

## **EXAM**

- 2 questions on plain english.
- 2 questions on drafting.
- 2 questions on legislative drafting.

## **PLAIN ENGLISH**

- Re drafting sentences into plain english (Nov 2017)
- Re drafting a paragraph (do it sentence by sentence)
- Re draft a section of an Act (Nov 2016)
  - Don't do this sentence by sentence
  - Read it in its entirety to see what they are saying.
- Transitions - have not been examined since 2015\*\* So it might come.

## **Transitions**

- These are words used to join sentences.
- They are tools that create coherence and consistency.
- They are used to clarify relationships between ideas and sentences.
- There are three types of transitions
  - Generic transitions
  - Orienting transitions
  - Substantive transitions

In exams, you need to 1. IDENTIFY and 2. GIVE THE RIGHT EXPLANATION.

## **Generic transitions**

- These are words or phrases placed at the beginning of a sentence to help the reader understand how the new information in that sentence relates to the information that precedes it / old info.
- Writers use generic transitions because they help show the logical connection between the ideas in different sentences.
- They can be used to show
  - Addition
  - Comparison
  - Contrast
  - Explanation
  - Conclusion
- **Example:** The suspect was with his daughter at the market till 11PM that night. Therefore, he could not have committed the robbery.
  - "Therefore" is the generic transition and it shows the CONCLUSION that the suspect could not have committed the robbery.
- They are generally used at the beginning of the sentence, linking the two parts together.

### **Orienting Transitions - Most commonly examined**

- They provide context for the information that follows. They serve to locate physically, logically and chronologically the ideas in the rest of the sentence.
- Two common orienting transitions are the times and dates and those that refer to cases.
- Other orienting transitions create context by directing the reader to adopt a certain point of view by supplying the source of information that follows.
- **Examples:**
- From the bank's perspective, granting a second loan would be ill advised and risky.
  - "From the bank's perspective" is the orienting transition directing the reader to adopt the POV that whatever info that follows is going to be limited to the perspective of the bank.
- In 1963, Kenya attained independence.
  - "In 1963" is the orienting transition, giving the historical context/perspective.
- On the 3rd day of March 2004, Nakumatt was advised that their store in Thika was built on a road reserve.
  - "On the 3rd day of March 2004" is the orienting transition, showing chronologically when they received the info.
- The difference between showing chronology and historical perspective is that
  - Historical perspective goes far back and is usually just the year, while
  - Chronology specific day/month and year.
- In often cited cases, the court has held that bail is a constitutional right.
  - "In often cited cases" is the orienting transition, indicating the importance of those cases in the right to bail.
- In the instant case.
- While in the case at hand
- As for damages, the court will probably enjoin those activities that constitute a private nuisance.
  - "As for damages" is the orienting transition as it shows a shift in topic, from everything that was discussed prior to damages.

### **Substantive transitions**

- \*Rarely used and not usually examined.
- These can be compared to the interlocking links of a chain. They serve two purposes:
  - They make a connection and
  - They provide context.
- Examples:
- I went to court early because I had a matter.
  - The whole sentence would essentially be a substantive transition. Which is why they are hard to examine.

## **DRAFTING**

1. Case Brief
2. Legal Opinion
3. Different forms of affidavits
  - Affidavit for a lost log book
  - Affidavit of marriage
4. Sale agreement
5. Employment contract
6. Contract of service
7. Different types of letters
  - Demand letter
  - Warning letter
  - Dismissal letter
8. Power of attorney
9. Deed poll
10. Judgment
11. Ruling
12. Professional Undertaking

## **CASE BRIEF**

- It is a dissection of a judicial decision in written form.
- Importance of a case brief:
  - It helps one understand the reasoning and the holding of the court.
  - It helps one predict the outcome of a case.
  - It helps one formulate arguments in your client's favour.
  - It helps one understand the application of new laws.
  - It helps one relate old and new laws.
- Read through the case first so that you understand the overall decision. Then read through it a second time identifying important facts.

