



# THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

**A. M. E. C. E. A**

P.O. Box 62157

00200 Nairobi - KENYA

**MAIN EXAMINATION**

Telephone: 891601-6

**MAY – AUGUST 2021**

Ext 1022/23/25

**FACULTY OF LAW**

Fax: 254-20-891084

**REGULAR PROGRAMME**

**CLS 102: CONSTITUTIONAL THEORY**

<b>Date: AUGUST 2021</b>	<b>Duration: 2 Hours</b>
<b>INSTRUCTIONS: Answer Question ONE and any other TWO Questions</b>	

## QUESTION ONE

- a) One of the challenges that faced the Building Bridges Initiative (BBI) was how to build consensus on some of its proposed constitutional amendments. From your understanding of the history of our constitution, the hits and misses in the constitution making process, identify the strengths and weaknesses of the BBI in its attempts to introduce changes to the Constitution of Kenya 2010. **(10 Marks)**
- b) By August 2010 Kenya probably had a constitution without constitutionalism. Discuss **(10 Marks)**
- c) Use the case of David Ndii & Others Versus Attorney General & Others Petition No. E282 of 2020 to reconcile the doctrine of the basic structure of the constitution with the constituent power of the people to make, unmake or amend the constitution **(10 Marks)**

## QUESTION TWO

- a) Use Kelsen's pure theory of law and any decided cases from the commonwealth to explain the legality the recent coup in Mali or indeed any coup in a

constitutional democracy.

**(10 Marks)**

- b) Discuss how the natural law theory can explain the probable theoretical and practical limits of the legislative competence of the parliament of Kenya. Use case law from any common law jurisdiction and any historical examples to illustrate your answer

**(10 Marks)**

### **QUESTION 3**

- a) Discuss the difference between Dicey's concept of the rule of law and the modern concept of the rule of law?

**(5 Marks)**

- b) Explain how you can assess the extent to which the Kenya as a country observes the rule of law **(5**

**Marks)**

- c) With the aid of one decided case, explain how the courts of Kenya have used the concept of the rule of law to determine the validity of acts of parliament. Use the IRAC model to analyse your chosen case noting to focus your analysis on the issue of the applicability of the rule of law **(10**

**Marks)**

### **QUESTION 4**

- a) Discuss the concept of separation of powers using the case of Madbury vs Madison 1803 1 Cranch **(10Marks)**

- b) Use any decided Kenyan case and media reports on how the legislature and the executive reacted to the outcome of the case to illustrate the practical challenges faced by the courts in exercising the power of Judicial Review as provided for in the Constitution of Kenya 2010 **(10**

**Marks)**

### **QUESTION FIVE**

With the aid of decided cases, write short notes on TWO of the following

- a) The applicability of the doctrine of the basic structure of the constitution to Kenya  
(10

**Marks).**

- b) The constituent power of the people and the limits of legislative competence in the making of the constitution.  
(10

**Marks).**

- c) The CoK 2010 as a transformative constitution and the implications on the interpretation of the constitution  
(10 Marks).

- d) How the CoK 2010 uses constitutionalism to restrain democracy in Kenya.  
(10

**Marks).**

DET MAY 2021