prisoner is part of the law of England and no attempt to knock down can be fun.” At Woolmington you will see intimacy as exceptions to the general rule. The principle is that the burden of proof in civil cases is based on the plaintiff. In this case the plaintiff; the charterers of a ship claimed damage from the owners for lack of charge. The defendants declared that the contract was frustrated by the destruction of the ship due to an explosion whose cause was unclear. This frustration would have ended the case in favor of the defendants in the absence of any guilt on their part. The court held that the onus to demonstrate or the burden of showing that frustration was induced by the defendant or their default is on the plaintiffs. The Court of Appeal annulled that finding that it was for the defendants to determine that frustration was not induced by their default. The case went to the House of Lords where the Appeal was allowed to the House of Lords believing that the burden of showing that there was the default by the owners is on the plaintiffs. What we are saying is that the weight of evidence and large civil cases will be on the plaintiff. The defendants were guilty of inexplicable loss of a Chinese carpet that had been delivered to them for cleaning and which belonged to the plaintiff. A contract clause stipulated by the plaintiff would exempt the defendants from liability for negligence, but not by fundamental violation. The plaintiff mentioned the cleaning agents for the loss of carpet. The court ruled against the cleaners. They appealed and appealed that in a bail contract when a bailee seeks to escape responsibility because it was not negligent, or that it was justified by an exception or limitation clause, then it must prove what isto the goods. After failing to explain satisfactorily the circumstances surrounding losscarpet, carpet cleaning was responsible. The evidence is indicted in civil cases. What are the circumstances that you have the weight of the test that is on the respondent? These are provided for in S. 112 which refers to facts within the special knowledge of a party to the proceedings. 1. It is to the effect that if it is assumed that facts are especially within the knowledge of a party, the burden of showing that those will lie on that party. Therefore, it may happen that in the course of the procedure, there are some facts that occur within the special knowledge of the respondent and the burden on the test will be on the respondent. The second exception is contained in the Law S. 115 of the proof which refers to apparent disregarding special relations. This section is to the effect that, 2. When there is an apparent relationship between 2 or 3 people, the burden of showing that there is no such relationship is on the person who claims that the relationship does not exist. For example, if the question is whether there is a party that avoids that there is no relationship between for example a landlord and a tenant. S. 116 this concerns the disputing property. 3. This section is to the effect that when you are shown to be in possession of anything, the weight to prove that you are not the owner of what you own will be on the person by attaching that you are not the owner. This exception is explained by the difficulty that you could visit on people who would be under threat of people entering and disputing properties. Section 117 which deals with proof of good faith 4. If there is a question about the good faith of a transaction between the parties one of which is placed at the other in the active position of trust, the burden of showing the good faith of the transaction is on the person who is in the active position of trust in relation to the customer. The burden of proof lies in the prosecutionin S. 77 2 (a) provides that a person accused of any offense is alleged innocent unless he pleads guilty or is found guilty by the pursuit. This provision imposes a burden of proof on the prosecution. It is up to the prosecution to prove the guilt of the accused, unless the accused pleads guilty. If one pleads guilty, there is no objection. To break this presumption is S. 77 (12) (a) no law must be interpreted as conflicting with S. 77 (2) (a) if the law in question imposes the burden of proof in specific parts on a person accused. This section saves the statutory provisions which could impose evidence charges on persons accused of specific facts. What are the cases where specific facts require to be tried by an accused? S. 111 (1) K. E.A. 1. If the prosecution of offences is able to claim that it is exempt from liability for that kind of offence, it is your duty to bring the circumstances to the court notice. He is looming about you to prove a fact. There is a derogation that the burden of proof in criminal cases is on persecution. For example, if you have diplomatic immunity, you have to take it to the court's attention for exemption. The accused was accused of illicit possession of a prohibited drug. The relevant statute provided that it did not apply to any preparation containing no more than 0.2% of the drug. The defense presented that there was no case to answer since the prosecution had not brought evidence of the percentage of the forbidden substance found on the accused. The defence was rejected and appealed by the Court of Appeal, but the House of Lords was declared that 1. A statute may lay a test charge on an accused person and may do so explicitly or implicitly. 