## **Contents of a case brief**

- Heading
  - Case name (Identity of the parties)
  - Court name
  - Date of the decision
  - Quorum
- Statement of facts
  - Identify the relationship of the parties.
  - Identify legally relevant facts (Facts that tend to prove/disprove an issue before the court).
  - Identify procedurally significant facts.
- Procedural history
  - Indicate whether it is the first time in court, whether it is an appeal or a second appeal.
  - If not the first time in court, identify the previous court(s).
- Issues
  - Substantive issues, eg. point of law in dispute or the key facts of the case relating to that point of law in dispute.
  - Procedural issues, eg. rule of law or legal principles that have been applied. This is the rule of law that the court applies to determine the rights of the parties. Rule of law can be derived from statute, case law, regulations, common law, international law, etc.
- Holding
  - Statement of law that is the court's answer to the issues.
  - If you write the issues correctly, the holding is usually a positive or negative statement in reply to the issues.
- Reasoning
  - This is the court's analysis of the issues and the heart of the case brief.
  - It is the way in which the court applied the law/rules to the particular facts in the case to reach its decision.
- Judgment
  - This is the court's final decision as to the rights of the parties.
- Concurring or dissenting opinions
  - This happens when you have more than 2 judges

- Conclusion
  - Summarize your analysis and ultimate finding,
- Personal impressions
  - Express your opinion.
  - Concur with the judgment. Critique parts of it.

### **LEGAL OPINION**

- If the recipient is someone outside the organisation, ie. the client you draft a letter.
- If the recipient is someone within the organisation, eg. pupil master or associate, you draft an internal memorandum.
- FIRAC

X & X Advocates  
1st Floor, Blue Building, Black Street  
P.O. BOX 123  
Nairobi

---

OUR REF:                                      YOUR REF: TBA                                      DATE:

John Doe  
P.O. BOX 345  
Nairobi

Dear Sir/Madam,  
RE: Legal opinion on the remedies available to John Doe

#### **Facts**

Subject to your visit to our chambers on the    day of    2020, you gave us the following facts.

.....

If the facts above are correct, below is my legal opinion.

#### **Issues** (in the form of questions)

- 1.
- 2.

#### **Rules**

#### **Application of rules to issue**

Issue 1:

According to the ... Act ....

### Conclusion

Summary.

If you would like us to assist you in (whatever it's about) feel free to visit our chambers for further discussion and to discuss costs.

Yours faithfully,

For X & X Advocates

Angela Kamau

## INTERNAL MEMORANDUM

TO: Associate John Mwangi

FROM: Pupil Mary Anne

RE: Legal opinion on the remedies available to Jane

### Facts

Subject to your instructions, you had requested me to draft a legal opinion on the remedies available to Jane based on the following facts.

.....

If the facts above are correct, below is my legal opinion.

### Issues (in the form of questions)

1. Does Jane have any legal remedy against John for breach of contract?

### Rules

### Application of rules to issue

Issue 1: Does Jane have any legal remedy against John for breach of contract?

According to the ... Act ....

### Conclusion

No need to sign out for an internal memo.

**Affidavit for a lost document (5 mark question)**

- Log book, passport, title deed, ID etc.

**REPUBLIC OF KENYA**

**IN THE MATTER OF OATHS AND STATUTORY DECLARATIONS ACT CAP 15 LAWS OF KENYA**

**AFFIDAVIT FOR LOSS OF PASSPORT**

I, John Doe, living and working in Nairobi of P.O. BOX 123, Nairobi, within the Republic of Kenya do hereby take an oath and state as follows

1. That I am a mae adult of sound mind residing in Nairobi and therefore competent to swear this affidavit.
2. That I am the registered holder of National ID Card Number 111 and Passport Number 012.
3. That the said passport number 012 got lost on 18th July 2020 in a bus I was travelling in from Nakuru to the city centre within Nairobi and the same cannot be traced hence the report made at the police station (Annexed is a true copy of the police abstract dated 18th July 2020).
4. That I swear this affidavit to confirm to whom it may concern that the information given is correct and in support of my application for another Kenyan passport.
5. That what is deponed is true to the best of my knowledge, information and belief and conforms to The Oaths and Statutory Declaration Act Cap 15, Laws of Kenya.

Sworn by the said John Doe on this                      day of                      2020 in Nairobi.

DEPONENT

BEFORE ME: COMMISSIONER OF OATHS

**Drawn by**

X&X Company Advocates,  
1st Floor, Blue Building,

Black Street,  
P.O. BOX 123,  
NAIROBI.

