



KISII UNIVERSITY

UNIVERSITY EXAMINATIONS

FIRST YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS
SECOND SEMESTER, 2021/2022
(FEBRUARY - JUNE, 2022)

LLBK 121: CONSTITUTIONAL JUSTICE

STREAM: LLBK 1 S2

TIME: 2 HOURS

DAY: FRIDAY, 9:00 – 11:00 A.M.

DATE: 20/05/2022

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) 'It is the principles or rules whether written or unwritten whether legal or non-legal, that seeks to sufficiently define the duties, functions and powers of Government and the relationship between the Government and its citizens which form the constitution of a state' Discuss the extent to which this statement can be used to characterise the Constitution of Kenya 2010. **(10 marks)**
- b) 'Constitutionalism facilitates, indeed makes it possible for a democratic political system by creating an orderly framework within which people make political decisions. Constitutionalism and the rule of law are not in conflict with democracy; rather they are essential to it democracy. Discuss. **(10 marks)**
- c) Professor De Smith was asked if there is constitutionalism in Kenya, what would be his response. **(10 marks)**

QUESTION TWO

- a) What is meant by the constitutional principle of ‘separation of powers’?
(4 Marks)
- b) The concept of ‘judicial review’ in constitutional theory is not consistent with the principle of ‘separation of powers’ Explain.
(6 Marks)
- c) PQRS wishes to move the court for an order to stop parliament for enacting a law on the basis that the proposed law is likely to infringe a fundamental right. What principles of constitutional law will guide the court in considering whether or not to grant the orders sought by PQRS? Give examples from court decisions.
(10 Marks)

QUESTION THREE

- a) Explain the role and functions of the Director of Public Prosecutions (DPP) in the Constitution of Kenya 2010.
(8 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?
(12 Marks)

QUESTION FOUR

- 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?
(5 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 structure for a country like Kenya **(10 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 **(5 Marks)**

QUESTION FIVE

- a) Describe the procedure for the impeachment of the President of the Republic of Kenya.
(12 Marks)
- b) What judicial remedies are available to a President who thinks parliament has not determined an impeachment proceeding in accordance with the law? Give illustrations using decided cases on the impeachment of Governors
(8 Marks)