



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

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MAIN EXAMINATION

JANUARY – APRIL 2014 TRIMESTER

FACULTY OF LAW

REGULAR PROGRAMME

CLS 204: ADMINISTRATIVE LAW

Date: APRIL 2014

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions

- Q1. a) Discuss the meaning, nature and scope of Administrative Law.
(15 marks)
- b) Following an epidemic, the ministry of Health considered whether or not to recommend to the public the use of a particular drug to prevent a similar epidemic. It did so recommend, taking the view that public interest in the use of the drug in preventing a recurrence of the epidemic outweighed any disadvantages arising from possible injury that might be suffered from its use in a small proportion of cases.
- Relying on the recommendation Z used the drug and was injured by it. He has commenced tort proceedings against the ministry alleging:
- i) That in arriving at the decision the ministry had failed to give proper weight to the interests of the who might be adversely affected by the drug, and failed to take account of the published research into the effect of the drug; and

- ii) That the advice published by the ministry as to the use of the drug was negligent.

The Ministry has applied to the court to have the allegations struck out as disclosing no reasonable cause of action. Consider the likely outcome of that application. **(15 marks)**

- Q2. a) “Natural justice is not to be confused with a vague sense of unfairness’ (Stephenson LJ). How in the light of this statement, is natural justice rated to fairness? **(10 marks)**
- b) Following a sharp fall in oil prices, the government has found itself in a severe financial crisis. It has therefore decided that all civil servants below a certain grade who are over 54 years of age, should be dismissed forthwith without notice and the salaries of the remainder are cut by 10%.

The Minister in charge of the public service has issued the necessary instructions, taking the view that the situation is too serious to permit consultations with the appropriate trade unions.

Consider the legality of the instructions. **(10 marks)**

- Q3. The president has appointed a committee of inquiry under Dame Josephine Obscure to investigate the reasons why tribunals have been created, examine their operation and effectiveness and consider any proposals for reform. Dame Josephine obscure asks you as the Senior Civil Service Office Lawyer seconded to the committee to prepare a briefing paper for the members of the committee, outlining the role of tribunals in the administrative process and commenting on any reforms which seem desirable to you. Draft a memorandum in response to her request. **(20 marks)**

- Q4. ‘The Wednesbury case was wrongly decided and now Wednesbury unreasonableness means whatever the judge want it to mean. It is time to forget Wednesbury and to establish a more rational basis for the principal

of irrationality. Critically assess this statement in the light of relevant cases. **(20 marks)**

Q5. Explain with the use of decided case, the role of an independent judiciary in upholding the rule of law in Kenya. **(20 marks)**

END