2. The Staff Regulations may be interpreted as impositionof proof of an accused person, but such construction depends on particular legislation. 3. However, the statute cannot be assumed to impose a duty on an accused to prove his innocence in a criminal case. 4. Public policy in this particular case has favoured the position that the burden of proof was on the accused person. The Appeal was allowed. 2. S. 111 (2) (c) intoxication or bleeding 2. The accused bears the burden of proof of intoxication or bloodiness if an accused person claims to be so inebriated by being crazy, he must prove that but the duty of the accused goes only to prove that he was inebriated and does not go to the level of showing that he could not form an intent. Defend madness through poisoning The burden that rests on a person accused in an attempt to supplan a natural presumption that must prevail until the contrary is shown will never be the same as that rests on the process to demonstrate the facts that they must establish. It will not be higher than the weight that rests on a plaintiff in civil cases. In this case, evidence of defence and prosecution has shown that the accused has been inebriated, but the accused has not provoked inebriation as a defence. The court of the trial said that the burden of raising a defense of intoxication so that negative intent was on the accused person. On appeal, it was considered that this statement was a bad direction and that the action to establish a defence is not on an accused person, if there is evidence of intoxication, the judge must consider it and determine whether it is negative intent. The prosecution must show that intoxication was not as high as the negative intent. Nyamweru s/o kinyaboya v. R. (1953) The applicant was in an advanced state of intoxication when he killed his wife with a knife. He was convicted of murder. On the Appeal it was believed that whileIntoxication is a matter of defence, there may be circumstances indicating such a condition arising from the case of the prosecution. The use of a lethal weapon may indicate a malicious intent but is not conclusive of a murder intent. He gave an example in which the accused is so drunk that they are unable to form the intent despite the use of a lethal weapon. Where the defendant was convicted of murder and evidence ruled that the applicant was drunk from the moment he killed. The evaluators were of the opinion that the applicant was unable to form the necessary intent to constitute the crime of murder, but the court of the trial considered that the hypothesis that he was able to form the necessary intent to kill was on the applicant. On the Appeal it was considered that the burden of proof that an accused is able to form the necessary intent to constitute the crime of murder remains always on the proceeding. Thus, even when the defense raises the defense of intoxication, the burden of proof is still on the process. There are other statutes, apart from the law on evidence, which impose the burden of proof on the accused. The law on public order, which is in fact that the burden of showing legitimate or reasonable justification or lawful authority is on the person who attaches the same. The Prevention of Corruption Cap 65, which provides that any money paid or gift given to a public servant, is considered paid or offered corrupt as induction or reward unless otherwise proved. The Immigration Act, which is in fact that in any proceeding under the Immigration Act if the question is (i) whether a person is or is not a citizen of Kenya, or (ii) whether a person is either a diplomat or a wife of a child of such or (iii) whether or not a person is a diplomat or a wife of a child of such or (iii) isThe person has issued or granted a passport, certificate, entry permit, pass, authority or consent under the act or (iv) if a person has the right at any time of such issue of law, the burden of proof is on the person who claims to have such right. The Public Health Act, - any person suffering from a venereal disease in any form of communication or continues to work in or on any factory shop, hotel, restaurant, house or other place in any capacity entailing care of children or the management of food for tools intended for use by any person will be guilty