Oral question: Assume you're holding an affidavit for a lost ID, read it to us.

**Affidavit of marriage (5 mark question)**

**REPUBLIC OF KENYA**  
**IN THE MATTER OF OATHS AND STATUTORY DECLARATIONS ACT CAP 15 LAWS OF KENYA**

**AFFIDAVIT OF MARRIAGE**

We, John Doe and Mary Jane, both living and working in Nairobi, of P.O. Box 123, Nairobi, within the Republic of Kenya hereby make an oath and state as follows

1. That we are adults male and female of sound mind residing in Nairobi and hence competent to swear this affidavit.
2. That John Doe was born in 1984 and is a holder of ID Number 111 and Mary Jane was born in 1990 and is a holder of ID Number 222.
3. That both of us got\*\* married on 1st January 2014 under Kikuyu customary law and that it is our first marriage.
4. That both our parents consented to our marriage and dowry was paid.
5. That we swear this affidavit jointly in support of our contention that we are legally married.
6. That what is deponed is true to the best of our knowledge and belief and conforms to The Oaths and Statutory Declarations Act Cap 15, Laws of Kenya.

Sworn at Nairobi on this      day of      2020  
by the said John Doe

Deponent

Mary Jane

Deponent



BEFORE ME: COMMISSIONER OF OATHS

**Drawn by \*\*\* Not drawn and filed by**

X&X Company Advocates,  
1st Floor, Blue Building,  
Black Street,  
P.O. BOX 123,  
NAIROBI.

**Deed Poll (10 mark question) Goes with Statutory Declaration of Identity**

DEED POLL ON CHANGE OF NAME\*\* confirm placement

This change of name deed is made this            day of            2020 by me Mary Jane Kamau of P.O. BOX 123 Nairobi in the Republic of Kenya as a resident of Kenya until recently called Mary Jane Wairimu.

\*\*\* This is marked, eg getting the names in the right place, old name vs new name.

It is hereby declared and witnessed on behalf of myself as follows

1. I absolutely renounce and abandon the use of my said former name of MARY JANE WAIRIMU and I assume and determine to take and use from the date hereof the new name of MARY JANE KAMAU in substitution of my former name of MARY JANE KAMAU.

\*\* former name, new name then former name again

2. I shall at all times hereafter in all records, documents and other writings and in all actions and dealings and all occasions use the new name of MARY JANE KAMAU in substitution for my former name of MARY JANE WAIRIMU so relinquished that I may hereafter be known not by the name of MARY JANE WAIRIMU but by the name of MARY JANE KAMU only.

\*\* new name, former name, former name, new name.

3. I authorise and require all persons at all times to describe me by the new name of MARY JANE KAMAU.

In witness whereof I subscribe my new name of MARY JANE KAMAU and also my former name of MARY JANE WAIRIMU and have set my hand on this day and year written.

Signed, sealed and delivered by the above mentioned in the presence of

---

MARY JANE KAMAU

---

MARY JANE WAIRIMU

BEFORE ME: COMMISSIONER OF OATHS

**Statutory Declaration of Identity**

IN THE MATTER OF REGISTRATION OF DOCUMENTS (CHANGE OF NAME) REGULATIONS  
AND IN THE MATTER OF MARY JANE KAMAU FORMERLY KNOWN AS MARY JANE  
WARIMU \*\*\*\*\* Confirm placement

I, Jacky Brown, of P.O. BOX 1234, Nairobi, living and working in Nairobi within the Republic of Kenya, do solemnly and sincerely declare as follows \*\* note the wording.

1. That I have for three years personally known the person formerly known as Mary Jane Wairimu and now known as Mary Jane Kamau referred to in the deed.
2. The identity card now produced and shown to me is the identity card of the relevant person formerly known as Mary Jane Wairimu and now known as Mary Jane Kamau.
3. That the former person and the person who executed the said deed are one and the same person.
4. I declare from my personal knowledge of the person formerly known as Mary Jane Wairimu and now known as Mary Jane Kamau and I make this declaration openly believing the same to be true and according to The Oaths and Statutory Declarations Act.

