## **FACULTY OF LAW CATHOLIC UNIVERSITY OF EASTERN AFRICA**

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## **DEPARTMENT OF PUBLIC LAW**

## **CLS 122 (CONSTITUTIONAL PRACTICE)**

## **COURSE OUTLINE**

## **Course description**

## In CLS 102 (Constitutional Theory) we explored the theoretical foundations of Constitutional Law. This course is built on the foundations of CLS 102. We still use a comparative approach and attempt to give the course a distinctly regional flavor. The focus shifts from theories, principles and concepts to an analysis of the normative provisions of the Constitution of Kenya 2010. We explore the structure and organization of the Constitution and revisit the principles of interpreting and construing the constitution. We then discuss specific topics such as the constitutional distribution of and restraints on public power, the structure and organization of Government (including Devolved Government), Citizenship, the Republic, National Values and Principles of Governance, Representation of the People, the Bill of Rights, Land and Environment, Independent Constitutional Commissions and Offices, Leadership and Integrity, Principles of Public Service Principles of Public Finance and National Security,. We end the course with an introduction to Constitutional Rights Litigation

## As was the case with CLS 102, the issues under discussion are illustrated through an examination the jurisprudence from the courts, the views of text writers and opinions expressed by academics, politicians and commentators.

## **Course Outcomes**

## At the end of the course, it is expected that the participant should be able to;

## **Show** a good understanding of the provisions of the CoK 2010 on the various topics discussed

## **Use** the different approaches of constitutional interpretation to interpret the provisions constitution of Kenya 2010.

## **Use** local and comparative case law to interpret, explain and illustrate the provisions of the constitution

1. **Explain** the provisions of the Constitution of Kenya 2010 on various issues

## **Compare** the Constitution of Kenya with selected constitutions in the region and beyond

1. **Prepare** pleadings and give opinions on constitutional rights litigation

**Teaching Methodology:**

Interactive lectures, group presentations, guest presentations, and individual visits to the courts **Instructional Materials**

Core text books, handouts, statutes, law reports-resources

**Equipment**:

Whiteboard, overhead projectors and sound equipment

**Course Assessment**:

Student Performance

Assignments, Continuous Assessment Tests, Term Paper, end of semester examination. Academic staff performance

Student evaluation, HOD evaluation, self-evaluation, peer evaluation, informal feedback from students etc.

**Textbooks and Journals for the Course**:

**Essential**

Mwaura, Charles Principles of constitutional law: An Introduction to the constitution of Kenya with cases and Materials. LawAfrica, Nairobi, Kenya 2014

My Teaching Notes

**Textbooks and Journals for Further Reading**:

* Kiwinda Morris Mbondenyi & John Osogo Ambani “*The New Constitution of Kenya: Principles, Government* and Human Rights”.
* Kanyeihamba, G.W. (1975). *Constitutional Law and Government in Uganda.* Nairobi: East African Literature Bureau.
* Kivutha Kibwana, (1998). *“Readings in Constitutional Law and Politics in Africa: A Case* *Study of Kenya”* (Faculty of Law, University of Nairobi).
* Ojwang, J.B. (1990). *Constitutional Development in Kenya.* Nairobi: Acts Press.
* Srivasta I.B.P, “*The Constitution of United Republic of Tanzania 1977* – Some Salient Features and Riddles”. East Africa Law Review 73.
* Nwabueze (1973). *Constitutionalism in the Emergent States*. London: Enugu.