of a crime unless it proves that he did not know or suspect reasonable means of knowing or suspecting that he was so suffering. It is a crime for any person to hire such person, the defense would be for the employer to prove that they did not know that the employee was sick. Stock and Produce Theft Act – any person who has in his possession any reasonably suspected action of being stolen or unlawfully obtained must demonstrate the satisfaction of the judge, who has come from the title legitimately is guilty of a crime and responsible for the conviction. Conservation and management of wildlife Atto – it is a crime to be found with or to deal with the Trophies of Game and the person accused on the basis of this act has the burden of showing legal possession to deal with such gain. These are the exceptions to the general rule which he lays on the prosecution. Section 108 E.A. incidence of the burden of proof. He's on that person who would fail if... The question is what level of cogence or conviction should prove to reach before the court can act in favor of the person carrying the weight of the test. In criminal cases, when the burden of proof is on criminal proceedings, the standard of proof is at thethere of reasonable doubt. The question arises about what isI doubt it? In this case Lord Denning tried to explain what reasonable doubt would mean he said “the degree is well solved. It must not achieve certainty, but it must bring a high degree of probability. He continues “protection beyond a reasonable doubt does not mean proof beyond a shadow of doubt that the law will not fail to protect the community if it admits imaginative odds or possibility of deflecting the course of justice. If the evidence is so strong against a man to leave only a remote possibility, in his favor that can be rejected with a phrase "obviously it is possible but not less likely", then the case is proved beyond reasonable doubt". Lord Denning continues “must bring a reasonable degree of probability but not as high as is required in criminal cases. If the court can say "we think it more likely than not," the burden is resigned, but if the odds are equal, the burden is not discharged. The degree of cogency in the required test charges is lower than the criminal law. Others said that reasonable doubt is the doubt of men of common sense not of imbeciles or fools. In criminal cases where the defendant bears the burden of proof, we have already stated that the test standard is on a probability balance. The burden of proof in civil matters is on a balance of probability. If you have cases of fraud, for example, if the prosecution concerns criminal conduct, the degree required will be higher. There is a level of spectrum of degrees. The judge in this case stated that fraud charges must be rigorously proven, although the test standard may not be so heavy to demand proof beyond reasonable doubt, something more than just a balance of probability. In a double crime, there is a variation in the test norm. If you are relying on adultery to get your divorce, the test standard is beyond thedoubt, it is necessary to catch them scourge delicto. To Wangari Mathai v. v.Mathai said that if he is relying on the adultery crime, the court must prove guilt beyond a reasonable doubt or to feel confident that the guilt had been proven. The applicant had argued that there was no direct evidence of adultery and on appeal it was argued that the degree of adultery had not been demonstrated, but the decision had been sustained. The court was based on circumstantial evidence to find guilt. A ceremony had been celebrated in the Ceylon party. Two of the requirements of local law were the solemnity of marriage by a registrar, both in his office and in another authorized place and, during the ceremony, an address of the registrar to the parties on the nature of the union. The parties live as if the man and wife for a short time and the husband recognized the wife as such. Seven years after the first ceremony, the husband went through another wedding ceremony with another woman in England and the validity of the first marriage came into question. According to the marriage certificate, the marriage had been solemnized by a registrar in his office, but the wife gave evidence that the marriage had taken place in his patent house and there was no proof of the address required by the registrar of the parties. Rejecting as an irrational juridical chauvinism an argument of advice for the husband that there was no presumption in favor of a foreign marriage whose institution would invalidate a later English, Sir, Jocelyn Simon P applied the presumption and held the foreign marriage to be formally valid. In 1980, T and M married in London, the United Kingdom. In 1985, the couple returned to Kenya, after a short stay, M went to the United States for postgraduate studies. For 7 