



MACHAKOS UNIVERSITY

University Examinations for 2022/2023 Academic Year

SCHOOL OF BUSINESS, ECONOMICS AND HOSPITALITY AND TOURISM

MANAGEMENT

FIRST YEAR FIRST SEMESTER EXAMINATION FOR

BACHELOR OF COMMERCE

BBA 101:

DATE:

TIME:

INSTRUCTIONS:

Answer Question One and Any Other Two Questions

The entrenchment of the power of judicial review as a constitutional principle should of necessity expand the scope of the remedy beyond the confines of the public-private power dichotomy. As a result, judicial review orders should now be applicable against any private person, body or authority who exercises a judicial or quasi-judicial functions by which a right or fundamental freedom of a person has been or is likely to be adversely affected.

In traditional African society, men from the same geographical area came together and formed tribes. These tribes formulated laws based on customs and beliefs for the common good. These customs applied exclusively to members of a specific community equivalent to the jurisdiction of the law in modern day. These laws and customs are now referred to as African customary law.

An occupier can be liable under occupiers' liability law to both trespassers and visitors on their property if there is 'any risk of their suffering injury on the premises by reason of any danger due to the state of the premises or to things done or omitted to be done on them'.

The doctrine of privity of contract is a common law principle which provides that a contract cannot confer rights or impose obligations upon any person who is not a party to the contract. The premise is that only parties to contracts should be able to sue to enforce their rights or claim damages as such.

In its citation the constitution of Kenya provided that: “This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government. No person may claim or exercise State authority except as authorized under the Constitution. The general rules of international law shall form part of the law of Kenya.”

In light of the above background:

QUESTION ONE (COMPULSORY) (30 MARKS)

- a) Explain the grounds for judicial review in the country (5 marks)
- b) Give the limitations of African customary law as a source of law in Kenya. (5 marks)
- c) Explain the defenses available to the occupier against liability of a trespasser. (4 marks)
- d) Discuss the exemptions to the doctrine of privity of a contract (6 marks)
- e) Highlight the main issues addressed in the constitution of Kenya. (10 marks)

QUESTION TWO (20 MARKS)

- a) Explain the circumstances under which trespass to a person would be Justified under law (8 marks)
- b) Briefly explain the rules applied in courts in interpretation of statutes (12 marks)

QUESTION THREE (20 MARKS)

- a) Parliament may delegate its law making authority to subordinate competent bodies. Discuss the reasons for delegated legislation. (10 marks)
- b) Outline the maxims of equity. (10 marks)

QUESTION FOUR (20 MARKS)

- a) Explain advantages of judicial precedents as source of law. (10 marks)
- b) Distinguish between of common law and equity. (10 marks)

QUESTION FIVE (20 MARKS)

- a) Describe four types of writs that the high court may issue to subordinate courts, tribunals and administrative authorities. (8 marks)
- b) Distinguish between public bill and private bill. (6 marks)

- c) In relation to alternative dispute resolution mechanism, explain the following terms:
Arbitration Mediation Negotiation (6 marks)