THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

A. M. E. C. E. A

MAIN EXAMINATION

AUGUST – DECEMBER   2018 TRIMESTER

FACULTY OF LAW

REGULAR PROGRAMME

CLS 303:EAST AFRICAN COMMUNITY LAW

Date: DECEMBER 2018	Duration: 2 Hours

1. **INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions. Kindly support your answer with case law and statutory provisions.**

Q1.   The Summit of the EAC set up a Committee to examine ways and means of fast tracking the EAC Political Federation, which presented its Report at the 6th Summit Meeting on November 29, 2004. Among the Committee's Recommendations were the following:
"

i)   *Retention of the timeframes for the Customs Union of five (5) years effective January 1, 2005 in place;*

ii)   *But overlapping of the four (4) stages of integration to allow the undertaking of parallel activities at each stage to ensure that the basic minimum requirements at each stage for the Federation are achieved within the five (5) years effective January 1, 2005;*

iii)   *A consolidated and planned approach, in the form of negotiating templates, in order to hasten the process towards Political Federation.*

WAY FORWARD
In the context of East Africa, there may be need to have a clear Transition Chapter within the Constitution where at the initial stages:
(a) The Heads of States of the Federation could either be:
(i)   One of the Heads of States of the Partner States, in which case, it will be rotational Head of State of the Federation say for each year;
(ii)   Elected by the National Parliaments plus the East African Legislative Assembly;

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(b) Federal Parliament – which in the transitional period could as at present be indirectly elected by National Assemblies with due regard to gender – (30% to be women);

(c) During this transitional period, the Constituent Boundaries be delineated to enable both the Head of State and Federal Parliament to be directly elected.

The Transitional Period can be for a limited period of say three (3). This issue of the Transitional Period should be addressed by the Constitutional Commission, which should come up with proposals acceptance to the people of East Africa.

The Committee envisages and recommends January 1, 2010 as the date for launching the East African Federation. On that date, a Federal President would also be sworn in."

Examine the compatibility or otherwise of these Recommendations with the Treaty for the Establishment of the East African Community, 1999

(30 Marks)

Q2. The Preamble to the Treaty for the Establishment of the East African Community, 1999 provides as follows:

"…………………………
…………………………...
………………………….
AND WHEREAS upon the dissolution of the East African Community the said countries signed on the 14th day of May, 1984, at Arusha, in Tanzania the East African Community Mediation Agreement 1984, hereinafter referred to as "the Mediation Agreement" for the division of the assets and liabilities of the former East African Community;
AND WHEREAS pursuant to Article 14.02 of the Mediation Agreement the said countries agreed to explore and identify areas for future co-operation and to make arrangements for such co-operation;
………………………….
………………………….."

a) According to the Mediation Agreement, "the countries agreed to explore and identify areas of future co-operation and to make arrangements for such co-operation." By limiting yourself to **FIVE** factors **ONLY**, demonstrate why there was a compelling reason for the revival of the EAC. **(10 Marks)**

b) The EAC Secretariat has requested you to share a Concept Note with them on your proposals on how to ensure that East African Community integration process succeeds by avoiding the pitfalls that led to the acrimonious fall out in 1977. As a student well trained in EAC Law, you choose to focus on **FIVE** priority areas **ONLY** which you believe, if addressed, will make the dream of integration a reality. Proceed. **(10 Marks)**

Q3. The establishment of the East African Community Common Market was identified as the second stage of the EAC integration process. Consequently, the Treaty for the Establishment of the EAC Common Market was enacted in 2010, to be implemented within five (5) years.

    a) Citing the relevant provisions of the Treaty, critically analyze the two rights and four freedoms envisaged thereunder. **(15 Marks)**

    b) What, if any, in your opinion, have been the challenges hampering the functioning of the EAC Common Market. **(5 Marks)**

Q4. "While the legislative and executive organs work towards the creating of an enabling environment for political integration to become a reality by enacting Community laws and adopting policies of implementing these laws, the judicial organ plays the crucial role of implementing the EAC Treaty and the community."
(quoted from Nsekela H, "The performance of the East African Court of Justice in Respect to Achieving Regional Integration" in Gastorn K, et al, (eds)
Processes of Legal Integration in the East African Community pp.129 – 145)

    a) By using decided case law, demonstrate the validity or otherwise of Nsekela's contention above with respect to the East African Court of Justice. **(10 Marks)**

    b) Although the East African Court of Justice has played a critical role in the regional integration, it has not been all rosy for the Court. Using practical examples, discuss the challenges that the Court has confronted since its inception. **(10 Marks)**

Q5. Lack of participation of the civil society and private sector as one of the major reasons for the collapse of the First East African Corporation in 1977 is identified as one of the main reasons for the collapse of the 1st EAC (1967 – 1977). Article 7 (a) of the Treaty identifies "people-centeredness" as one of the Operational Principles of the East African Community established by the Treaty for the Establishment of East African Community, 1999.

    a) To what extent has the East African Community enhanced (or failed) this Operational Principle? **(10 Marks)**

    b) Critically analyze the role of the East African Legislative Assembly in the East African Community integration process. **(10Marks)**

END

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