## Shivji G., “*The State of the Constitution and Constitution of the State*” (1978) Eastern Africa Law Review.

## **Course Content**

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| **Week 1** | **Lesson** | **Reading** | Tasks |
| Introduction to the Course.  Leveling of expectations  The Structure and Organization of the Constitution of Kenya 2010 | **Reading**  * The CoK 2010 from cover to cover * Read the 1963 (as revised in 1969) Constitution of Kenya from cover to cover * Revisit the history of the amendments to the constitution of Kenya I your notes in CLS 102 * Read the Constitution of Uganda 1995 from cover to cover * Read the constitution of Tanzania 1977 from cover to cover * Read the constitution of South Africa from cover to cover * Read the Constitution of the United States of America from cover to cover * Please visit <http://elimika.ac.ke/uraia/mod/page/view.php?id=39> for a simplified course on the Constitution of Kenya 2010. extracted 12th January 2018 | Participants read the CoK 2010 from Cover to cover ahead of the class.  Participants attempt to recite and explain the various chapters of the constitution  Participants compare the various constitutions read with the Constitution of Kenya 2010 |
| **Week 2 and 3** | **Lesson** | **Reading** | Tasks |
| Interpretation of the constitution | **Text**   1. Teaching notes on constitutional interpretation 2. Andrei Marmor, Constitutional Interpretation <http://ssrn.com/abstract=506302> extracted 12th January 2018 3. David A. Strauss Common Law Constitutional Interpretation <http://chicagounbound.uchicago.edu/journal_articles> extracted 12th January 2018 4. Motola and Ramaphosa (2002) pp 13- 126 5. Muthoni Thiankolu (2007)Landmarks from El Mann to the Saitoti Ruling 6. Phillip Kichana; The High Court judgment in the Timothy Njoya and others versus CKRC and the AG 7. Ongoya Z E; Patrick Ouma Onyango and 12 others vs. The Honourable Attorney general and 2 others: a classical case of misapplying and dis-applying jurisprudence?   **Statute**   1. Articles 23,259 CoK 2010   **Case Law** **KENYA**El Mann vs. AG [1969] E.A. 357 (HC)Felix Njagi Marete –vs- The AG  [1987] KLR 690, (HC)Joseph Maina Mbacha and 3 ors vs. AG HC Misc 385 of 1989 (HC)Crispus Njogu vs. AG (H.C. CR. Application No. 39 of 2000)(HC)  1. Chege Kimotho & Others vs. Vesters & Another [1988] KLR 48; Vol. 1 KAR 1192; [1986-1989] EA 57 2. In the Matter of the Estate of Lerionka Ole Ntutu [2008] KLR 452: 3. Charles Lukeyen Nabori& 9 Others vs. The Hon. Attorney General & 3 Others Nairobi HCCP No. 466 of 2006 4. Richard Nduati Kariuki vs. Honourable Leonard Nduati Kariuki& Another [2006] 2 KLR 356 5. In The Matter of The Principle of Gender Representation in the National Assembly and the Senate Advisory Opinions Application 2 of 2012 [2012] eKLR (SC)  Jayne Mati & another v Attorney General & another [2011] eKLR Nairobi Petition No. 108 of 2011 In the Matter of the Interim Independent Electoral Commission Constitutional Application No. 2 of 2011 [2011] eKLR (HC)  1. Timothy Njoya and Others -Versus- CKRC and The Attorney General and Others, Misc. Civil Application No. 82 of 2004 ( 2004 1 KLR 261)(HCK) 2. Patrick Ouma Onyango and 12 others vs. The Honourable Attorney General and 2 others HC Misc 667 of 2005 ( 2005 eKLR) 3. Raila Odinga vs IEBC &3ORS Petition no 5 of 2013 (SC) 4. Raila Odinga & Kalonzo Musyoka vs IEBC & ORS Presidential Election Petition No 1 of 2017 (SC) 5. Dr Ekuru Aukot v Independent Electoral & Boundaries Commission & 3 others Petition No. 471 OF 2017 [2017] eKLR (HC) 6. John Harun Mwau & 2 others v Independent Electoral and Boundaries Commission & 3 others Presidential Election Petition Nos 2 and 4 of 2017 [2017] eKLR (SC) 7. Independent Electoral & Boundaries Commission v Maina Kiai, Khelef Khalifa, Tirop Kitur, Attorney-General, Katiba Institute & Coalition for Reforms & Democracy [2017] EKLR (CA) 8. Geoffrey Ngotho Mutiso vs. Republic[2010] eKLR 9. Joseph Njuguna Mwaura and others vs Republic [2013] eKLR. 10. Joseph Kaberia Kahinga & 11 others v Attorney General [2016] eKLR (HC) 16th September 2016 11. Francis Kariokor Muruatetu & Anor vs Republic Petition No 15 &16 