



# THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

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

JANUARY – APRIL 2019 TRIMESTER

FACULTY OF LAW

REGULAR PROGRAMME

CLS 303: EAST AFRICAN COMMUNITY LAW

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**Date: APRIL 2019**

**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 6<sup>th</sup> Summit Meeting on November 29, 2004. Among the Committee's Recommendations were the following:

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- (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;*

- (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. With the help of relevant provisions of the Treaty for the Establishment of the East African Community, 1999 (“the Treaty”), please identify any three key Organs of the EAC and critically analyze their composition, powers and functions. **(20 Marks)**
- Q3. Article 8 (4) of the Treaty provides that “*Community organs, institutions and laws shall take precedence over similar national ones on matters pertaining to the implementation of this Treaty.*” Critically examine the inter-link between the EAC Law (the Treaty, Protocols and Community Acts) and the national laws of the Partner States. **(20 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. The Preamble to the Treaty for the Establishment of the East African Community identifies 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. Article 7 (a) 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) The EAC Secretariat has requested you to share a Concept Note with them on your proposals on how to ensure that East Africans are properly sensitized about the EAC integration process. Please proceed. **(10 Marks)**