

CHUKA



UNIVERSITY

UNIVERSITY EXAMINATIONS

FIRST YEAR EXAMINATION FOR THE AWARD OF DEGREE OF BACHELORS OF LAWS

BLAW 111: LEGAL SYSTEMS AND METHODS

STREAMS: BLAW

TIME: 2 HOURS

DAY/DATE: TUESDAY 20/7/2021

2.30 P.M. – 4.30 P.M.

INSTRUCTIONS: ANSWER ANY FOUR QUESTIONS

QUESTION IS MANDATORY

QUESTION 1

- (a) Montesquieu was one of the great political philosophers of the enlightenment. Institutionally curious and moderately funny, he construed a rather artistic account of the various forms of government, and of causes that made them what they were and that complicated or constrained their development. He used this account to account how governments might be preserved from corruption. He saw despotism, in particular, as a standing danger for any government not already despotic, and argued that it could best be prevented by a system in which different bodies exercise legislative, executive and judicial power, and in which all these bodies are bound by the rule of law. This theory of separation of power had an enormous impact on liberal political theory and on founders of different constitutions worldwide to date.

Discuss the relevance of the Montesquieu's philosophy in the Constitution of Kenya, 2010, with clear illustration of decided cases and the arms of government. (15 Marks)

- (b) How do different arms of the Kenyan Government act as checks and balances against each other? (10 Marks)

BLAW 111

- (c) Discuss ways in which the impartiality and independence of judges is guaranteed under the Constitution of Kenya, 2010. (5 Marks)

QUESTION 2

- (a) Judges ought to remember that their office is *jus dicere* and not *jus dare*; to interpret law and not to make law.” [Francis Bacon, The Essays of Counsels, Civil and Moral, 1625] To what extent does Bacon’s view of common law judge hold true today especially in light of the case of **David Ndi & Others –Versus- Attorney General & Others consolidated Petition E282 OF 2020**. Answer with reference to cases and academic commentary. (15 Marks)
- b. Explain the instances when a Court can depart from precedent. (5 Marks)

QUESTION 3

- (a) Discuss the following concepts as applied in common law: ratio decidendi, obiter dictum, stare decisis and per incuriam. (10 Marks)
- (b) Briefly explain the salient differences between the Common Law Legal system and the Civil Law Legal system. (5 Marks)
- (c) Discuss the sources of Law in Kenya (5 Marks)

QUESTION 4

- (a) “Legal argument can be put into syllogistic form. It is usually helpful and sometimes necessary to do so. We normally reduce judgments, however long, into simple syllogism” Define and explain how we do this in law. (10 Marks)
- b. “There are certain main rules of interpretation of statutes that have been developed over time. There are probably more approaches to interpretation than rules of interpretation. Any of the approach may be selected by a court or a judge in a panel. In interpreting any word or words, a court is said to invoke whichever of the rules that produces a result that satisfies its sense of Justice in the case before it.’ Set out the three main rules of interpretation and explain their meaning and operation. (10 Marks)
-