KENYATTA UNIVERSITY

UNIVERSITY EXAMINATIONS 2011/2012

FIRST SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

LCC 400: TAXATION LAW

DATE: Wednesday, 21st December, 2011 TIME: 9.00 a.m. – 11.00 a.m.

INSTRUCTIONS:

1. Please answer **QUESTION ONE** and any **OTHER TWO** questions.
2. Please note that penalties accrue for failure to answer question One.
3. Support your answer with illustrations from relevant case law, statutory provisions, and any other relevant references.
4. Write neatly and legibly.
5. Your answer script must bear our student registration number.

QUESTION ONE

Kennedy Mwangi disputes his 2009 assessment for income tax on the ground that he was not resident in Kenya in that year. The facts, which were not in dispute, were that:

- In 2007, he had a home in Nairobi and was present for a period totaling 250 days;
- During the year preceding that, he sold his home and was present in Kenya for a total of four months;
- In 2009, he had no home but was present in Kenya for more than three months, and
- He was thus present on average for more than three months in each of the three years.

It was argued on his behalf in relation to the definition of “resident” in the Income Tax Act (Cap. 470) of the Laws of Kenya, that :

1. it was not permissible to aggregate periods of residence with periods of mere presence; and

2. that “averaging” in the relevant subsection meant in effect that four months presence was required in each of the relevant years;

a) Advice, giving reasons, on the cause of action available to Kennedy Mwangi. **(10 MARKS)**

b) Based on the facts of the above case, describe the meaning and importance of the aspect of *"residence"* in respect of income tax. **(10 MARKS)**

c) Give a comprehensive view of incomes chargeable to income tax in Kenya. **(10MARKS)**

QUESTION TWO

Write explanatory notes on any 4 of the following:

a) The revenue purpose of taxation (**5 MARKS**)

b) The cannon of equity, equality or justice. **(5 MARKS)**

c) Principle of flexibility and elasticity. **(5 MARKS)**

d) The Kenya Revenue Authority – functions and structure. (**5 MARKS)**

e) Tax Avoidance and Tax Evasion. (**5 MARKS)**

QUESTION THREE

"Corporations, just like individuals, are taxed on the income they derive from or which accrues in Kenya."

Critically discuss taxation of individuals, corporations and partnerships and Cooperative societies under the Income Tax Act. (**20MARKS)**

QUESTION FOUR

Describe the salient features of Value Added Tax Act (VAT) (Cap. 476) of the Laws of Kenya and discuss the merits and demerits of VAT. **(20MARKS)**

QUESTION FIVE

a) Describe in detail the meaning and advantages of withholding tax and exemptions thereto (if any). **(5 MARKS)**

b) Describe in detail the administration of *Pay As You Earn* (P.A.Y.E.) system**.**

(15 MARKS)