

Mount Kenya University



UNIVERSITY EXAMINATION 2021/2022

SCHOOL OF LAW
DEPARTMENT OF PUBLIC LAW

BACHELOR OF LAW
REGULAR/EVENING

UNIT CODE: BLW1103

UNIT TITLE: CONSTITUTIONAL LAW

DATE: THUR 16TH DEC, 2021 8.00AM MAIN EXAM TIME: 2 HOURS

INSTRUCTIONS: ANSWER A TOTAL OF THREE (3) QUESTIONS.
QUESTION ONE (1) IS COMPULSORY

1. Explain how / whether the following would be able to bring a claim for breach of a fundamental rights under the Constitution of Kenya 2010 and the possible remedies they may seek from the courts.
 - a) Mutiso a young Kenyan IT expert who lost his job after his employer closed down the company due to the financial problems caused by the Covid 19 pandemic in Kenya. Mutiso is now homeless and lives at Uhuru park in Nairobi in a small polythene tent. ✓ [10 Marks]
 - b) The Bongomek minority ethnic group who claim that their right to development has been violated by the Bungoma County government which took over their forest, evicted the community from the forest and converted it into a national game park. The constitution of Kenya under the bill of rights does not provide for the right to development. [10 Marks]
 - c) It is said that the study of the executive under the repealed constitution of Kenya was a study about presidential power. Compare and contrast the executive under the 1963 repealed constitution and the Constitution of Kenya 2010. [10 Marks]

Accountability & Democratic
Participation of the
protection of rights
protection of *Inter-ministerial*
Equitable sharing of resources

2. You have been invited to give a presentation about the objects and principles of devolution in the Constitution of Kenya 2010 at the annual devolution conference dubbed 'Going back to the basics; understanding devolution in Kenya'. Write a detailed brief of your presentation. [20 Marks]
3. Although the Kenyan Constitution contains no explicit clause on separation of powers, the Montesquieuan influence is palpable throughout the document. Critically discuss this statement. [20 Marks]
4. During the BBI sensitization rally in Eldoret town, one politician was heard saying; *"the constitutional principle of sovereignty of the people is necessary to ensure that a passing national mood or opinion cannot be transmitted easily into action at every point!"*.
You immediately got a phone call from TV47 to appear in the evening political show for purposes of unpacking the politician's statement in order to help *mwana* understand what the politician was talking about. Write a detailed brief of your presentation at TV47 noting to cite appropriate case law and constitutional provisions. [20 Marks]
5. a) Why is it that the enforcement of socio-economic rights is always at cross purposes with the doctrine of separation of powers and how does the judiciary resolve this tension? [10 Marks]
b) Explain the role of public interest litigation in enhancing democracy such as Kenya. [10 Marks]