of 2015)(SC) 14th December 2017   **UGANDA** Charles Onyango Obbo vs Uganda  1. Tinyefuza v. The Attorney General Constitutional Appeal No. 1 of 1997(Unreported)  (Uganda Constitutional Court) 2. Attorney General v Susan Kigula& 417 Others, Supreme Court of Uganda Constitutional Appeal No. 3 of 2006   **TANZANIA**   1. Ndyanabo vs. AG 2001 EA 485 (TZ)  **SOUTH AFRICA**  1. Namibia v Mwandinghi 1992 (2) SA 335 (page 362) 2. Makwanyane vs S 1995 (6) BCLR 665 (CC) 3. Du Plessis and ors vs De Klerk and ors 1996 (5) BCLR 658 (CC) 4. Larbi-Odam and ors vs.MEC for Education and anor. 1997(12) BCLR 1665 (CC) 5. National Coalition for Gay and Lesbian Equality and ors vs Minister for Home and ors 200 (1) BCLR 39 (CC) 6. Transvaal Agricultural Union vs. Minister of Land Affairs & anor. 1997(2) SA 621 7. S vs. Zuma 1997 (2) SA 621 CC 8. Soobramoney vs Minister of Health Kwazulu 9. Minister of Health and 8ors vs Treatment Action Campaign & 2 ors 10. Irene Grootboom vs Oostenberg Municipality 11. In the Matter of State Vs T Mwakanyane and another CCT/3/94  **UNITED STATES**  1. McCulloch vs. Maryland 17 US 316 1819 2. Madbury vs. Madison 5 US I Cranch 137.1803 3. Morrison vs. Olson 487 US 654 1988 4. NYT vs. Sullivan 376 U.S. 254 1964 5. Lochner vs. New York 198 US 45 6. Scott vs. Emmerson 15 Mo 576 1857 7. Roe vs. Wade 410 US 113 1973 8. IPP vs Casey 505 U.S. 833 1992 9. Plessey vs Fergusson 163 U.S. 537 10. Brown vs. Board of Education 347 U.S. 483 195 | Participants attempt to interpret selected provisions of the constitution then compare their interpretation with the interpretations from the courts  Participants make presentations on selected cases  Participants make presentations on their understanding of the trends and patters on constitutional interpretation across different jurisdictions relate them to the prevailing socio-economic and political environment.  Participants revisit the CLS 102 discussions on theories of law and relate the theories to constitutional interpretation |
| **Week 3, 4, 5, 6 & 7** | **Lesson** | **Reading** | **Tasks** |
| Structure andOrganization of Government (The Executive) | **Statute**   1. Chapter 9 CoK 2010 2. Assumption of the Office of President Act (No 21 of 2012) 3. section 10 of the Public Finance Management Act, 2012 (PBO)   **Text**   1. Teaching Notes on Executive Power 2. SID Working Paper, Ben Sihanya, The Presidency and Public in Kenya’s new Constitutional Order [http://sidint.net/docs/WP2.pdf Extracted 12th Jan 2018](http://sidint.net/docs/WP2.pdf%20Extracted%2012th%20Jan%202018) extracted 12th January 2018 3. Executive Order No. 1/2016 Organization of the Government   **Case Law**  **Election of the president**   1. International Centre for Policy and Conflict & 5 Others vs The Hon. Attorney-General & 4 Others[2013]eKLR HC Petition 552 of 2012 Decided 15th day of February 2013 Mbogholi Kimondo, Omondi Kimaru, Nyamweya JJ 2. Raila Odinga vs IEBC & 3ORS Petition no 5 of 2013 (SC) 3. Raila Odinga & Kalonzo Musyoka vs IEBC & ORS Presidential Election Petition No 1 of 2017 (SC) 4. Dr Ekuru Aukot v Independent Electoral & Boundaries Commission & 3 others Petition No. 471 OF 2017 [2017] eKLR (HC) 5. John Harun Mwau & 2 others v Independent Electoral and Boundaries Commission & 3 others Presidential Election Petition Nos 2 and 4 of 2017 [2017] eKLR (SC)   **The position of cabinet secretaries**   1. Tom Luusa Munyasya & another v Governor, Makueni County & another Industrial Court Cause Number 103 of 2014 [2014] eKLR Nairobi   **The position of the Attorney General**   1. George Bala v Attorney General HC Petition No. 238 of 2016[2017] eKLR 2. Okiya Omtatah Okoiti & another v Attorney General & 7 others CHRD PETITION NO 446 OF 2013 [2013] eKLR 3. David Kariuki Muigua –v- Attorney General & Another HCCP No. 161 of 2011 4. Isaac Aluoch Polo Aluochier v Uhuru Muigai Kenyatta & Another CHRD Petition 360 of 2013 [2014] eKLR   **Power to make policy choices**   1. Luco Njagi & 21 others v Ministry of Health & 2 others Nairobi Constitution and Human Rights Division Petition NO. 218 OF 2013 [2015] eKLR   **The Executive and the Judiciary**   1. Law Society of Kenya v Attorney General & others