



LAW SCHOOL
UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE

AND

PRE-KENYA SCHOOL OF LAW CORE COURSES COMPLIANCE PROGRAM

AUGUST 2017

RLLB 106: CONSTITUTIONAL LAW II

Examiner: Dr. Eric Kibet

INSTRUCTIONS

1. This is the final examination in Constitutional Law II. 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 3 pages, including this one.
4. Time allocated for this examination is **THREE** (3) 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. You may refer to the Constitution while in the examination room. You will be supplied with a copy of the Constitution for your use. You are NOT permitted to bring ANY hard or soft materials to the examination room, including your own copy of the Constitution. 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 One (20 marks)

Karuri is a 32 year old Kenyan male who has lived with his grandparents in Argentina ever since he was 12 years old. He has recently returned to Kenya with his partner Gonzalez. Gonzalez is a 28 year old male who holds Argentinean citizenship. They are married to each other under Argentinean law which recognizes same-sex marriages and accords them the same treatment as other forms of marriage. Karuri and Gonzalez want to settle in Kenya. They both love the country and would like to work, invest, adopt children and spend their retirement in Kenya.

They are however afraid that their union will not be recognized in Kenya. That would mean they may not enjoy legal benefits that accrue to married couples under tax, insurance, adoption and succession laws, among other laws. Gonzalez may also not receive citizenship on the basis of his marriage to Karuri. They intend to petition the High Court to adjudicate on their 'constitutionally protected rights such as having their union recognized, among others. Moreover, they would like the offending provisions of marriage, tax, insurance, adoption and succession laws, declared unconstitutional to the extent that they do not recognize their union as a 'marriage.'

They intend to represent themselves. They only need your advice on arguments to make in support of their case, and arguments to expect in opposition to their case. Bearing in mind theories and approaches to constitutional interpretation, advise them accordingly.

(20 marks)

Question Two (2)

"Devolution encompasses all the advantages of a unitary system of government while eliminating all the disadvantages of a federal system." (Anonymous) Discuss.

(20 marks)

Question Three (3)

Gibson Cheres and his Terik community have just received an eviction notice from Kenya National Highways Airports. They are required to vacate their homes in 'Ng'omwet area. Ng'omwet area is situated in Bungoma County and is adjacent to Eldoret-Malaba highway. The notice reads:

"As you are aware, the land in which you live is public land earmarked for the expansion of Eldoret-Malaba highway. You

are hereby required to vacate the land immediately to allow construction work to begin. Failure to vacate immediately as herein advised will result in forcible eviction without further notice.”

Terik community has lived in Ng’omwet since time immemorial. This is the only home that Gibson Cheres and others of his generation have known. He is now seventy years old. He recalls that his great grandparents lived in the same area. However, he and all the other Ng’omwet residents have no title deeds. The Terik community is estimated to be about eight hundred in number.

Living conditions in Ng’omwet are horrible. The area is overcrowded with flimsy shacks, most of which made of polythene or plastic materials. The settlement has no electricity; no running water; no medical facilities, and no toilets. The unemployment rate in this community is estimated to be at 95%. Only 20 % of the population have post-primary education. With high levels of illiteracy, this community is a high risk group for HIV/AIDS infections.

Child immunization services are virtually unavailable to this community. The average life expectancy for members of the community is 38 years, which is about 20 years below the national average. Similarly, infant mortality is high. Only 1 out of 5 children born lives to see the fifth birthday. Their nutrition index is also poor, with at least 50% of the population suffering from malnutrition.

Time is running out. NYS bulldozers are already on site. This community is afraid that they will be rendered homeless. With the long rains approaching, they are afraid that many of them, especially children and the elderly might not survive the weather if their homes are destroyed. Being a minority group, they have no political representation in Parliament or in Bungoma County Assembly.

Gibson Cheres has sought legal redress in court on his behalf and on behalf of his community. The matter was heard and concluded before you. While analyzing relevant provisions of the Constitution and case law, prepare your reasoned opinion deciding the matter.

(30 marks)