



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 124: LEGAL RESEARCH AND WRITING

STREAM: LLBK 1 S2

TIME: 2 HOURS

DAY: TUESDAY, 9:00 – 11:00 A.M.

DATE: 24/05/2022

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

The ratification and promulgation of the 2010 Kenyan Constitution brought with it a hope for the realization of the hopes and aspirations of the Kenyan people. It marked a rebirth of a new nation and marked some considerable changes in the Kenyan legal order. One of the changes introduced by the 2010 Constitution was the introduction, recognition, and inclusion of International Law as a source of law.... The recognition of International Law as a source of law in Kenya by the Constitution brought together with it a barricade of interpretative and application questions that generally deal with the place of international law in the hierarchy of valid norms in the Kenyan legal order. (Per E.B.N. Abenga “The Place of International Law in the Hierarchy of Valid Norms under the 2010 Constitution *Constitutional Law E-Journal SSRN*)

Using the above as a backdrop, discuss the various sources of law under the 2010 Constitution taking special note to explain the place of International Law as a source of law. **(30 marks)**

QUESTION TWO

“Legal Writing is founded on logic. A legal argument must not only be sound, it must be logical and devoid of fallacies.” (Anonymous)

- (a) With due regard to the above statement, discuss the concept of legal logic, taking note of the various elements of logic as well as fallacies that may lead to illogical legal arguments. **(15 Marks)**
- (b) Discuss the importance of logic to a legal writer. **(5 Marks)**

QUESTION THREE

“Just as with the English Oak, so with the English Common Law. You cannot transplant it to the African Continent and expect it to retain the tough character which it has in England.” (Per Lord Denning in *Nyali Ltd vs. Attorney General* (1956) 1 QB 1)

- (a) Taking note of the above dictum, discuss the application of English Common Law in Kenya, taking note of the challenges thereof. **(10 Marks)**
- (b) Discuss the relationship between Common Law and the Doctrines of Equity as sources of law in Kenya **(10 Marks)**

QUESTION FOUR

- (a) “Separation of powers is part of a normal and healthy constitutional democracy. The judiciary should avoid usurping the role of Parliament by engaging in law making process guised as statutory interpretation.” (Anon)
Using the above statement as a starting point, discuss the various rules of statutory interpretation. **(15 Marks)**

- (b) Distinguish between the following in the context of the legislative process. **(5 marks)**

- (i) Government Bill and a Private Member Bill
- (ii) A Public Bill and a Private Bill

QUESTION FIVE

Make short notes on any four of the following legal writing concepts

- (a) *Stare Decisis*. **(5 marks)**
- (b) *Orbiter Dicta*. **(5 marks)**
- (c) The Plain English Movement. **(5 marks)**
- (d) Statutory Interpretation. **(5 marks)**
- (e) Constitutional Interpretation. **(5 marks)**