HC PETITION NO 3 of 2016 [2016] eKLR 2. Jackson Maina Wangui & another v Republic HC CR C No 35 of 2012 [2014] eKLR   **The Executive and independent institutions**   1. In the Matter of the National Land Commission Advisory Opinion Reference No. 2 of 2014 [2015] eKLR 2. Independent Policing Oversight Authority & another v Attorney General & 660 others HC Petition No.390 OF 2014 [2014] eKLR   **Powers to appoint**   1. Republic v Attorney General & 3 others Ex-Parte Tom Odoyo Oloo HC MISC 196 of 2015 JR [2015] eKLR 2. Benson Riitho Mureithi v J. W. Wakhungu & 2 others [2014]eKLR Mumbi Ngugi J 28th day of February 2014 3. Minister For Internal Security and Provincial Administration v Centre For Rights Education & Awareness (CREAW) & 8 others Civil Appeal No. 218 OF 2012 [2013] eKLR   **The Public service**   1. Richard Bwogo Birir v Narok County Government & 2 others Industrial Court Petition NO. 1 OF 2014 [2014] eKLR Nakuru 2. Valerie Rugene v Public Service Commission & 2 others ELRC 93 of 2015(Nairobi [2016] eKLR 3. Fredrick Otieno Outa vs. Jared Odoyo Okello SCK Petition No. 6 of 2014 [2014]eKLR 4. Kenya Tea Development Agency Ltd vs. Ismael Ombati Ochieng & 9 Others [2015] eKLR. 5. Felix Kiprono Matagei v Attorney General & 3 others CHRD 61 of 2016 [2016] eKLR 6. Kenya Union of Domestic, Hotels, Education And Allied Workers (Kudhehia Workers) v Salaries and Remuneration Commission CHRD 294 of 2013 [2014] eKLR 7. Union of Civil Servants & 2 others v Independent Electoral and Boundaries Commission (IEBC) & another CHRD 281 of 2014 [2015] eKLR 8. Patrick Wanyonyi Khaemba v Secretary – T.S.C & another CHRD No 231 of 2013 [2014] eKLR   **Immunity**   1. Abdul Karim Hassanally vs Westco Kenya Limited[2003] eKLR 2. Republic v President & 12 Others Ex-parte Soet Kenya Limited & 2 Others NRB MISC 698 of [2004] eKLR 3. Republic vs. Chief Justice of Kenya & 6 others Ex-parte Moijo Mataiya Ole Keiwua Miscellaneous Civil Application Number 1298 of 2004 4. Republic v President & 7 others Exparte Wilfrida Itolondo & 4 others HC MISC CA 232 0f 2012 [2014] eKLR JR 5. Talaso Lepalat v Embassy of the Federal Republic of Germany & 2 others CHRD No 393 of 2014 [2015] eKLR 6. Karen Njeri Kandie v Alssane Ba & another CA CA No 20 of 2013 CA [2015] eKLR   **Impeachment**   1. Martin Nyaga Wambora & 3 others v Speaker of the Senate & 6 others CA No 14 of 2014 [2014] eKLR (CA) | Participants are encouraged to research online on real life stories the structure of the Executive in Kenya and to identify stories that illustrate their learning |
| Structure andOrganization of Government (The Legislature) | **Statutes**   1. Chapter 7 and 8 CoK 2010 2. GAZETTE NOTICE NO. 3378 Paul Chepkwony 3. National Assembly (Powers and Privileges) Act - Chapter 6 (Revised Edition 2012) 4. Standing Orders of the National Assembly as adopted in January 2013 5. Standing Orders of the Senate as adopted on 14th June 2017 <file:///C:/Users/Admin/Downloads/Standing_Orders_As_adopted_by_the_Senate_on_14th_June_2017.pdf> extracted 12th January 2018 6. Standing Orders of the County Assembly of a selected County 7. Elections Act 2011 8. Election Offences Act No 37 of 2016 9. Election Campaign Financing Act 2013 10. The East African Legislative Assembly Elections (Election of Members of the Assembly) Rules, 2017 11. Public Appointments (Parliamentary Approval) Act, 2011 (No 33 of 2011) 12. Petitions to Parliament (Procedure) Act (No 22 of 2012) 13. National Assembly Remuneration Act - Chapter 5 (Revised Edition 2012)   **Text**   1. Teaching notes on the legislature 2. Tom Ginsburg, The Decline and Fall of Parliamentary Sovereignty, Judicial Review in New Democracies: Constitutional Courts in Asian Cases, Cambridge University Press, 0521817153 3. IEA Research Paper Series No. 19, The parliamentary budget oversight in Kenya, Analysis of the Framework and Practices since 1963 to Date, IEA Nairobi, April 2009, 4. Visit <http://www.parliament.go.ke/> for IEC materials on the parliament of Kenya 5. History of the parliament of Kenya <file:///C:/Users/Admin/Downloads/24_History_of_the_Parliament_of_Kenya.pdf> extracted 12th January 2018 6. How parliament works extracted 