

**COUNCIL OF LEGAL EDUCATION**

**EXAMINATION FOR AWARD OF DIPLOMA  
IN LAW (PARA-LEGAL STUDIES)**

**JULY, 2009**

**GENERAL PRINCIPLES OF CONSTITUTIONAL  
LAW AND LEGAL SYSTEM 1**



**Instructions**

- (a) Answer **QUESTION 1 and ANY OTHER THREE QUESTIONS**
- (b) QUESTION 1 is COMPULSORY and carries 25 marks
- (c) All other questions carry 15 marks each
- (d) Marks may be lost for illegibility
- (d) Time allowed is **Two (2) Hours**

- 
1. You are a civic education trainer specializing in para-legal studies. Your employer, a local legal Non-Governmental Organization has tasked you to make a presentation to a group of youth leaders drawn from across the country.

Prepare a comprehensive report on your presentation highlighting the following key points:

- (a) The meaning and origins of law and its unique character as compared to other instruments of social control;
- (b) Theoretical approaches to definition of law;
- (c) Functions of law in society;
- (d) Major legal systems in the world today;
- (e) Classification of law.

**(25 marks)**

2. (a) Apart from the Constitution of Kenya there are several other "written laws" which form part of the laws of Kenya. Identify these and explain their place in the hierarchy of the formal sources of law in Kenya.

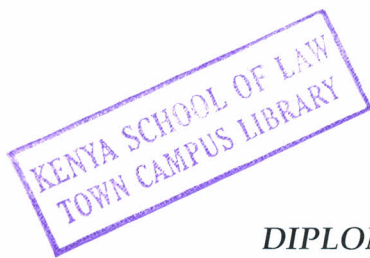
**(8 marks)**

- (b) Describe the process of law-making by Parliament in Kenya.

**(7 marks)**

3. (a) Explain in detail the origins and meaning of "common law" and "equity" and show the extent to which these are sources of law in Kenya. (9 marks)
- (b) What do you understand by the following concepts?
- (i) Stare decisis
  - (ii) Ratio decidendi
  - (iii) Obiter dicta
- (6 marks)
4. Discuss in detail the establishment, composition and jurisdiction of the High Court of Kenya. (15 marks)
5. Identify the proper forum for filing each of the following cases, giving reasons for your answer:
- (a) M, a Muslim wishes to sue N, a non-Muslim, over a dispute relating to a contract for the sale of a motor vehicle valued at Kshs.1.5 million;
  - (b) A, a member of Kenya Mpya Sacco Society wishes to sue the Sacco over some unpaid savings;
  - (c) X, a tenant at a shop in Nairobi wishes to sue Y, the landlord, over some alleged illegal rent increment;
  - (d) Mary wishes to sue Peter for maintenance of their child Tom;
  - (e) Wanareli Workers Union wishes to sue on behalf of its members for alleged violation of a Collective Bargaining Agreement.
- (15 marks)
6. Write short notes on the following:
- ~~(a)~~ The Chief Justice;
  - (b) The Attorney-General;
  - ~~(c)~~ Removal of a judge from office;
  - (d) Distinction between lawyer and advocate;
  - (e) Role of Para-legals.
- (15 marks)
-

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*DIPLOMA IN LAW (PARA-LEGAL STUDIES)*

CONSTITUTIONAL LAW AND LEGAL SYSTEM I

MONDAY 11<sup>th</sup> OCTOBER, 2010

DURATION: 2 HOURS

**Instructions to Candidates**

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question **ONE** carries **25 marks**
- (c) All other questions carry **15 marks** each

PLEASE TURN OVER

### QUESTION ONE

- (a) Define the term the term jurisdiction and explain the three main types of jurisdiction. **{8 marks}**
- (b) What are the different dimensions of the three main types of jurisdiction. **{8 marks}**
- (c) Describe the composition and jurisdiction of the following courts.
- (i) The Supreme Court
  - (ii) The Court of Appeal
  - (iii) The High Court
- {9 marks}**

### QUESTION TWO

Write short notes on the following:

- (i) The Natural Law Theory **{5 marks}**
- (ii) Legal Realism **{5 marks}**
- (iii) The Marxist – Leninist Theory of Law **{5 marks}**

### QUESTION THREE

- (a) What are the **FOUR** major Legal Systems in the world? **{4 marks}**
- (b) What are the essential characteristics of the four systems? **{11 marks}**

### QUESTION FOUR

Define the term “Law” and explain **FIVE** ways in which the law may be classified.

