



RIARA LAW SCHOOL

UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE

AND

PRE-KENYA SCHOOL OF LAW CORE COURSES COMPLIANCE PROGRAMME

16TH DECEMBER 2019

RLB 211: ADMINISTRATIVE LAW 2

INSTRUCTOR: DR. VICTOR LANDO

INSTRUCTIONS

1. This is the final examination in Administrative 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 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 ONE

Eden is 26 years old. She holds a B.Com (Finance Option) from the University of Kent, School of Business, and is pursuing a Masters in Strategic Management from Nairobi Business School. She also runs a transport company that supplies trucks to transport barley for the East African Breweries Ltd.

On 6 June 2019 she bought a new Mercedes 'Benz Actros Prime Mover Truck registration No. KCW 111W from DT Dobie Nairobi, with financing from Stanbic Asset Finance, to the tune of Ksh. 7 Million. The Loan is to be repaid via monthly instalments of Ksh.250,000. Eden knows from her projections that the truck will bring in about Ksh.300,000 per month hence she should be able to comfortably repay the loan on schedule.

She sends her driver, Jamo to pick the truck from the DT Dobie showroom, at 11.00 am, and instructs him to get certification as to whether all relevant fittings have been made, including a speed limiter. Her driver, confirms with the mechanics and the manager at DT Dobie that all relevant licenses and clearances have been done, and that this is a 'buy and drive'. They show him all the relevant legal clearances and certificates required to operate the said truck on the roads as a commercial vehicle.

Jamo decides to take the new ride for a 'maiden spin' on Mombasa road. He is flagged down by an officer attached to the National Transport and Safety Authority, who claims that he was driving the truck at 100kph instead of 80kph, and that the vehicle is not fitted with a speed limiter. Jamo tries to explain that the vehicle has just been released from the DT Dobie showroom and shows the NTSA Officer the licenses and clearances, but the officer refuses to oblige and says those are forgeries. The officer then proceeds to impound the vehicle and has it towed to the NTSA yard in Athi River. This happens at 12.00pm, one hour after the vehicle was released to Jamo.

At 2pm, Eden, her lawyer and her driver head to the NTSA yard in Athi River to address the situation with the responsible officer Athi River. On arrival, Eden is handed a letter bearing no official seal, but signed for the Director General NTSA by the Head of Operations Athi River, dated 6 June 2019, stating that *'Upon mechanical examination of the vehicle, and having conducted a hearing on 6 June 2019 at 1.00 pm, and upon receiving no representation from the owner of the vehicle, it is hereby ordered that the said Mercedes Benz Truck No.KCW 111W is banned from operating any transport operations for a period of 6 months'*.

The NTSA Act provides that all official communication to be made under seal and signed by the Director General. The NTSA Act does not make provision for banning any motor vehicles from the roads. Furthermore, the Traffic Act does not designate the NTSA with any powers of arrest and impounding of vehicles.

Advise Eden, based on provisions of statute, case law as well as the Constitution, on whether she may pursue judicial review against the NTSA, the grounds upon which she may pursue that action, as well as the most appropriate remedies to seek. **(30 marks)**

QUESTION TWO

Draft a Statutory Statement to accompany her application for Leave **(20 marks)**

QUESTION THREE

- a) “An application by way of judicial review before the High Court is not intended to turn it into an appellate one to deal with the merits of the issues before the inferior tribunal-*R. V Board of Post Graduate Studies, Kenyatta University Ex parte Amarjit Singh* ‘

In light of the above statement, critically analyse the concept of Judicial review as distinguished from an Appeal and Ordinary Review. **(10 marks)**

- b) “The Kenyan judiciary must guard against the development of a two-tracked system of judicial review. One that looks like the old cases influenced by the common law, on the one hand, and cases that are decided under the 2010 Constitution’s principles of judicial review [on the other]. Those two tracks are likely to undermine the establishment of a vibrant tradition of judicial review as required by the 2010 Constitution.” Professor James Thuo Gathii-“*The Incomplete Transformation of Judicial Review*”

Critically analyse the above statement in light of the Common Law Approach to Judicial Review and Judicial Review as a distinct remedy under article 22, 23, 47 as read with article 165 of the Constitution of Kenya. – **(10 marks)**