12th January 2018 <file:///C:/Users/Admin/Downloads/28_How_Parliament_Works%20(1).pdf> 7. The mediation process in law making <file:///C:/Users/Admin/Downloads/18_The_Mediation_Process_in_Law_Making%20(1).pdf> extracted 12th January 2018 8. The mace <file:///C:/Users/Admin/Downloads/25_The_Mace%20(1).pdf> extracted 12th January 2018 9. The speaker and other presiding officers <file:///C:/Users/Admin/Downloads/6_The_Speaker_and_Other_Presiding_Officers%20(1).pdf> extracted 12th January 2018 10. The Clerk of the National Assembly <file:///C:/Users/Admin/Downloads/5_The_Clerk_of_the_National_Assembly%20(1).pdf> extracted 12th January 2018 11. Powers privileges and immunities of parliament <http://www.parliament.go.ke/the-national-assembly/resources?start=14> extracted 12th January 2018 12. The process of debate in parliament <file:///C:/Users/Admin/Downloads/7_Process_of_Debate_in_the_House%20(1).pdf> 13. Procedure in the committee of the whole house extracted 12th January 2018 <file:///C:/Users/Admin/Downloads/3_Procedure_in_Committee_on_a_Whole_House_on_a_Bill%20(1).pdf> extracted 12th January 2018 14. The Commitee system in parliament <file:///C:/Users/Admin/Downloads/22_The_Committee_System_of_the_National_Assembly%20(1).pdf> extracted 12th January 2018 15. The role of political parties and key parliamentary offices <file:///C:/Users/Admin/Downloads/33_The_Role_of_Political_Parties_and_Key_Parliamentary_Offices.pdf> extracted 12th January 2018 16. The role of the public in the budget making process <file:///C:/Users/Admin/Downloads/31_Role_of_the_Public_in_the_Budget_Process.pdf> extracted 12th January 2018 17. The legislative Budget Calendar <file:///C:/Users/Admin/Downloads/LEGISLATIVE%20BUDGET%20CALENDAR.pdf> extracted 12th January 2018 18. PBO Brochure <file:///C:/Users/Admin/Downloads/PBO%20BROCHURE.pdf> extracted 12th January 2018 19. Public participation in the legislative process <file:///C:/Users/Admin/Downloads/27_Public_Participation_in_the_Legislative_Process%20(1).pdf> extracted 12th January 2018 20. Rules Governing Conduct of Members <file:///C:/Users/Admin/Downloads/32_Rules_Governing_Conduct_of_Members%20(1).pdf> extracted 12th January 2018 21. Statutory Instruments <file:///C:/Users/Admin/Downloads/21_Statutory_Instruments.pdf> extracted 12th January 2018 22. SID Working Paper, Adams Oloo Elections, Representations and the New Constitution <https://www.sidint.net/docs/WP7.pdf> extracted 12th January 2018 23. See also New SID Working Paper: Bi-Cameralism under the new Constitution   <https://www.sidint.net/.../new-sid-working-paper-bi-cameralism-under-new-constitutio>.. extracted 12th January 2018   1. Petitions to parliament <file:///C:/Users/Admin/Downloads/4_Petitions_to_Parliament%20(1).pdf> extracted 12th January 2018 2. A history of the National Assembly Standing Orders <file:///C:/Users/Admin/Downloads/8_A_History_of_the_National_Assembly_Standing_Orders%20(1).pdf> extracted 12th January 2018 3. How Law is made <file:///C:/Users/Admin/Downloads/2_How_Law_is_Made%20(1).pdf> extracted 12th January 2018 4. The Sergent-at-Arms <file:///C:/Users/Admin/Downloads/13_The_Serjeant_At_Arms_Department.pdf> extracted 12th January 2018 5. The Hansard Department <file:///C:/Users/Admin/Downloads/10_The_Hansard_Department%20(2).pdf> extracted 12th January 2018   **Cases**   1. Jayne Mati & another v Attorney General & another [2011] eKLR Nairobi Petition No. 108 of 2011 2. Peter O. Ngoge v Francis Ole Kaparo & 4 Others HC MISC 22 of 2004 [2007] eKLR In the Matter of the Interim Independent Electoral Commission Constitutional Application No. 2 of 2011 [2011] eKLR (HC 3. Republic v Speaker of the National Assembly & 4 others Ex-Parte Edward R.O.Ouko HC Misc App No 108 OF 2017 JR [2017] eKLR 4. Speaker of the Senate & another v Attorney-General & 4 others Advisory Opinion No 2 of 2013 [2013] eKLR 5. Judicial Service Commission v Speaker of the National Assembly & 8 others HC Petiton no 518 of 2013 [2014] eKLR 6. The Report Of The Special Committee on the Proposed Removal from office of Prof. Paul Kiprono Chepkwony, the Governor of Kericho County 7. Martin Nyaga Wambora & 3 others v Speaker of the Senate & 6 others [2014] eKLR 8. Republic v National Assembly Committee of Privileges & 2 others Ex-Parte Ababu MISC APP NO 129 of 2015 JR [2016] eKLR 9. James Opiyo Wandayi v Kenya National Assembly & 2 others HC MISC APP No 258 of 2016[2016] eKLR 10. John Kipng'eno Koech & 2 others v Nakuru County Assembly & 5 others [2013] eKLR 11. Robert N. Gakuru & Others v Governor Kiambu County & 3 others [2014]eKLR 12. Speaker of the Senate & another v Attorney-General & 4 others [2013] eKLR Advisory Opinion Reference No. 2 OF 2013(SC) | Participants make presentations on various aspects of legislative power.  