



RIARA LAW SCHOOL

UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE

AND

PRE-KENYA SCHOOL OF LAW CORE COURSES COMPLIANCE PROGRAMME

SEPTEMBER- DECEMBER 2019

RLB 106: CONSTITUTIONAL LAW 2

EXAMINER: 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 4 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 (30 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*

- a) **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)**

- b) **Evaluate at least five (5) provisions of the Constitution, which should in your view, be proposed for amendment, and advance reasons for your proposals as well as the most appropriate manner of effecting these amendments. (15marks)**

Question 2. (20 marks)

“... 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... the Constitution, of necessity, has principles and values embodied in it...when one interprets an Act of Parliament in the backdrop of the Constitution, the duty of the court is to see whether that Act meets the values embodied in the Constitution.” (*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 the fundamental considerations that should guide constitutional interpretation and application in Kenya. (20 marks)

Question 3(20 Marks)

Examine the following scenarios and answer the questions that follow.

a) Faith has been a member of Wasanii Arts Club for the past 7 years. She is a professional artist and has been successful in hosting her paintings in several national and international art exhibitions. She has been recognized by the President for her outstanding achievements in the field of Art and was awarded a Head of State Commendation(HSC) during the last Mashujaa Day celebrations. She has expressed an intention to vie for the position of Chairperson in the elections slated for 17 December 2019. The Elections Board of the Club denied her nomination papers on the strength of Clause 6 of the Constitution of Wasanii Arts Club which stipulates that:

' the post of Chairman of the Club shall be open for men 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 of artists 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 Faith with a concise legal opinion detailing any violations of the Constitution of Kenya 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) For the past 6 months, members of the African Church of God in Narok have been having leadership wrangles pitting the Bishop on the one side, against the Senior Pastor on the other. On Sunday, 24th November 2019, the confrontation between the wrangling parties turned violent leading to the deployment of anti-riot police to restore order at the church premises, which is wholly owned by the Church. Subsequently the Narok County Commissioner declared that the African Church of God shall remain closed indefinitely. She then instructed the police to deny entrance to any person seeking to access the premises. Amos, is a member of the Church and has come to you seeking legal advice on the legality of the closure of the church by the County Commissioner.

Provide Amos with a concise legal opinion based on the Constitution of Kenya on whether the closure of the church is valid in law, and any remedies that may be available to him. (10 marks)