Declared at Nairobi this       day of       2020 by the said Jacky Brown

BEFORE ME: COMMISSIONER OF OATHS

**Drawn by \*\*\* Not drawn and filed by**

X&X Company Advocates,  
1st Floor, Blue Building,  
Black Street,  
P.O. BOX 123,  
NAIROBI.

### **Contracts \*\*\*60% chance that this will come (as in it comes often)**

Need to know how to draft three contracts (asked interchangeably)

1. Sale contract (look at the conveyancing one)
2. Employment contract
3. Contract of service\*\*\* (find this)

All three contracts have “free” marks

- Introduction of parties: “This sale agreement/ employment agreement.contract of service is made this      day of      2020 between Mary Jane of P.O. BOX 123, Nairobi (hereinafter referred to as the vendor), which expression shall where the context admits incu
- Recitals (the position of the parties)
  - Whereas, the vendor is the registered owner of .... (look at the sale agreement in conveyancing notes)
- Relationship between the parties

Eg for car

Now this agreement witnesseth as follows

Item : Motor vehicle registration ....

Purchase price

Employment contract

Now this agreement witnesseth as follows (this is the part that changes for all three)

1. Terms of employment
2. Duties of the employer and the employee
3. Place and hours of work
4. Probation
5. Compensation (salary, benefits, etc)
6. Termination of employment
7. Leave (annual, sick, maternity, unpaid,etc
8. Non compete clause
9. Confidentiality
10. Alternative Dispute Resolution

Then sign out, ie. the attestation part of the contract (the same for all three

**FIND A CONTRACT OF SERVICE**

## **SALE AGREEMENT**

This sale agreement is made this ..... day .....of 2021 between **MARY JANE** holder of Kenya National Identification Card Number ..... of P.O.BOX 6543 00100 NAIROBI (hereinafter referred to as “the vendor” which expression shall where the context admits, include her agents and representatives), on one hand and **JOHN DOE** holder of Kenya National Identification Card Number ..... of P.O.BOX 9876 00100 NAIROBI (hereinafter referred to as “the purchaser” which expression shall where the context admits his agents and representatives). (description of parties)

### **WHEREAS:**

- a. The vendor is the registered owner of all that parcel of land known as LR 123 and is desirous of selling it.
- b. The purchaser has expressed his interest to purchase the said parcel of land.
- c. The vendor has agreed to sell and the purchaser has agreed to buy the said parcel of land.  
(Recitals, ie. the legal position of the parties)

### **NOW THIS AGREEMENT WITNESSETH AS FOLLOWS** (clauses on sale agreement)

#### **1. Nature of interest**

The nature of interest is leasehold

#### **2. Purchase price**

The total purchase price is Kshs 1,000,000/= A deposit of Kshs 200,000/= is to be paid on or before the execution of this agreement.

All payments are to be made to:

Account name. ....

Account no. ....

Bank.....

Branch..... (if these are not given in the question, leave it blank.

#### **3. LSK Conditions of Sale**

LSK Conditions of Sale, 2015 will apply so long as they are not inconsistent with the party intentions.

#### **4. Encumbrances**

The land is sold free from any encumbrances and third party claims.

#### **5. Completion**

Completion day shall be 90 days after the execution of this agreement. Completion venue shall be the vendor’s advocates chambers.

Completion documents will include the following:

- i. Original title deed
- ii. Rates and rent clearance certificate
- iii. Stamp duty valuation form
- iv. Copy and National Identification Card
- v. Copy of Kenya Revenue Authority Pin
- vi. 3 passport size photos
- vii. Any consents if required.

## **6. Registration**

Registration of transfer will be done by the purchaser advocate to their satisfaction.

## **7. Legal representation**

Each party will cater for its own legal fees

## **8. Vacant possession (O.Q)**

The vendor assures the purchaser that after the full purchase price is paid to the vendor, she will transfer vacant possession to the purchaser.

## **9. Breach and default\***

In case there is a breach of this agreement caused by the purchaser, the vendor shall give an additional 21 days' notice within which to rectify the breach, failure to which she will be entitled to his full deposit plus interest and repudiate the contract and can sue for damages.

In case there is a breach of this agreement caused by the vendor, the purchaser shall give an additional 21 days' notice within which to rectify the breach, failure to which, he will be entitled to his full deposit plus interest and can sue for damages.