**{15 marks}**

**QUESTION FIVE**

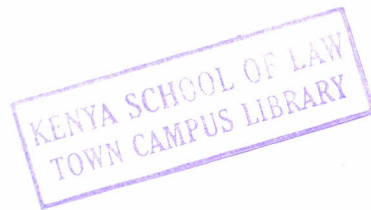
- (a) What is meant by the doctrine of Judicial precedent? {5 marks}
- (b) What are the advantages and disadvantages of the application of the doctrine by the courts ? {10 marks}

**QUESTION SIX**

Write short notes on the following:

- (i) The adversarial judicial system {8 marks}
- (ii) The inquisitorial judicial system {7 marks}

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*DIPLOMA IN LAW (PARA-LEGAL STUDIES)*

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CONSTITUTIONAL LAW & LEGAL SYSTEM

MONDAY 25<sup>TH</sup> JULY, 2011

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) Question ONE carries 25 marks
- (c) All other questions carry 15 marks each

PLEASE TURN OVER

1. (a) What are the formal sources of law in Kenya? Illustrate your answer with three (3) decided cases. (10 marks)
- (b) What is the hierarchy of laws in Kenya? Illustrate your answer with two (2) decided cases. (8 marks)
- (c) Use the three theories of natural law, legal position and legal realism to explain the nature and sources of law in Kenya. (7 marks)
2. Briefly discuss five (5) rules (maxims) of statutory interpretation. (15 marks)
3. Write short notes on the composition and jurisdiction of:
- (a) The Supreme Court of Kenya. (7½ marks)
- (b) The Court of Appeal of Kenya (7½ marks)
4. (a) What are the four main features of the adversarial system of trial? (10 marks)
- (b) Which of these features can you identify in the criminal trial process in Kenya? (5 marks)
5. (a) What is meant by the doctrine(s) of precedent and *stare decisis*? (5 marks)
- (b) What are the advantages and disadvantages of the doctrine? (10 marks)
6. (a) What is the structure of legal education in Kenya. (5 marks)
- (b) Who regulates legal education in Kenya? (5 marks)
- (c) Who is an “advocate” under the provisions of the Advocates Act (Cap. 16, Laws of Kenya)? Cite two (2) decided cases to support your answer. (5 marks)

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*DIPLOMA IN LAW (PARA-LEGAL STUDIES)*

CONSTITUTIONAL LAW & LEGAL SYSTEM

MONDAY 6<sup>TH</sup> AUGUST, 2012

DURATION: 2 HOURS

**Instructions to Candidates**

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question **ONE** carries **25 marks**
- (c) All other questions carry **15 marks** each

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## QUESTION ONE

- a) Attempt a definition of the term "law" and discuss the functions that law serves in society. (10 marks)
- b) Drawing guidance from the Constitution of Kenya, 2010 and the Judicature Act (Chapter 8, Laws of Kenya), outline the formal sources of law in Kenya noting to indicate the proper hierarchy of the various sources. (15 marks)

## QUESTION TWO

Citing relevant examples, present a comparative analysis of the following terms commonly used in the study of legal systems:

- a) Common law vs. Civil law
- b) Adversarial vs. Inquisitional judicial systems
- c) Procedural law vs. Substantive law
- d) *Ratio decidendi* vs. *Obiter dicta*
- e) Statutory vs. Non-statutory law

(15 marks)

## QUESTION THREE

- a) Set out in proper hierachial order the various courts established under Chapter 10 of the Constitution of Kenya, 2010. (5 marks)
- b) Discuss the composition and jurisdiction of the High Court of Kenya. (10 marks)

## QUESTION FOUR

Explain the process through which a Bill undergoes before it becomes law, noting to indicate the procedure applicable when the President declines to assent to a Bill passed by Parliament.

