



**Strathmore**  
UNIVERSITY

**STRATHMORE LAW SCHOOL  
MASTERS OF LAW (LL.M)  
END OF MODULE MAIN EXAMINATION  
LLM 8311: PUBLIC PROCUREMENT LAW AND POLICY**

Date: **Wednesday, 30<sup>th</sup> March 2022**

Time: 3 Hours

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**Instructions**

1. This examination consists of **FIVE** questions.
2. Answer **Question ONE (COMPULSORY)** and any other **TWO** questions
3. This is an open-book examination. You may consult any written material you like in preparing to answer the questions. The exam mode for this exam is **OPEN**. However, **DO NOT** use any other bibliography other than the reading list provided.
4. **DO NOT** copy and paste from any online source or from another candidate. The answers will be subject to a plagiarism check and a similarity index of over 30% will automatically lead to disqualification.
5. You should spend a fair amount of time organizing your thoughts before starting to write.
6. Careful organization and clarity will be highly valued.
7. Please start each question on a new page.

## Question 1 (compulsory)

A hallmark of public procurement regulation is that it governs public procurement systems by way of enforceable legal rules as opposed to other ways of governing such systems, e.g. by means of guidelines or manuals. Enforcement is thus an important aspect of public procurement regulation. The rationales for having enforceable rules, remedies and sanctions in a procurement system are varied.

Gordon has argued that

“Any protest system serves multiple purposes, and there is inevitably conflict among them. These competing goals, like the competing objectives or ‘desiderata’ of a procurement system overall, lead to trade-offs, since one or more goals can be met only at the expense of others. In a protest system, the overarching tension can be viewed as the tension between the desire to exhaustively investigate any complaint, on the one hand, and the need to let the procurement process move forward, on the other. This tension can be viewed as tension between support for the right to protest and opposition to that right, although the opposition may be couched as concern about limiting the disruption caused by the protest process.”

(D Gordon “Constructing a Bid Protest System: The Choices that Every Procurement Challenge System Must Make” (2006) 35 *Public Contracts Law Journal* 427).

In recent years the view has, however, also emerged that remedies and sanctions may not always be the best way to achieve the various objectives of a procurement system in terms of law. Other options, such as increased transparency rules, linked for example to increased reporting and publication of procurement decisions, are increasingly highlighted as more effective alternatives to remedies or sanctions.

1.1 Taking into account, among others, the relationship between enforcement and the various objectives of a procurement system as well as the particular form(s) of enforcement, analyse the role of the enforcement of public procurement law within the Kenyan procurement system.

[20 marks]

1.2 Evaluate the efficacy of the design of the Kenyan procurement remedies regime and its relationship with achieving the objectives of the procurement law system.

[10 marks]

[Total: 30 marks]

**Answer any TWO of the following questions**

**Question 2**

In recent years, the narrow understanding of value for money as the primary goal of public procurement law systems has given way to broader notions of the objectives of public procurement systems, including the notion of sustainable public procurement. Discuss whether this shift is evident in the Kenyan procurement law system.

[15 marks]

**Question 3**

Discuss the way in which Kenya has used the UNCITRAL Model Law on Public Procurement to frame its own procurement law regimes since its inception in 2001. As part of your discussion, you should indicate whether this approach has been beneficial or detrimental to procurement law development in the country.

[15 marks]

**Question 4**

All procurement law regimes set out the procurement procedures to be used in the relevant country. These can either be expansive or restrictive. Discuss the relevance of procurement methods being prescribed by law with particular reference to Kenyan law and whether the Kenyan approach is a sensible one.

[15 marks]

**Question 5**

Public procurement law is largely premised on the notion that acquisition by the state is different from acquisition by any other buyer in the market. Assess this statement and use examples from public procurement law in support of your argument.

[15 marks]

**TOTAL MARKS: 60**