



**FOURTH YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS
FIRST SEMESTER, 2022/2023
(SEPTEMBER-DECEMBER, 2022)**

LLBK 414: JURISPRUDENCE

STREAM: LLBK Y4 S1

TIME: 2 HOURS

DAY: TUESDAY, 12:00 – 2:00 P.M.

DATE: 20/12/2022

INSTRUCTIONS

- 1. Do not write anything on this question paper.***
- 2. Answer Question ONE [Compulsory] and any other TWO Questions.***
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.***

QUESTION ONE

a) Article 45 of the Kenyan Constitution provide;

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- Every Adult has the right to marry person of the opposite sex, based on the free consent of the parties.

The Lesbian and Gay Society Kenya has filed a matter in court Stating the above clause is 'discriminative' and should therefore 'be deleted'. You are the presiding judge and were a keen student of Jurisprudence. Show case strategies you will adopt to interpret this provision of the law.

(15marks),

b) The Kenyan Criminal Justice system provides for death penalty as punishment for extreme capital offences. Across the globe, a debate about abolishing the death penalty rages on. Kenya being a member of the Global community has been caught up with the above debate. The question is therefore whether this practice ought to be abolished. Drawing from the various Jurisprudential schools and theories, how can you shape the debate? Importantly, do the various theories of justice have a bearing on this debate? Discuss. (15 marks)

QUESTION TWO

H. L. A HART and JOHN AUSTIN remain two of the most prominent figures in the tradition of positive law. Differentiate and assess how they perceive the nature of law. (20 marks)

QUESTION THREE

Republic v Mohamed Abdow Mohamed, High Court Criminal No. 86 of 2011(2013) eKLR is an example of a case where the court accepted the Director of Public Prosecutions termination of murder after the families of the accused and the deceased reached a settlement using traditional system/African customary law. Discuss a school of thought that may have underpinned the court's decision. (20 marks)

QUESTION FOUR

The Hart-Fuller debate has no relevance in the modern society today. Discuss. (20 marks)

QUESTION FIVE

Natural Law School of Jurisprudence has many eminent jurists who have made tremendous impact in the development of Law especially in Constitutional Law Making in Kenya. Discuss the philosophy of any **two** of the following jurists. Provide your own detailed **CRITIQUE** of their theories having regard to practical application of law as you know it today. (20 marks)

1. St Thomas Aquinas.
2. Lon L. Fuller.
3. John Finnis.