(15 marks)

### QUESTION FIVE

- a) Drawing from the relevant historical perspective, distinguish the terms common law and equity. (5 marks)
- b) What weaknesses in the common law led to the development of equity? (5 marks)
- (c) Under what circumstances may a judicial precedent lose its binding force? (5 marks)

### QUESTION SIX

Discuss the qualifications, mode of appointment and the powers and functions of the following officials in the context of the Kenyan constitution set-up:

- a) Chief Justice (5 marks)
- b) Attorney-General (5 marks)
- c) Director of Public Prosecutions (5 marks)



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*DIPLOMA IN LAW (PARA-LEGAL STUDIES)*

*(1<sup>st</sup> Year Term I)*



**GENERAL PRINCIPLES OF CONSTITUTIONAL LAW & LEGAL  
SYSTEMS I**

MONDAY 12<sup>TH</sup> AUGUST, 2013

DURATION: 2 HOURS

**Instructions to Candidates**

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question **ONE** carries **25 marks**
- (c) All other questions carry **15 marks** each

PLEASE TURN OVER

### QUESTION ONE

- a) J.R. Lewis in his book "Law in Action" said, "law is part of everyone's life, a living part, a determining part, controlling and giving part, it concerns people and it is alive." In light of this definition attempt the definition of law. (10 marks)
- b) (i) Draw a court structure tree under the new dispensation. (5 marks)
- (ii) Explain the composition and functions of the Judicial Service Commission. (10 marks)

### QUESTION TWO

- a) Explain the supervisory jurisdiction of the High Court of Kenya. (7 marks)
- b) Write explanatory notes on the following:
- c)
- (i) Business Rent Tribunal. (4 marks)
- (ii) Co-operative Tribunal. (4 marks)

### QUESTION THREE

It is only the High Court of Appeal and Supreme Court that make binding precedents. In light of this statement, explain how judges make laws. (15 marks)

### QUESTION FOUR

Justify the following as sources of law in Kenya:

- (i) Administrative Regulations. (3 marks)
- (ii) Delegated Legislation. (6 marks)
- (iii) African Customary Law. (3 marks)
- (iv) Islamic Law. (3 marks)

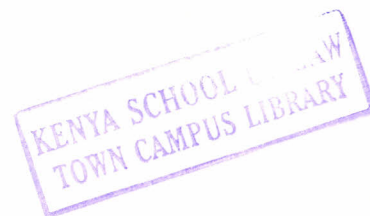
### QUESTION FIVE

You have been considered for employment as a court clerk in one of the leading law firms in Nairobi. In order for you to impress your employer and be successful in your job, what unbecoming conduct must you guard against? (15 marks)

### QUESTION SIX

Write on the following:

- a) Subordinate Courts. (8 marks)
- b) Common Law Systems. (7 marks)



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DIPLOMA IN LAW (PARALEGAL STUDIES)

## GENERAL PRINCIPLES OF CONSTITUTIONAL LAW AND LEGAL SYSTEMS I

11<sup>TH</sup> AUGUST, 2014

DURATION: 2 HOURS

### Instructions to Candidates

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question **ONE** carries **25 Marks**
- (c) All other questions carry **15 Marks** each

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page 3*

1. a) "Law is a rule laid down for the guidance of an intelligent being." In view of this definition by John Austin, discuss the definition of Law. (7 Marks)
- b) Draw the Kenya Court tree in ascending order. (5 Marks)
- c) Explain the powers and jurisdiction of the Supreme Court of Kenya. (8 Marks)
- d) Explain the common law system as applied in England during the Norman conquest of 1066 AD. (5 Marks)
2. Write explanatory notes on the following:
- a) The Constitution as a source of Law. (5 Marks)
- b) Kadhis courts. (5 Marks)
- c) Tenets of the legal profession. (5 Marks)
3. a) In line with the doctrine of judicial precedent, explain how judges make laws. (10 Marks)
- b) Explain the advantages and disadvantages of such judge made laws. (5 Marks)
4. a) Discuss the composition and jurisdiction of subordinate courts in Kenya. (10 Marks)
- b) Explain grounds on which, a judge may be removed from office. (5 Marks)
5. a) Kanini, a women representative from Kitui is a new member of Parliament, who has never been to Parliament. She intends to sponsor a Bill on matters of children, having identified a loophole in the Children Act of 2005. Unfortunately, being a new member of Parliament she does not understand what it entails where to start and where to end. Kanini approaches you for guidance. Advice Kanini. (12 Marks)
- b) Write brief notes on *obiter dicta*. (3 Marks)

