



# THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

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

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AUGUST – DECEMBER 2018 TRIMESTER

FACULTY OF LAW

REGULAR PROGRAMME

CLS 122: CONSTITUTIONAL PRACTICE

Date: DECEMBER 2018

Duration: 2 Hours

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

- Q1. a) The Kenyan constitution 2010 has been described as a ‘transformative’ constitution. What are the implications of that description for constitutional interpretation and enforcement in Kenya? **(12 Marks)**
- b) In the current debate on the need for a referendum there are proposals for a parliamentary system of Government. Explain the advantages and disadvantages of a parliamentary executive structure for a country like Kenya **(6 Marks)**
- c) In the same referendum debate, there are proposals to scrap the senate. Explain the role of bicameralism in constitutional theory and advice on whether or not bicameralism is a good legislative structure for Kenya **(6 Marks)**
- d) In the same referendum debate, there are proposals to replace the Supreme Court with a Constitutional Court. Explain the advantages and disadvantages of a constitutional court and briefly describe how the constitutional court can be structured and composed to maximise the advantages **(6 Marks)**
- Q2. a) Independent Constitutional Commissions and Offices in the CoK 2010 have been described as the ‘fourth arm of Government’. With the aid of decided cases, explain the extent to which this description would be true

for Independent Constitutional Commissions and Offices in the CoK 2010  
**(10 Marks)**

- b) Explain the grounds and procedure for the removal of a constitutional commissioner in the CoK 2010  
**(10 Marks)**
- Q3. a) Explain the role and functions of the Director of Public Prosecutions (DPP) in the Constitution of Kenya 2010  
**(5 Marks)**
- b) How does the relationship between the DPP and the Inspector General of Police in the CoK 2010 give effect to the concept of constitutionalism  
**(5 Marks)**
- c) Public Spirited Citizen (PSC) is unhappy with the decision of the DPP to prosecute some corruption suspects. According to PSC, the intended prosecutions are baseless and intended to achieve an ulterior political objective. PSC wants your advice on whether or not the court can stop the DPP from prosecuting the suspects. Advise PSC  
**(10 Marks)**
- Q4. a) Distinguish between the four different forms of decentralization in the Government of the Republic of Kenya and give an example of each form of decentralization  
**(4 Marks)**
- b) Distinguish between exclusive, concurrent and residual functions in the allocation of competence between National and County Governments in the CoK 2010  
**(6marks)**
- c) The Ministry of Devolution and Planning has issued a circular to County Governments requiring County Governments to seek clearance from the ministry of devolution on foreign trips by County Government officials. The County Governments have sought your advice on the constitutionality of the directive. Advise the County Governments  
**(5marks)**
- d) Explain to the County Governments the constitutional procedure for the resolution of disputes they may have with the Ministry of Devolution and Planning  
**(5marks)**
- Q5. a) The Governor of County 048 has just been summoned by the Senate to 'clarify certain issues' concerning the procurement of goods and services by County 048. Governor 048 objects to the summons saying Senate has no power to summon governors and in any event the County Assembly of County 048001 is already dealing with the issue. Governor 048 has sought your advice on whether he should attend before senate as required. Advise the Governor.  
**(10 Marks)**

- b) The County Assembly of County 0001 has impeached the Governor 0001 for abuse of office. The alleged abuse arises out of the procurement of goods and services by County 0001. Governor 0001 argues that he has no role to play in the procurement of goods and services by the County Government and he cannot be impeached for the same. There is strong evidence that the governor had nothing to do with the procurement and was not even aware of it. Governor 0001 has sought your advice on whether or not a court can overturn the impeachment. Advise the Governor 0001. **(10 Marks)**

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