Participants identify real life stories on the Kenyan legislature that can be used to illustrate their learning  Participants are encouraged to visit the county assembly of Nairobi or either house of the parliament of Kenya  An attempt will be made to organise a visit to parliament or the county assembly of the County of Nairobi or both |
|  | **Reading** | **Activity** |
| Structure andOrganization of Government (The Judiciary) | **Statutes**  1. Chapter 10 CoK 2010 2. Judicial Services Act 3. Supreme Court Act, No. 7, of 2011 4. Appellate Jurisdictions Act 5. Magistrates Courts Act 6. Statute Law (Miscellaneous Amendments) Act, 2014 (special Gazette Supplement No. 160 (Acts No.18) of November 24, 2014) 7. Land Court Act No. 19 of 2011. 8. The Magistrates' Courts Act, 2015 9. The Kadhi’s Courts Act Cap 11 LoK 10. High Court (Organization and Administration) Act No. 27 OF 2015   **Text** Teaching notes on the JudiciaryVisit <http://www.judiciary.go.ke/portal/home> and <http://www.judiciary.go.ke/portal/page/judiciary-iec-materials> for IEC materials on the Judiciary of Kenya extracted 12th January 2018  1. Judiciary Transformation Framework 2012-2016 <http://www.judiciary.go.ke/portal/assets/filemanager_uploads/Judiciary%20Transformation%20Framework%20-%20JTF.pdf> extracted 12th January 2018   **Cases**   1. Malindi Law Society v Attorney General & 4 others HC PETITION NO 3 of 2016 (Malindi) [2016] eKLR 2. Law Society of Kenya Nairobi Branch v Malindi Law Society & 6 others Civil Appeal No 287 of 2016 [2017] eKLR 3. Judicial Service Commission v Speaker of the National Assembly & 8 others [2014] eKLR 4. Tribunal Matter No 1 of 2012.Report and Recommendation into the conduct of the Hon Lady Justice Nancy Makokha Baraza(Report of the Tribunal to Investigate the Conduct of the Deputy Chief Justice and the Vice President of the Supreme Court) 5. Report and recommendation into the conduct of Hon. Mr Justice Joseph Mbalu Mutava, Judge of the High Court of Kenya Sept 2016 <http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Final_Report_of_the_Tribunal_Investigating_the_Conduct_of_Justice_Mutava.pdf> extracted 12th January 2018 | Participants are encouraged to visit a superior court at least once during the |
|  | **Reading** | **Activity** |
| Structure andOrganization of Government (The Constitutional Commissions and Independent Offices) | **Statutes**   1. Chapter 15 CoK 2010 2. Institution specific statutes   **Cases**   1. Judicial Service Commission v Speaker of the National Assembly & 8 others [2014] eKLR 2. In the Matter of the National Land Commission Advisory Opinion Reference No. 2 OF 2014 [2015] eKLR | Participants make presentations on the cases under discussion to illustrate their learning Guest speaker |
|  | **Reading** | **Activity** |
| Structure andOrganization of Government (Devolved Government) | **Statutes**   1. Chapter 11 CoK 2010 2. County Governments Act 3. Inter Governmental Relations Act 4. Urban Areas and Cities Act 5. Transition to Devolved Government Act   **Texts**   1. Teaching Notes on Devolution 2. Republic of Kenya 2011, Task Force on Devolved Government of Kenya. Report on the Implementation of Devolved Government in Kenya 3. SID Working Paper ,Othieno Nyanjom Devolution in Kenya’s new Constitution <http://sidint.net/docs/WP4.pdf> Extracted 12th Jan 2018 4. Society for International Development Working Papers: Taxation and fiscal decentralisation in Kenya; a case study of Kwale, Kiambu and Kisumu Counties <http://www.dialogues.sidint.net/downloads/DevolutionPolicyWorkingPaperwithinlayout.pdf>   