

COUNCIL OF LEGAL EDUCATION



PRE-BAR EXAMINATIONS

SEPTEMBER, 2010

LEGAL METHODS, SYSTEMS & CONSTITUTIONAL LAW

Instructions

- (a) Candidates **MUST** answer Question One and any other 3 questions
 - (b) All questions carry **25 marks** each
 - (c) Time allowed is **3 hours**
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1. Clause 7(1) of the Sixth Schedule to the Constitution of Kenya provides as follows:

“7(1). All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution.”

- (a) Citing relevant statutory authority, explain the meaning of the expression “*All law in force immediately before the effective date.*”

(15 marks)

- (b) What legislative intervention would you propose as part of the “alterations” contemplated by Clause 7(1) referred to above?

(10 marks)

2. Discuss the concept of separation of powers as understood in constitutional theory and show the extent to which the architecture of the Constitution of Kenya addresses this doctrine.

(25 marks)

3. It has been stated that there is no such thing as “judge-made law ”since judges do not make law but only interpret it.

Discuss the correctness or otherwise of this statement, having regard to the canons of statutory interpretation and judicial processes obtaining in common law jurisdictions such as Kenya.

(25 marks)

4. Present a comparative analysis of adversarial versus inquisitorial judicial systems, describing concisely the respective functions of a judge and an advocate in each of the two systems. **(25 marks)**
5. Discuss the court system established under Chapter Ten of the Constitution of Kenya, setting out the structure, composition and jurisdiction of the various courts created therein. **(25 marks)**
6. Write short explanatory notes on the following:
- (a) Federal – Vs – Unitary constitution;
 - (b) Unicameral – Vs – Bicameral Legislature;
 - (c) Burden of proof – Vs – Standard of proof;
 - (d) Sources of international law;
 - (e) Arbitration.

(5 marks each)