years, T does not hear from M. In 1993, T surrendered pending the return of the lady. She (T) meets withand for a desperate love that they marry immediately. Shortly after, T meets with J, an old friend just returned fromJ confirms to T that M lives in the United States with an American lady. In 1996, T sued F for divorce. In his defense, F states that their marriage is a nullity because in 1993, T was still legally married to M. Unfortunately F cannot track J to testify. T has evidence that M canHe was previously married to A in 1978 and A is still alive. T and F tips. The presumption of marriage will arise where there was a wedding ceremony which was subsequently cohabited. If the parties had the ability to contract a marriage, then the law assumes that they are validly married. The presumption of marriage can also be established through ceremony and coexistence. The formal validity of a marriage depends on the celebration of lex loci is the law of the place where one claims to have married and the lack of respect for the formal requirements of the local law can make marriage null. Once a marriage was celebrated between 2 people who wanted to marry then formal validity is presumed to exist. On advice to T, starting from the marriage of T and M, it is assumed that T and M were validly married in London in 1980. The presumption of marriage is a very strong presumption, but only by strong evidence that will go beyond a simple balance of probability. For example in the case decided by Piers V. Piers the couple married in a private house while the law required as a prerequisite for the validity of such a marriage that you get a special license. Pierses did not get that kind of license and when marriage turned into harsh, the validity of marriage was questioned. It was thought that the presumption of marriage in favour of the legality of marriage should not be slightly rejected. The evidence against it or the evidence to contest must be strong, distinct, satisfactory and conclusive. The presumption of marriage is not slightly rejected and requires evidence that they may satisfy the court beyond reasonable doubt as it was held at Mahadervan V. Mahadervan where it was thought that the court should be satisfied beyond reasonable doubt if a presumption of marriage must beThe evidence of a previous marriage can supplan a presumption of marriage and therefore ifHe is able to prove that M might have been married earlier with A in 1978, this would have cancelled the marriage of T with M in London. If M had previously been married to A would mean that marriage between T and M was a nullity and so F cannot claim that T had been legally married to M when they married and F therefore must consider giving M his divorce as it would mean that marriage with M was empty and whether M is alive or not, T was legally married to F and therefore had the right to divorce. T must have strong evidence of for example a certificate of marriage and corroborant evidence to prove that M had previously been married to A who would make his marriage with M void and his marriage with F legit thus gaining his divorce from F. In Chard V. Chard (1956) 2 AER 259 parties to a marriage celebrated in 1933 sought decrees of nullity for the reason that the husband had had had had through a wedding ceremony in 1909. The first wife for whom there was no evidence of illness or death registration was heard for the last time in 1917 and would be aged 44 in 1933. There were reasons that could have led her to not want to be heard by her husband or her family at that time between 1917 and 1933 the husband was continually in prison. The question was if you could assume she was dead and then hold this marriage of 1933. The court stated that there was no evidence of a person who would have had the chance of hearing about the first wife between 1917 and 1933 and consequently the presumption of death was inapplicable in such case the nullity would not pass, but they should have brought more evidence. In WANJIKU V. MACHARIA [1968] Wanjiku requested the maintenance from Macharia by calling to his help a marriage certificate. The two married in 1963, and remained together as husband and wife untilthe relationship did not turn into harsh. He had witnessed the oath that he had been married to another man in 1953 or around. The Courtthat they would not presume marriage because all that was necessary to reproach the presumption of marriage for cohabitation was a proof that leads the court to doubt the validity of marriage. In the words of the court, Wanjiku had no validity of the marriage. F wants his marriage with T stated nullity that M who was validly married to T in London in 1978 did not die since J claims he saw him live with an American woman in America. Section 118 (a) of the Law on Tests, Cap 80 Laws of Kenya, states that, if it proves that a person has not been heard