



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

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

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MAY – JULY 2018 TRIMESTER

FACULTY OF LAW

REGULAR PROGRAMME

CLS 102: CONSTITUTIONAL THEORY

Date: JULY 2018

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions
Marks will be awarded for effective use of Case Law and Constitutional Provisions. You may use a clean copy of the Constitution of Kenya 2010.

- Q1. a) 'I am aware of the fallacy of supposing that general language must have a single 'objective' meaning. Nor is it easy to avoid the influence of one's personal intellectual and moral precepts. But it cannot be too strongly stressed that the constitution does not mean whatever we might wish it to mean... if the language used by the law giver is ignored in favour of a general resort to 'values', the result is not interpretation but divination Per Kentridge J ; S vs. Zuma & others 1995 (2) SA 642 CC'. Discuss the extent to which this statement explains the two major approaches to constitutional interpretation disclosed in the statement. Use the reasoning of the court in Timothy Njoya and Others -Versus- CKRC and The Attorney General and Others, Misc. Civil Application No. 82 of 2004 (2004 1 KLR 261 NO 2), EI Mann vs R 1969 EA 357 and Joseph Maina Mbacha & 3 ors vs. AG HC Misc. 385 of 1989 to support your answer
(10 marks)
- b) Democracy is a constitutional value in the CoK 2010, so is Constitutionalism. Discuss how constitutionalism interacts with democracy to produce the best outcomes of government systems
(10marks)
- c) Explain why Hans Kelsen's concept of the Grundnorm of law is or is not consistent with the concept of the constituent power of the people as articulated in Timothy Njoya and Others -Versus- CKRC and The Attorney

- Q2. You have been instructed by a Civil Society Organization with an interest in constitutional reform with a request to design a legislature for Kenya that recognizes the challenges of the ethnic and regional diversity of Kenya and the danger of executive control over the legislature.
- a) Identify some five devices from constitutional theory that can help in the design of a legislature for Kenya that responds to the concerns of your instructing clients and explain how those devices actually address the concerns of your clients **(10 marks)**
 - b) Explain how the principle of parliamentary sovereignty has been reconciled with the principle of constitutional supremacy in the CoK 2010
- Q3. a) The president of the Republic of Kenya has accused the Judiciary of frustrating the war on corruption and invited the judiciary to 'join the war on corruption'. The president is mainly concerned that the Judiciary is releasing persons charged with corruption on bail pending trial and dismissing a significant majority of the cases brought against persons charged with corruption. The president says the country cannot win the war against corruption unless the judiciary 'cooperates with his government to fight the vice'. The president has formed a Multi-Agency forum composed of the Judiciary, the Office off the Director of Public Prosecution, the Directorate of Criminal Investigations and the Ethics and anti-Corruption Commission to discuss how corruption cases will be handled in court. Explain why the president's approach to the war on corruption may or may not be considered a threat to the constitutional principle of the independence of the judiciary. **(10 Marks)**
- b) Reconcile the concepts of Judicial Review and Separation of Powers as provided for in the CoK 2010. **(10 Marks)**
- Q4. a) Distinguish between the formal and substantive aspects of the Rule of law.
- c) Use case law to demonstrate how the courts of Kenya have used the concept of the rule of law to delineate or limit the law making power of parliament
- Q5. Write short notes on the following concepts noting to use case law or the provisions of the Constitution of Kenya 2010 to illustrate the concepts or show the practical application of the concepts
- a) Sovereignty of parliament
 - b) Supremacy of the constitution

- c) Separation of powers
- d) Vertical and horizontal application of the Bill of rights

END