6. a) On what grounds can the Director for Public Prosecutions be removed from Office? (5 Marks)
- b) Explain at least five functions performed by the Attorney General of Kenya. (5 Marks)
- c) What is the composition of the Judicial Service Commission? (5 Marks)

(Hanzi!! ra utdekam.  
Bullshit!  
Dimefanya maswali then afterwards  
ndio nikaanza kufikiriwa

COUNCIL OF LEGAL EDUCATION



*DIPLOMA IN LAW (PARA-LEGAL STUDIES)*

**CONSTITUTIONAL LAW AND LEGAL SYSTEM II**

MONDAY 7<sup>TH</sup> FEBRUARY, 2011

DURATION: 2 HOURS

**Instructions to Candidates**

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) Question ONE carries 25 marks
- (c) All other questions carry 15 marks each

PLEASE TURN OVER



### QUESTION ONE

- (a) Define a constitution. {5 marks}
- (b) Discuss FIVE classifications of constitutions. {10 marks}
- (c) How does the Kenyan Constitution fit into the five classifications? {10 marks}

### QUESTION TWO

- (a) Define the concept of "Executive Power" {5 marks}
- (b) How was executive power shared between the President and the Prime Minister under the old Constitution of Kenya and the National Accord and Reconciliation Act 2008? {10 marks}

### QUESTION THREE

Write short notes on the following:

- (a) Types of legislatures {4 marks}
- (b) Limitation of legislative power {5 marks}
- (c) How does the new constitution of Kenya limit legislative power? {6 marks}

### QUESTION FOUR

- (a) Where is/was judicial power vested by:
- (i) The old constitution of Kenya? {1 mark}
  - (ii) The new constitution of Kenya? {1 mark}
- (b) What is meant by "independence of the judiciary"? {2 marks}
- (c) State five pillars of judicial independence. {5 marks}
- (d) Which of the five pillars have been provided for in the new Constitution of Kenya? {6 marks}

### QUESTION FIVE

Write short notes on the following:

- (a) The declaratory theory of the state. {3 marks}
- (b) The constructive theory of the state. {2 marks}
- (c) Five different types of sovereignty. {10 marks}

### QUESTION SIX

Briefly discuss the law making process under:

- (a) The old constitution of Kenya. {7 marks}
- (b) The new Constitution of Kenya. {8 marks}

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- (b) The constructive theory of the state. {2 marks}
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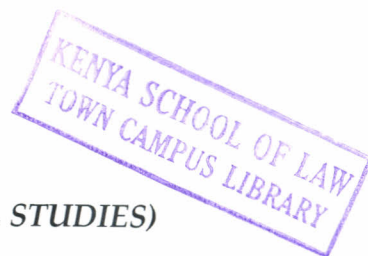
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COUNCIL OF LEGAL EDUCATION



*DIPLOMA IN LAW (PARA-LEGAL STUDIES)*

**GENERAL PRINCIPLES OF CONSTITUTIONAL LAW & LEGAL  
SYSTEMS II**

MONDAY 19<sup>TH</sup> NOVEMBER, 2012

DURATION: 2 HOURS

**Instructions to Candidates**

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question **ONE** carries **25 marks**
- (c) All other questions carry **15 marks** each

PLEASE TURN OVER

### QUESTION ONE

- a) Attempt a definition of the term "constitution" and explain **FIVE** ways of classifying constitutions. (10 marks)
- b) Drawing from your knowledge of the Constitution of Kenya, 2010, discuss the following concepts and give specific examples of their application.
- i) Supremacy of the Constitution
  - ii) Separation of Powers
  - iii) Sovereignty

(15 marks)

### QUESTION TWO

- a) What do you understand by the expression "Legislative Power"? (2 marks)
- b) Set out the structure and composition of the Parliament of Kenya as provided for under the Constitution. (7 marks)
- c) Discuss **THREE** main functions of the Parliament of Kenya, indicating the statutory tools available for carrying out those functions. (6 marks)

### QUESTION THREE

The Constitution of Kenya establishes two levels of government, namely, the National and County Governments, each with its own executive.

- a) What is the structure and composition of the National Executive? (5 marks)
- b) Set out the qualifications and procedure of choosing the President of Kenya. (7 marks)
- c) What is the constitutional function of the County Executive? (3 marks)

### QUESTION FOUR

Present a detailed analysis of the concept of independence of the judiciary, noting to indicate the key pillars thereof and the presence or otherwise of such pillars in the Constitution of Kenya.

