



KENYATTA UNIVERSITY
UNIVERSITY EXAMINATIONS 2018/2019
SUPPLEMENTARY EXAMINATION FOR THE DEGREE OF MASTER OF BUSINESS
ADMINISTRATION

BACHELOR OF LAWS

LPL 216: HUMAN RIGHTS LAW

DATE: MONDAY 23RD SEPTEMBER 2019

TIME: 11.00 A.M - 1.00 P.M

INSTRUCTIONS :

1. **ALL** Questions are Compulsory.
2. Support your answer with relevant illustrations from case law, statutory provisions and any other References.
3. Your writing must be **NEAT** and **LEGIBLE**.
4. Your answer booklet must bear your assigned **REGISTRATION NUMBER**, both on the cover and every written page therein.
5. Do not scribble or draft answers on the inner or outer cover pages or your answer booklet.
6. Do not write anything except your **REGISTRATION NUMBER** on this question paper.
7. **ALL** Kenyatta university Examinations rules apply as if they were contained herein.

QUESTION ONE

Pana, a twenty-nine year old man worked as a waiter in a five star hotel, Hotel Rotonov, in Nairobi owned by a Russian billionaire. One Tuesday morning Pana was summoned by the hotel manager, Zani, to a private room in the Hotel. Zani explained to Pana that other workers in the hotel had raised concerns about his mode of dressing and mannerism, which Zani alleged appeared feminine. Zani thus ordered Pana to remove his clothes so that he could confirm his gender. Pana objected. Zani then grabbed him by the neck, pinned him on the floor and attempted to remove his clothes. Pana quickly freed himself and dashed out of the room. Zani then instructed the Hotel security to apprehend Pana and escort him to Kijiji Police Station.

At Kijiji Police Station, Zani alleged that Pana had assaulted him and also asked the police officers to search Pana to confirm his gender. At the report office and in the presence of the public, the police officers handcuffed Pana and removed his clothes to confirm his gender. A humiliated and dejected

Pana was then thrown into the male police holding cells. Later that evening People TV in its 7pm and 9pm News Bulletin aired a clip on Pana's search at Kijiji Police Station alongside a commentary from the Minister of Justice who stated that the issue of the rights of sexual minorities in Kenya was a 'non-issue' and that the African culture abhors and frowns upon such practices.

Based on the above scenario and using relevant Constitutional provisions and case law:

- i. Discuss four (4) rights violated in this scenario (12 Marks)
- ii. Discuss the obligations of Hotel Rotonov and People TV (6 Marks)
- iii. Discuss the obligations of the Kenyan Government (8 Marks)
- iv. Evaluate the statement by the Minister of Justice in the context of limitation of rights (4 Marks)

QUESTION TWO

- i. In February 2018 Mapa visited a Government hospital complaining of constant headache and tiredness and was diagnosed with kidney failure. She was immediately advised to start dialysis as a life saving measure. However, the Government hospital informed her that there was only one working dialysis machine since the other two machines had broken down two years ago and the government had not allocated money for their repair. Thus, she would be put in a queue of about 230 people waiting to undergo dialysis. This meant she would wait up to ten (10) months.

In March 2018 Mapa petitioned the High Court arguing that the requirement she waits for ten months before she could undergo dialysis violated her right to the highest attainable standard of health care and to emergency health care. She sought an order compelling the Government hospital to immediately put her on dialysis.

The High Court declined to order the Government hospital to put her on dialysis immediately and instead directed the Attorney General and the Minister of Health to table in Court within ninety (90 days) a policy framework on provision of medical care for kidney patients and an action plan on acquisition of new and/or repair of the existing dialysis machines.

- ii. In the *Francis Muruatetu* case on the legality of the death penalty, the Supreme Court in December 2017 declared the mandatory death penalty contained in Section 204 of the Penal Code unconstitutional. The Court directed the Attorney General, the Law Reform Commission and the Speakers of the National Parliament to give effect to the judgment by formulating the necessary amendments, formulations and enactment of statute law. Further, the Court suspended the operation of its judgment and directed the Attorney General and the Director of Public Prosecutions to within twelve (12) months prepare a progress report identifying an appropriate framework to address sentence re-hearings for other persons subject to the mandatory death penalty.

Using case law, discuss the Constitutional remedies granted by the Courts scenario (i) and (ii) above and the justification for each remedy (*Both questions carry equal marks*) (20 Marks)

QUESTION THREE

Write concise notes on the following:

- i. Unenumerated rights in the Bill of Rights in the Kenya Constitution, 2010 (10 Marks)
- ii. 'Article 59 Commissions' on the enforcement of the Bill of Rights in the Kenya Constitution, 2010 (10 Marks)