



KISII UNIVERSITY

UNIVERSITY EXAMINATIONS

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

LLBK 213: ADMINISTRATIVE LAW AND JUDICIAL REVIEW

STREAM: LLBK 2 S1

TIME: 2 HOURS

DAY: TUESDAY, 12:00 – 2:00 P.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

“Administrative law deals with, among others, the composition, structure, powers, duties, functions and procedures of the organs of administration and bodies performing public functions. In Kenya, sovereign power vests in the people and is delegated by the Constitution to 3 principal organs of government, which ideally perform separate and independent functions: Parliament and the legislative assemblies in the county government; the national executive and the executive structures in the county governments; and, the judiciary and independent tribunals.” Anonymous Discuss the above statement in the light of the new Constitution of Kenya 2010. **(30 marks)**

QUESTION TWO

“Rules made pursuant to a statute are subsidiary legislation. They are made under delegated power. A delegate’s power is confined to the objects of the legislature. The main reason of delegation is that the legislature itself cannot go into sufficient detail. So it makes a skeleton Act. The delegate supplies the meat, thus the intention of the legislature must always be the prime guide to the meaning of the delegated legislation.” ***Kenneth Stanley Njindo Matiba v Attorney General***, Misc. Application No. 790 of 1993 (Unreported).

- a) What reasons justify delegated legislation?

- b) b) What controls are available in administrative law to ensure that delegated legislation conforms to law and that delegated authority is not abused? **(20 marks)**

QUESTION THREE

“The idea that ‘the rule of law’ anchors administrative law in constitutional democracies commands near universal acceptance among public law scholars. But, the rule of law, though a much talked about good governance ideal, is itself a very broad public law concept. In fact, the meaning attributed to the phrase varies from context to context.” Peter Kaluma, *Judicial Review: Law Procedure and Practice* (2009), pp.14 - 15 Discuss what you understand “the rule of law” to mean. **(20 marks)**

QUESTION FOUR

Control of the executive is traditionally the function of Parliament. But legislative control(s) have been found wanting. Administrative law has never tolerated a situation in which the executive is let to do as it wills. In contemporary times, executive control has shifted to the judiciary vide judicial review. Anonymous.

- a) Discuss the weaknesses of legislative control of executive power.
- b) What attributes make judicial review the most efficacious control mechanism against executive authority?

(20 marks)

QUESTION FIVE

Briefly discuss the following Administrative Law Concepts:

- a) Ultra Vires doctrine
- b) b) Delegation
- c) c) Separation of power
- d) d) Supremacy of the Constitution

(20 marks)