



KENYATTA UNIVERSITY

UNIVERSITY EXAMINATIONS 2011/2012

SECOND SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAW

LPR 106 : CONSTITUTIONAL LAW I

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DATE: FRIDAY 13TH APRIL 2012

TIME: 9.00 A.M. – 11.00 A.M.

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INSTRUCTIONS

- 1) Answer question ONE and any other TWO questions
- 2) You will be penalised for failing to answer question one
- 3) Support your answer with relevant case law, conventions and any other relevant references where necessary
- 4) Write neatly and legibly
- 5) Your answer sheet must bear your student registration number

QUESTION 1 (Compulsory)-30 marks

Section A: Compulsory

Question 1 (31 marks)

- (a) What are the significant changes which the 2010 Kenyan Constitution makes to the 1963 Kenyan Constitution? (20 marks)
- (b) Are these changes an improvement or a retrogression? Give reasons for your answer. (10 marks)

Section B: Answer 2 Questions from this Section (40 marks; 20 marks for each question)

Question 2

In 2010, the Kenyan High Court, had been faced with a case involving a petition by Mrs. Jones for divorce from her husband, Mr. Jones. Both parties had been married in Kenya and lived here. The High Court had ruled that according to Muslim Law in Kenya and the rule of

the Khadi's courts, Mrs. Jones had no right to flee her matrimonial home as she had done, despite many grievances to which Mr. Jones had subjected her. These included his beating up Mrs. Jones on many occasions on the basis that he was suspecting Mrs. Jones of committing adultery. In the opinion of the High Court, customary law accepts such practices and Mrs. Jones should go back to her matrimonial home. She therefore appealed to the Court of Appeal to overrule this ruling and annul the marriage between her and Mr. Jones. Furthermore, Mrs. Jones asserts that her right to be free from harassment is a constitutional right which is granted to her under Kenya laws.

Mr. Jones, though he is being accused, believes that he has not been given the chance to present his case and all his facts, as he disputes some of the accusations made by Mrs. Jones. His Attorney at the High Court, for some strange reason, seemed to have concealed some of the information presented to him and did not discuss all details from Mr. Jones' account of events which occurred between him and Mrs. Jones. The brother of Mr. Jones therefore wants to be his Attorney at the Appeal Court so as to represent Mr. Jones.

As a legal advisor, what advice would you provide to both parties, Mr. and Mrs. Jones on their respective rights as well as the limitations on these rights, concerning each aspect of this case? (20 marks)

Question 3

Discuss the following doctrines and analyse how they are promoted generally, and also, in Kenya:

(a) Separation of Powers (10 marks); and

(b) Judicial Review (10 marks).

Question 4

To what extent does the Kenyan Constitution promote and protect the fundamental rights and freedoms of Kenyan citizens? (20 marks)

Question 5:

If you choose Question 5 as your second question in Section B, answer one of the following (that is, one of: 5(a), 5 (b) or 5(c) below):

5 (a) With due reference to statute and case law in Kenya, discuss the doctrine of constitutional supremacy and how the constitution is interpreted in relation to other sources of law in Kenya. You should also cite a few cases from other jurisdictions and state their importance to constitutional supremacy within the Kenyan context.

(20 marks)

5 (b) With due reference to statute and case law, what approach does the Kenyan legal system adopt to granting nationality and citizenship rights to foreigners in Kenya?

(20 marks)

5(c) “The Rule of Law is Recognised and Promoted In-Depth in Kenya”. Discuss.

(20 marks)