



RIARA LAW SCHOOL

UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE

AND

**PRE-KENYA SCHOOL OF LAW CORE COURSES COMPLIANCE
PROGRAMME**

JANUARY-APRIL 2024

RLB 106: CONSTITUTIONAL LAW 2

INSTRUCTOR: Dr. VICTOR LANDO

INSTRUCTIONS

1. This is the final examination in Constitutional Law 2. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This examination has **THREE** questions. Please answer **ALL THREE QUESTIONS**.
3. This examination has 5 pages, including this one.
4. Time allocated for this examination is **TWO** (2) hours. You must stop writing when time is called.
5. Please sign the roll sheet when you turn in your answer sheet. If you fail to sign the roll sheet, we shall have no way of establishing that you sat for this examination and your marks will not be reported.
6. This is a **CLOSED BOOK** examination. This means that save for a clean copy of the Constitution of Kenya, which shall be supplied by the Law School, you are not permitted to bring **ANY** hard or soft materials to the examination room. You are also not allowed to access materials stored in computers, electronic gadgets or the internet. You should not bring to the examination room any of the following: cell phones, tablets, computers, statutes, notes, outlines, or books. Neither should you bring to the examination room books or materials unrelated to this course. If you need to have medicine or food items with you, please let the invigilator know before the examination begins.
7. This examination is governed by **Riara University Academic Honesty Regulations**. Students who violate those regulations will be penalized. Students have an obligation to report to the invigilator any incidences of academic dishonesty compromising the integrity of this examination.

Question 1(a) (15 marks)

Read the excerpt below from the Standard Digital Newspaper and answer the questions that follow.

Standard Digital. Published 02 Sept 2017

The Law Society of Kenya says President Uhuru Kenyatta is entitled to express his dissatisfaction in yesterday's Supreme Court ruling which invalidated the announcement of his reelection on August 11. LSK commended Uhuru for also declaring that he respects court's decision which he does not agree with. In a press conference on Friday, shortly after the ruling President Uhuru said he disagrees with Supreme Court ruling but will respect it. He has urged Kenyans to maintain peace and shun tribalism.

"I respect the Supreme Court's decision but I don't agree with it... Millions of Kenyans queued and voted, but six people have decided that they will go against the will of Kenyans... Again I say, the Court has made its decision and we respect it but we do not agree with it," said Uhuru who was accompanied by Deputy President William Ruto.

However the LSK, condemned his further attacks towards Judiciary terming the remarks as inappropriate and unconstitutional.

"Further statements by President describing the Chief Justice and other judges of the Supreme Court of Kenya as '*wakora*' (crooks or scoundrels) and ominously declaring that they should wait for him after he is successful in the coming fresh elections are unfortunate and wholly inappropriate remarks from the head of state who under the Constitution is a symbol of national unity, enjoys immunity from criminal and civil proceedings and must promote and enhance the unity of the nation." Said the Law Society in a press statement.

On Saturday, President Uhuru hit out at the Supreme Court questioning the grounds on which his nullification was determined. He threatened to deal with the Judiciary if he will be reelected within the 60 days that Supreme Court ordered the Independent Electoral and Boundaries Commission (IEBC) to conduct fresh presidential polls.

With reference to case law and relevant provisions of law, critically discuss the concept of Countermajoritarianism and how the Constitution of Kenya anticipates and addresses the challenges associated therewith. (15 marks).

Question 1(b) (15 Marks)

“Although the power of amendment is wide, it is not wide enough to include the power of totally abrogating or emasculating or damaging any of the fundamental rights or the essential elements in the basic structure of the Constitution or of destroying the identity of the Constitution.”

Njoya and others v the Attorney General [2004] 1 KLR at p.646

In light of Kenya’s Constitutional history, and with reference to case law as well as provisions of the Constitution, critically analyse how the framers of the Constitution of Kenya 2010 insulated it against manipulation and self-serving amendments by the political class. (15 marks)

Question 2. (20 marks)

The Constitution provides ..."a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of race, colour, belief or sex. This is a magnificent goal for a Constitution: to heal the wounds of the past and guide us to a better future. For me, this is the core idea of transformative constitutionalism: that we must change.” **Justice Pius Langa, Chief Justice of the Republic of South Africa** (Prestige Lecture delivered at Stellenbosch University, October 2006)

In view of the foregoing statement, critically analyse the concept of transformative constitutionalism in the context of Kenya’s constitutional experience from independence to date and discuss at least five (5) provisions of the Constitution of Kenya, which seek to reinforce its transformative character. (20 marks)

Question 3(20 Marks)

a) Examine the following scenario and provide a brief/ concise legal opinion based on case law and provisions of the Constitution on the appropriate Course of action as well as remedies to be pursued under the Constitution of Kenya.

Jane has been a member of Wenyeki Athletics Club for the past 6 years. She is an avid decathlon and marathon enthusiast and has been successful in hosting a number of Decathlon and marathon events nationally and internationally. She has been recognized by the President for her outstanding achievements in the field of sports and athletics. She expressed an intention to vie for the position of Chairperson of Wenyeki Athletics in the elections slated for 1 September 2024. The Elections Board of the Club denied her nomination papers on the strength of Clause 6 of the Constitution of Wenyeki Athletics Club which stipulates that:

' the post of Chairman of the Club shall only be open for ale club members above the age of 35 and below the age of 65'

She approached the Board of the Club who informed her that the constitution of the Club is the final authority on matters pertaining to governance at the Club, and that if she is not in agreement then she should start her own club or go elsewhere or even go to Court. The resident Club secretary rudely told her that she would go nowhere even if she filed suit and that the High Court of Kenya in 2006 held that the private affairs of Clubs were not open to court scrutiny as per *Republic v Kenya Cricket Association Ex Parte Maurice Odumbe*.

Provide a concise legal opinion detailing any violations of the constitution that may have been committed, whether she has any legal recourse under the law, and what remedies she may seek (if any). (10 marks)

b) "... The Constitution is not an Act of Parliament. It exists separately in our statutes. It is supreme... constitutional provisions ought to be interpreted broadly or liberally, and not in a pedantic way... Constitutional provisions must be read to give (effect to) values and aspirations of the people...." (*Crispus Karanja Njogu v. Attorney General, Criminal application no. 39 of 2000 (unreported)*).

In view of the foregoing statement, and with the help of decided cases, as well as relevant provisions of the Constitution of Kenya, critically analyse at least five (5) provisions that should guide constitutional interpretation and application in Kenya. (10 marks)