



LAW SCHOOL

**UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB)
DEGREE**

RLLB 108: LEGAL SYSTEM AND METHODS

December 2014

Examiner: F.K. Githiru

Instructions:

1. Time allowed is 3 hours.
2. This is a closed book examination.
3. This paper consists of three questions.
4. Answer ALL questions.

QUESTION ONE

For the first time in Kenya gay activists have come out boldly and openly to demand the recognition of gay rights. They are said to be drafting a law that they will be lobbying parliament to adopt. Against this background, discuss the moral and legal arguments in favour of and against legalisation of gay rights and use the above example to explain the relationship between law, morals and the role of law in society.

20 marks

QUESTION TWO

You have been provided with the Court of Appeal decision in the case of *Dennis Kirui Cheruiyot v Republic: Criminal Appeal No 184 Of 2009* to enable you answer this question.

- a. Discuss the main contents of a written judgment to wit;
 - i. The coram
 - ii. The issues for determination
 - iii. The holding
 - iv. The ratio decidendi
 - v. The obiter dicta
- b. Using the decision that has been given to you, identify each of the above contents.

25 marks

QUESTION THREE:

“The promulgation of the Constitution of Kenya, 2010 heralded a new beginning for most institutions. For the Judiciary, this call was even more urgent. It became imperative for the Judiciary to develop a mechanism for institutional renewal that would enhance public faith and confidence in it. This is the product of that process.

The Transformation of the Judiciary must be seen as part of the transformation of Kenyan society commanded and envisaged by the Constitution. Kenyans voted overwhelmingly in 2010 to establish a free, equal, prosperous and just social order. They entrenched this agenda in the Constitution and entrusted all government agencies with the task of implementing it. This Framework merely seeks to realize these constitutional ideals for the Judiciary.

Its genesis, however, has a long historical basis, the constitutional moment only being propitious...”

Preface to the Judiciary Transformation Framework 2012-2016

Against the above sentiments, discuss the injustices that faced the judiciary pre 2010 and the transformation that has so far been witnessed in this arm of government. What are the challenges that stand in the way of judicial transformation?

25 marks