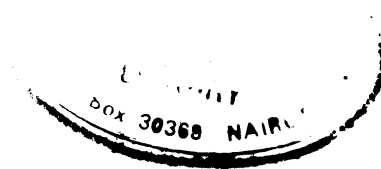


COUNCIL OF LEGAL EDUCATION



PRE-BAR EXAMINATION

LEGAL METHODS, SYSTEMS & CONSTITUTIONAL LAW

MONDAY, 19TH SEPTEMBER, 2011

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. Article 2 of the Constitution of Kenya provides in part as follows:

“(1) This Constitution is the Supreme law of the Republic and binds all persons and all State organs at both levels of government.”

“(4) Any law,..., that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.”

(a) In light of the foregoing, discuss the concept of supremacy of the constitution and compare that concept with the doctrine of sovereignty of Parliament.

(15 marks)

(b) What are the other formal sources of Kenyan law that are required to be in conformity with the Constitution?

(10 marks)

2. “It must be observed that at Common Law not every opinion expressed by a judge forms a Judicial Precedent. In order that an opinion may have the weight of a precedent, two things must concur; it must be, in the first place, an opinion given by a judge, and in the second place, it must be an opinion the formation of which is necessary for the decision of a particular case; in other words it must not be *obiter dictum*.”

Professor John C. Gray; Quoted in GOODHART, “Determining the Ratio Decidendi of a Case” 40 Yale Law Journal 161.

(a) Explain the origins and philosophical basis of *stare decisis* as a unique feature of the common law legal system.

(10 marks)

(b) Under what circumstances may a judicial precedent lose its binding force?

(10 marks)

(c) To what extent is this doctrine applicable in Kenyan courts?

(5 marks)

3. You are an experienced State Counsel in the department of legal drafting at the office of the Attorney-General. Following a request by the Director of the Judiciary Training Institute, the Attorney-General has appointed you to present a discussion paper to newly appointed magistrates on the subject of statutory interpretation.

Using appropriate illustrations and case law, prepare your paper, noting to pay particular attention to the following tools of statutory interpretation:

- (i) Statutory aids;
- (ii) Judge-made rules;
- (iii) Presumptions.

(25 marks)

4. You are a newly appointed graduate assistant at the Faculty of Law at a local university. The dean has requested you to prepare a lecture presentation to the first year LL.B students on the history of the court system in Kenya including the present constitutional and statutory set-up of the courts.

Prepare detailed notes for the lecture paying attention to issues of structure, composition and jurisdiction of the courts in Kenya.

(25 marks)

5. A legal practitioner in Kenya is occasionally called upon to advise clients on avenues of resolving disputes in places other than the ordinary courts of law, and in some instances to represent clients in those places.

What legal avenues exist in Kenya for resolving disputes outside ordinary courts of law and what merits attach to taking such routes?

(25 marks)

6. Discuss the qualifications, mode of appointment and the powers and functions of the following officials in the Kenyan justice system:

- | | |
|---------------------------------------|------------------|
| (a) Chief Justice; | (5 marks) |
| (b) Attorney-General; | (5 marks) |
| (c) Director of Public Prosecutions; | (5 marks) |
| (d) Chief Khadhi; | (5 marks) |
| (e) Chief Registrar of the Judiciary. | (5 marks) |