



KENYATTA UNIVERSITY

UNIVERSITY EXAMINATIONS 2018/2019

SECOND SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

LPL 104: CONSTITUTIONAL LAW 1

DATE: Monday, 8th April 2019

TIME: 9.00am - 11.00am

INSTRUCTIONS:

1. Answer ALL questions
2. Support your answer with relevant illustrations from case law, statutory provisions and any other reference.
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 Examination rules apply as if they were contained herein.

QUESTION 1

'Constitutionalism is [...] the principle that the exercise of political power shall be founded by rules, which determined the validity of legislative and executive action by prescribing the procedure according to which it must be performed or by delimiting its permissible content. [...] Constitutionalism becomes a living reality to the extent that these rules curb the arbitrariness of discretion and are in fact observed by the wielders of political power, and to the extent that within the forbidden zones upon which authority may not trespass there is significant room for the enjoyment of individual liberty.' (De Smith, S, A, 'Constitutionalism in the Commonwealth Today', Mlaya Law Review, 4.2.205-17p 205)

(30 marks)

- a) Assess the above cited minimalist definition of constitutionalism and give a more comprehensive understanding of the notion of modern constitutionalism. (10 marks)

- b) In your opinion, does the Constitution of Kenya, 2010 offer hope for achieving the standards set out by the notion of modern constitutionalism? Explain your answer citing relevant Chapters and provisions of the Constitution 2010. (20 marks)

QUESTION 2

1,200,000 Kenyan citizens have⁴ decided to propose a constitutional amendment which intends to

- change the national symbols and the republican form of government to monarchy;
- reduce the term of office of the Chief Justice;
- shift the legislative power from the Parliament to the National Executive.

They have drafted and submitted the Bill to the National Assembly.

Assess the above scenario by reference to the relevant provisions of the Constitution of Kenya, 2010. (20 marks)

QUESTION 3

Historically, the principle of separation of powers in Kenya has always been compromised. Justify the claim that Constitution of Kenya, 2010 has improved the status of separation of powers among the three arms of government. Support your answer with relevant theories and provisions of the Constitution, 2010. (20 marks)