Extracted 12th Jan 2018  **Cases**   1. International Legal Consultancy Group v Senate & Clerk of the Senate [2014] eKLR 2. County Government of Kiambu & another v Senate & others [2017] eKLR 3. John Kipng'eno Koech & 2 others v Nakuru County Assembly & 5 others [2013] eKLR 4. Council of Governors & 3 others v Senate & 53 others HC Petition No 381 of 2014(as Consolidated With Petition No 430 of 2014 [2015] eKLR 5. Council of Governors & 6 others v Senate HC Petition No.413 OF 2014 [2015] eKLR 6. Simon Wachira Kagiri v County Assembly of Nyeri & 2others HC PETITION NUMBER 7 OF 2013 [2013] eKLR (NYERI) | Participants indentify emerging issues on devolution Participants make presentations on the cases under discussion to illustrate their learning |
| **Week 8** | **SIT IN CAT** | | |
| **Week 9** | **Lesson** | **Reading** | **Tasks** |
| Public Finance | Statutes  1. Chapter 12 CoK 2010 2. Public Finance Management Act 2012 3. Public Procurement and Assets Disposals Act 2015   **Texts**   1. Teaching Notes on Public Finance 2. Njeru Kirira Public Finance under Kenya’s new Constitution SID Working Paper [http://www.constitutionnet.org/vl/item/public-finance-under-kenya-new-constitution extracted 12th January 2018](http://www.constitutionnet.org/vl/item/public-finance-under-kenya-new-constitution%20extracted%2012th%20January%202018)   Cases   1. Jayne Mati & another v Attorney General & another [2011] eKLR Nairobi Petition No. 108 of 2011 2. Robert N. Gakuru & Others v Governor Kiambu County & 3 others [2014] eKLR 3. Wanjiru Gikonyo & another v National Assembly of Kenya & 8 others [2016] eKLR 4th day July, 2016 Onguto J 4. Institute of Social Accountability & another v National Assembly & 4 others HC Petition No 71 of 2013 [2015] eKLR Lenaola, Mumbi, Majanja JJJ 20TH Feb 2015 5. The National Assembly vs The Institute of Social Accountability and ors CACA 92 OF 2015(Githinji Okwengu Kariuki JJA) | Participants identify emerging issues in public finance management in the national government and in the counties Participants make presentations on the cases under discussion to illustrate their learning |
| **Week 10** | **Lesson** | Reading | **Tasks** |
|  | Leadership and integrity, principles of public serviceNational values, and principles of governance | **Statutes**  1. Article 10 CoK 2010 2. Article 232 CoK 2010 3. Leadership and Integrity Act 2011 4. Public Officer Ethics Act 2003 5. Anti-Corruption and Economic Crimes Act 6. Ethics and Anti-Corruption Commission Act  **Text**Teaching Notes on Chapter SixSociety for International Development Working Papers: Why corruption prevails and what can be done to eliminate it [http://dialogues.sidint.net/downloads/SIDIntegrityPolicyWorkingPaper.pdf extracted 18th January 2018](http://dialogues.sidint.net/downloads/SIDIntegrityPolicyWorkingPaper.pdf%20extracted%2018th%20January%202018) **Cases**   1. Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others CIVIL APPEAL NO. 290 OF 2012 [2013] eKLR (CA NRB) (Coram: Kihara Kariuki, , W Ouko, P Kiage, Gatembu Kairu & Murgor, JJ.A 2. Trusted Society of Human Rights Alliance vs AG & 3 others Petition No. 229 OF 2012 (Ngugi, Ngugi & Odunga JJ) 20th September 2012 3. Commission for the Implementation of the Constitution v Parliament of Kenya & 5 others [2013] eKLR Majanja J 7th day of February 2013 4. International Centre for Policy and Conflict & 5 Others vs The Hon. Attorney-General & 4 Others[2013]eKLR HC Petition 552 of 2012 Decided 15th day of February 2013 Mbogholi Kimondo, Omondi Kimaru, Nyamweya JJ 5. Evans Nyambega Akuma v Attorney General & 2 others & 2 others [2013] eKLR 20th Day of September, 2013 6. Isaac Aluoch Polo Aluochier v Attorney General & 2 others [2013] eKLR Odunga J 1st day of March 2013 7. Benson Riitho Mureithi v J. W. Wakhungu & 2 others [2014]eKLR Mumbi Ngugi J 28th day of February 2014 8. Secretary Isiolo County Assembly & 2 others v Speaker (Mohammed Tubi) Isiolo County Assembly [2014] eKLR Lenoala J 30th Day of September 2014. 9. Francis Mwangi v Ethics and Anti-Corruption Commission [EACC] & 3 others [2016] eKLR Mumbi Ngugi J 27th day of January 2016 10. Okiya Omtatah Okoiti & another v Attorney General & 3 others [2016] eKLR 2nd June, 2016 | Participants review the challenges facing the enforcement of chapter sixParticipants make presentations on the cases under discussion to illustrate their learning Guest speaker |