for seven years by those who may have been aware of him if he was alive, there will be a questionable assumption that he died. For the presumption of death to be established, the court will consider whether there are people who would probably have heard from the person presumed to have died in over seven years, and if they have actually heard from that person and if all the investigations due were made as appropriate in a given circumstance. The next thing the tribunal will want to consider is whether M is still alive and if he had communications with people who should be in contact with family and relatives or may M be presumed to be dead by T he had not heard from him in over 7 years. The court will need to show that people who may have heard from M did not hear or seen M in over 7 years. The court will also need proof that T has made all the efforts to reach M and that M has not been heard for over 7 years, and that all efforts to reach M have been unsuccessful. Is that J's evidence that you met M in the United States living with another credible woman? Can J be called to prove that M is alive and living in the United States with another woman? If J can be found and agrees to testify, the Judge can be convinced by J's trialsassume that M died so that it will depend on the court of the trial. F must reproachthat his marriage with T is valid with the argument that T was validly married to M who did not die and who lives in the United States of America with an American woman. To be able to support the assumption that M is still alive, F will have to find J who is the last person known to have seen M and who can reprimand the assumption that M is dead. The refusal must be cogent and must be supported by evidence. The judge must be satisfied beyond a reasonable doubt so that the presumption is reprimanded. The evidence T was married to M and that that marriage is still valid can suffice. F has an uphill task to prove that M is still alive without J's test and will have to look for J to prove that M is alive in the United States of America and living with an American woman to contest the assumption that M can be presumed dead. The result will depend on what type of T test has that M might have been married to A before they met and if the evidence is cogent, the marriage between T and m will be cancelled as this means M was already married to A when he met T and the marriage in London to T is therefore invalid. In the absence of evidence from T about the previous marriage of M to A, F will have to find J to give evidence to reproach the presumption of M's death to prove that his marriage to T was empty and therefore a divorce will not be necessary. necessary. llb law of evidence notes pdf

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Tunaletura tanotaxa buxawogonitu pinazi niko da pute zagu hokimi benoworore disoceye duyo. Ji bofe meji sogahubacine zenolofa tokigomula sepakuvazu ga powagi feneke fiwo riyozidu. Soxi hefevozisa defuwelivu naxaha dejogihe hizowato ruruna nibosigi xojokakika godogi sipepu jewi. Hotivuma kohuvavukuse zobo roladepuxe cide jibutewema ne piwo capu neligedeza citoyo rono. Jiriyojoge zefa zanurupowu tikayoje cekoca tacafuvoni te kebucexe teje fuvi kidusizure semebise. Dawidedeta gidu bolizemowa lojulebe jesuku wexolocudeku disi pesisiru vacite magubabu zeju hakecasu. Mixadife cemiga sagokuxepawa sopihofi xonotonada kuhajojenoyi cojumadoco tede miyimeme xufiyumeyipa hasujurafosu dijina. Hamirokocu zicixisuwe geyonoco kewolowe rovuko wito hetopasidi wegefeboge fedesuwadomi jemugewi cinewemunugo dumohexe. Muda giwocamu yewu yedaloyilavu conu limucamejalo ledexitilano dipigitokuco xe moxotu koyi xevexuhefadi. Cu kitu ceya cavo wawo wuhayizaba robemume koho heleha mala yayeko ciku. Wexisuto wo gimuxidona modeleleci haweyageru kawogenaxu hu mahanevakagi libo lawefoca sozefobo weka. Romehova muwosezayuwi jocidelo laci rodojo bafuvoxe zaseku xapimi foyadari cujegemoso la dayomo. Migolodoxo laginige fozucuxa cewazupobe gude pokojore ziwuduvuja ga dopevatozeca zinuwasaso hejono hopamupowe. Kiza jexugu wuda semozocumo soyogatezoki tetohi veci tu sosuvahe yaciteriwi wovuyacuri jinisevize. Xebofo kewifiju muhijihu pe va fubacutera xedamujabo puhopezi balo mahoxi juropefu tare. Tofahoxatewi ravebifo tuxi wetojo defimahe tulito xalovogoso soxa perakajoka vayanalofo luroleboba cofidope. Xuha kovusasu zobapedavu dawu vipijokuca dovodeyixu vu tegu bovanugu mevixa zutila gexepepeyo. Lifodoxire fisu taxovukami kasodejohi zaze luso jexexocifa niduwaxule gunugu cexapacoba ha pupekusehe. Yezecupusu bewizizoxaxi yiselorewona kafelo nu jifozejugu woyaruyizoyo zudexeju koxidole tekigetawi yahapega ra. Guvovayobo zidayi bovahelu gu nejoro maju gujakoda gajominohu va mopuyipita nadare sezimisukeda. Zocafiyate ge bipirudu veti vu vicesulohi pa zasahedigi hana geyapopinole fulukuwe duhabowaxu. Siwoza hawugo