



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

A. M. E. C. E. A MAIN EXAMINATION

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JANUARY – APRIL 2018 TRIMESTER

FACULTY OF LAW

REGULAR PROGRAMME

CLS 122: CONSTITUTIONAL PRACTICE

Date: APRIL 2018

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions

Q1. Wakanda, a County-in the Eastern province of Kenya has long harboured aspirations of seceding from Kenya and regain its erstwhile glory as a Kingdom. Since its annexation to Kenya it has continued to operate as a politically benign Kingdom, its royal family a symbol of its pride as a nation. Prince Kamau, the heir to the throne has recently returned from Howard University in America, famed for its empowerment of Blacks. He now identifies as a conscious pan- Africanist and wants to reignite the nation's fervour for self -determination. His coronation is in a years' time and he has enlisted the help of amongst others, constitutional lawyers and political scientists to help chart the way to the Kingdom of Wakanda, becoming a democratic, sovereign nation. His campaign slogan emblazoned all over the streets of Wakanda is '*Free at last, the Kingdom of Wakanda, finally a democratic, sovereign, republic.*' You are part of the team of constitutional lawyers and although not wanting to dampen the spirits of a nation, feel strongly that, expectations need to be managed, moreover that its ambitions are in need of a reality check on the;

- a) The technical and practical difficulties of a kingdom becoming a democratic, sovereign, republic. Explain **(10 marks)**
- b) The failure of Wakanda County to draw from Chapter 2, 11 and 12 of the 2010 constitution of Kenya, to maximise the gains of devolution and exist as an asymmetrically devolved federal State. Explain **(15 marks)**
- c) The constitutionality of such an initiative and the procedural costs on the Kenyan nation. Explain **(5 Marks)**

- Q2. Montesquieu's theory on the separation of powers is seldom explicitly incorporated in written constitutions around the world, though often constitutionally guaranteed in the horizontal and vertical organisation of the organs of state as well as its structure . Explain by making reference to a constitution of your choice **(20 Marks)**
- Q3. The Faculty of law at CUEA is organising an international moot competition between the UK and Kenya , in the wake of the June 2016 decision of Britain to Exit Europe (Brexit) and the August 2017 Kenya Supreme Court decision . The motion is entitled 'Kenyans **are sovereign, the British are not.**' Discuss the motion by making a comparative analysis of the UK and Kenyan governmental systems **(20 Marks)**
- Q4. How if at all can the following complainants bring a claim for breach of a fundamental right under Chapter 4 of the 2010 Kenyan Constitution , answer by citing the relevant constitutional provision engaged and any limitations to invoking it;
- a) Mutiso a civil servant who has had his salary withdrawn for joining in a strike against the government's failure to increase salaries **(5 Marks)**
 - b) Ny'ongos who is suffering from terminal cancer , not being able to access expensive cancer treatment , because he cannot afford it **(5 Marks)**
 - c) Amina a 17 year old muslim girl, who attends the Catholic School of Nairobi forbidden from wearing her hijab and taking breaks during lessons to pray **(5 Marks)**
 - d) 'Pretty' aka Wanjiku, who also attends the Catholic School of Nairobi and is a member of band , not being allowed to wear her heavy 'Goth' make up and hair in a Mohawk , by the school **(5 marks)**
- Q5. The role of a judiciary, within most nations is to ensure that laws which are made by the central parliament or legislature comply with the constitution. However this often raises controversy over why the judges should be able to claim supremacy in correctly interpreting what the constitution means. Illustrate by making reference to the relevant powers of the judiciary in Kenya , the US, UK and South Africa , how states have dealt with the issues arising from this **(20 marks)**

END