| **Week 11** | **Lesson** | **Reading** | **Tasks** |
| National Security | **Statutes** National Police Service Act No 11A of 2011  1. National Police Service(Amendment)Act 2013 2. National Police Service(Amendment)Act 2014  National Police Service Commission Act  1. The National Police Service Commission (Amendment) Act, 2013 2. The National Police Service Commission (Amendment) Act, 2014 3. The Security Laws (Amendment)Act 2014 4. Kenya Defence Forces Act 2012 5. Kenya Defence Forces Amendment Act 44 of 2016   **Text**   1. KNCHR Advisory Brief On National Police Service Amendment Bill 2013 And The National Police Service Commission Amendment Bill 2013   **Cases**   1. Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya &10; others [2015] eKLR 2. Independent Policing Oversight Authority & another v Attorney General & 660 others HC Petition No.390 OF 2014 [2014] eKLR | Participants research online for real life stories about the issues under discussion and share their learning in class Participants make presentations on the cases under discussion to illustrate their learning  Guest speaker |
| **Week 12** | **Lesson** | **Reading** | **Tasks** |
| Enforcement | **Statutes**Artices 22 23 47 48 70 258 259 261 **Case Law**  **Lack of procedural rules**   1. Joseph Maina Mbacha & 3 ors vs AG 1989 2. Felix Njagi Marete –vs- The AG  [1987] KLR 690,   **Locus standii**   1. Maathai vs. Kenya Times Media Trust Ltd [1989] KLR 267 2. Nairobi HCMC No. 89 of 1969 [1970 EA 631; [1971] EA 289 3. Mureithi & 2 Others (for Mbari ya Murathimi Clan) vs. Attorney General & 5 Others Nairobi HCMCA No. 158 of 2005 [2006] 1 KLR 443 4. James Omingo Magara –versus – Manson Oyongo Nyamweya & 2 others (2010)eKLR 5. William Kabogo Gitau –versus-George Thuo & 2 others(2010)eKLR 6. Trusted Society of Human Rights Alliance – vs- The Attorney General & 2 others (2012) eKLR and Dr. Ondego Charles & 208 others – versus – Kenyatta National Hospital Nairobi HCCC No. 6 of 2000 7. Republic v County Government of Mombasa Ex-parte Outdoor Advertising Association of Kenya [2014] eKLR 8. Ms. Priscilla Nyokabi Kanyua vs. Attorney General & Interim Independent Electoral Commission Nairobi HCCP No. 1 of 2010 9. Mumo Matemu vs. Trusted Society of Human Rights Alliance & 5 Others Civil Appeal No. 290 of 2012 Court of Appeal   **Pleading with particularity**   1. Anarita Karimi Njeru vs. The Republic (1976-80) 1 KLR 1283 2. Mumo Matemu vs. Trusted Society of Human Rights Alliance, CA CA NO 290/2012 [2013] eKLR, 3. Deepak Chamanlal Kamani & Another vs. Kenya Anti-Corruption Commission & 2 Others Civil Appeal (Application) No. 152 of 2009.   **Conservatory orders**   1. Centre for Rights, Education and Awareness (CREAW) & 7 others vs. The Hon. Attorney General, Nairobi HC Pet. No 16/2011, 2. Muslims for Human Rights (MUHURI) & 2 others vs. The Attorney General & Judicial Service Commission, Mombasa HC Pet. No. 7 of 2011 3. Judicial Service Commission vs. Speaker of the National Assembly & Another [2013] eKLR 4. Gatirau Peter Munya vs. Dickson Mwenda Kithinji & 2 Others, S.C. Application No. 5 of 2014, 5. V/D Berg Roses Kenya Limited & Another vs. Attorney General & 2 Others [2012] eKLR 6. Michael Osundwa Sakwa v Chief Justice and President of the Supreme Court of Kenya & another [2016] eKLR   **Reliefs**   1. The Centre for Human Rights and Democracy & Others vs. The Judges and Magistrates Vetting Board & Others Eldoret Petition No. 11 of 2012 | Participants make presentations on the cases under discussion to illustrate their learning  Participants draft an petition bringing out issues of locus standing, pleadings, conservatory orders and possible reliefs  Guest Speaker |
| **Week 14** | **Lesson** |  |  |
| Revision**Outstanding presentations** | | |
| **Week 15** | Revision**Outstanding presentations** | | |
| **Week 16** | Exams | | |

## **CHARLES B G OUMA**

## **LECTURER CONSTITUTIONAL LAW**

## **FACULTY OF LAW, CUEA**

## **JANUARY 2018**