

COUNCIL OF LEGAL EDUCATION



PRE-BAR EXAMINATION

PRB 001 - LEGAL METHODS, SYSTEMS & CONSTITUTIONAL LAW

WEDNESDAY, 26TH SEPTEMBER, 2012

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer Question **ONE** and **any other three** Questions
- (b) ALL Questions carry **25 marks each**
- (c) Marks may be lost for illegibility

PLEASE TURN OVER

1. With the coming into force of the Constitution of Kenya 2010, time is now ripe for reviewing the Judicature Act (Chapter 8, Laws of Kenya) in order to align it with the Constitution and update the Act to reflect the jurisprudential realities obtaining in Kenya in the year 2010.

You are a legal officer with the Kenya Law Reform Commission and the chairman of the commission has asked you to do the following:

- (a) Prepare a detailed memorandum on the question of formal sources of law in Kenya by comparing the Constitution and the Judicature Act and justifying the need to amend the latter to conform with the former and bring the Act up to date.

(15 marks)

- (b) Legal scholars have attempted to classify constitutions in various ways. Set out the main classifications of constitutions and indicate where you would place the Constitution of Kenya with respect to each of those categories.

(10 marks)

2. Several legal systems exist in the world today, with the common law system and the civil law system being two major ones.

Discuss in detail these two legal systems and set out the respective merits and demerits of the adversarial and inquisitorial judicial processes that characterize each of these legal systems.

(25 marks)

3. Article 22(1) of the Constitution of Kenya, 2010 provides that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

- (a) What is the proper manner of approaching the court to seek relief under Article 22?

(7 marks)

- (b) What possible remedies may a court grant where a suit under Article 22 is successful?

(18 marks)

4. The Constitution of Kenya, 2010 creates two categories of courts, namely, the Superior Courts and the Subordinate Courts. Set out the courts falling under each category and briefly discuss the jurisdiction of each.

(25 marks)

5. The legislative authority of the Republic of Kenya is vested in Parliament but Parliament may sometimes delegate that authority to other bodies or persons for various reasons.

- (a) What justification exists for delegation of legislative powers by Parliament? **(10 marks)**
- (b) What forms does delegated legislation take? **(5 marks)**
- (c) What legislative and judicial mechanisms exist for control of delegated legislative power? **(10 marks)**

6. You are an advocate of the High Court of Kenya practicing as such in the firm of Simba Wanyika & Co. Advocates.

The following are legal problems of your various clients and you are required to present a written legal opinion to each of them setting out the applicable legal norms and the specific steps necessary to ventilate your clients' legal concerns.

- (a) Mr. Juma has a land boundary dispute with this neighbor Mr. Omolo. Mr. Juma informs you that yesterday, an altercation with Mr. Omolo resulted in a scuffle in which Mr. Juma sustained injuries. He blames Mr. Omolo for both the boundary dispute and the injuries. **(5 marks)**
- (b) Mr. Korir's son, aged 10 was killed in a road traffic accident. Mr. Korir seeks your advice on the legal options open to him. **(5 marks)**
- (c) Mr. Mwangi has a rent dispute with his tenant Miss Kariuki and want to know how he can recover the rent he claims is due and also "throw out" Miss Kariuki from the house. The property in question is a business premises. **(5 marks)**
- (d) Mr. Kizito signed as a guarantor for Mr. Amoko in respect of a SACCO loan that Mr. Amoko took from a co-operative society in which both are members. Mr. Amoko has defaulted on the loan repayments and the SACCO now seeks to recover the amount due from Mr. Kizito. Advise Kizito. **(5 marks)**
- (e) Mrs. Abdalla, a Muslim, wishes to inherit the property of her deceased husband (also a Muslim) and wishes to know how to go about the inheritance process. **(5 marks)**