(15 marks)

### QUESTION FIVE

- a) What is the role of political parties within Kenya's constitutional set-up? (5 marks)

- b) Present a brief historical survey of political party participation in Kenya's constitutional history. (10 marks)

### QUESTION SIX

Write brief notes on the following:

- a) Democracy (5 marks)
- b) Human rights & freedoms (5 marks)
- c) Rule of Law (5 marks)



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*DIPLOMA IN LAW (PARA-LEGAL STUDIES)*

**GENERAL PRINCIPLES OF CONSTITUTIONAL LAW & LEGAL  
SYSTEMS II**

FRIDAY 29<sup>TH</sup> NOVEMBER, 2013

DURATION: 2 HOURS

**Instructions to Candidates**

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question **ONE** carries **25 marks**
- (c) All other questions carry **15 marks** each

PLEASE TURN OVER

### QUESTION ONE

- a) Explain the rights of an accused person before a court of law. (8 marks)
- b) Explain the role of the Kenyan parliament under the 2010 Constitution. (7 marks)
- c) "The Kenyan Constitution is rigid". Discuss (10 marks)

### QUESTION TWO

Write explanatory notes on the following:

- a) Parliamentary Service Commission (10 marks)
- b) Rights of persons with disabilities under the Constitution (2010) (5 marks)

### QUESTION THREE

- a) How may a sitting President be removed from office? (12 marks)
- b) What is the composition of the Kenyan cabinet? (3 marks)

### QUESTION FOUR

Explain the powers and functions of the Kenya Human Rights Commission? (15 marks)

### QUESTION FIVE

- a) Wakili is a Kenyan national who has been working in South Africa as an advocate after completing her doctorate degree in law from the University of Capetown. While in Kenya for holiday, Wakili sets her eyes on an advertisement in one of the local newspapers for the post of the Deputy Chief Justice. Wakili is interested in applying for the post. Guide Wakili on what she needs to take into account. (10 marks)
- b) Explain at least **FIVE (5)** tenets that are required to be observed as underlying basic ethics in the legal profession. (5 marks)



## QUESTION SIX

Write notes on the following:

- |   |           |
|---|-----------|
| (a) Bi-carmeral Parliament                      | (3 marks) |
| (b) Court Martial                               | (3 marks) |
| (c) Presidential assent                         | (2 marks) |
| (d) Power of mercy                              | (2 marks) |
| (e) Rights of children under the Bill of Rights | (5 marks) |
-

THE KENYA SCHOOL OF LAW



DIPLOMA IN LAW (PARALEGAL STUDIES)

**GENERAL PRINCIPLES OF CONSTITUTIONAL LAW AND LEGAL SYSTEMS II**

**4<sup>TH</sup> DECEMBER, 2014**

**DURATION: 2 HOURS**

**Instructions to Candidates**

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions.
- (b) Question **ONE** carries **25 Marks**.
- (c) All other questions carry **15 Marks** each.

**PLEASE TURN OVER**

1. a) Explain the concept of constitutionalism. (7 Marks)
- b) Write explanatory notes on the following:
  - (i) Jurisdiction of the High Court of Kenya. (8 Marks)
  - (ii) Bicameralism (5 Marks)
- c) List and briefly explain at least five limitations of rights and fundamental freedoms of individuals. (5 Marks)
2. Explain how the concept "separation of powers" is envisaged in the Kenyan Constitution. (15 Marks)
3. Write explanatory notes on the following:
  - a) Rights to fair hearing (5 Marks)
  - b) Distinction between Republican and Monarchical types of Constitutions. (5 Marks)
  - c) Independence of the Judiciary. (5 Marks)
4. Explain the grounds on which a sitting President can be removed from office before the expiry of term. (15 Marks)
5. The current Constitution of Kenya differs in great perspective from the one enacted in 1963. That in view, bring out the characteristics of the current constitution. (15 Marks)
6. a) What are the qualifications for appointment, and the functions, of the Deputy President? (7 Marks)
- b) Write notes on:
  - (i) Sovereignty (2 Marks)
  - (ii) Standing Orders (2 Marks)
  - (iii) *Ratio Decidendi* (2 Marks)
  - (iv) Client confidentiality. (2 Marks)