## **10. Interest rate**

The interest rate is 10% p.a. from the time of default.

## **11. Warranties**

The vendor warrants the purchaser the following;

- i. That she is the registered owner of the said parcel of land and therefore has the right to sell it.
- ii. There are no pending matters in court over the said parcel of land.
- iii. There are no boundary disputes over the said parcel of land.
- iv. There are no third party claims over the land

## **12. Arbitration clause (dispute resolution)**

In case a dispute arises between the parties, the matter shall first be referred to negotiation. If negotiation fails the matter will be referred to mediation then arbitration before taking it to court.

## **13. Special condition**

- i. Force majeure.
  - ii. All notices are to be in writing.
  - iii. Time is of the essence
- (any additional content one would like to put in the contract)

Both parties have placed their hands on this document this ..... Day ..... of 2021 at Nairobi.

**MARY JANE**

**(VENDOR) SIGN.....**

**JOHN DOE**

**(PURCHASER) SIGN.....**

**BEFORE ME ADVOCATE .....**



**REPUBLIC OF KENYA**  
**AGREEMENT FOR SALE OF MOTOR VEHICLE**

**THIS AGREEMENT** is made this 1<sup>st</sup> day of September, 2020 by and between **PETER KAMAU ID.NO. 11909966** of P.O Box 391, NAIROBI in the Republic of Kenya (from now on referred to as the “Vendor”) and **STANLEY JEFFERSON ID.NO.31323334** of P.O Box 326, NAIROBI in the said Republic (from now on referred to as “the Purchaser”)

A reference to the vendor, or the purchaser in this agreement, shall, where the context admits, include their advocates, agents, representatives or other assignees.

The Vendor and the Purchaser shall collectively be referred to as the “Parties”

**WHEREAS:**

- A. The Vendor is the registered owner of Motor Vehicle Registration No. KCZ591S, CHASSIS/FRAMEYN550016732, MAKE: ANDROER, MODEL: DISCOVERY, ENGINE NO.1Y0061370, COLOR: BLACK as per attached copies of import documents vehicle (from now on “The Vehicle”)
- B. The Vendor has agreed to sell and the Purchaser has agreed to buy the Vehicle subject to the following terms and conditions.

**TERMS AND CONDITIONS**

**IN CONSIDERATION** of the mutual promises and other valuable consideration exchanged by the Parties as set forth herein, the Parties, intending to be legally bound, agree as follows:

**Consideration**

1. The total purchase price to be paid by the Purchaser to the Vendor for the Vehicle is the sum of Kenya Shillings Five Million (Kshs. 5,000,000.00) payable as follows:
  - i. Kenya Shillings Two Million Five Hundred Thousand only (Kshs. 2,500,000.00) due to the Vendor on execution of this agreement, payment of the same is hereby acknowledged by the vendor;
  - ii. The balance of Kenya Shillings Two Million Five Hundred Thousand only (Kshs 2,500,000.00) to be paid in monthly installments of Kenya Shillings Thirty Thousand (Kshs 30,000) on or before the 9<sup>th</sup> of every month commencing 9<sup>th</sup> September, 2020, and thereafter on the 9<sup>th</sup> of each succeeding month until payment in full.

**Delivery of the Vehicle and Title Documents**

2. The Vendor undertakes:
  - a. That the vehicle is in good road worthy condition.
  - b. That there are no liens, charges, encumbrances and or any other claims by a third party over the Vehicle.
  - c. On payment of the Purchase Price reserved in clause (1) above:
    - i. To hand over possession of the Vehicle to the Purchaser and surrender copies of duly signed transfer forms of the Vehicle in favor of the Purchaser, a copy of PIN certificate, a copy of his National Identity Card and the Log book together with the import document, manuals and any other documents pertaining the same.
    - ii. To hand over spare wheel, wheel spanner, jack and tool kit.



3. Delivery shall be effected by the Vendor upon acknowledgement of payment of the Deposit and execution of this Agreement.
4. The Purchaser shall take possession of the Vehicle immediately after the execution of this Agreement, and the title and risks shall be transferred from the Vendor to the Purchaser after such possession.
5. Legal fees shall be paid equally by both parties.
6. Parties shall pay for taxes and statutory fees imposed by law equally, so far as this Agreement is concerned.
7. Both the Vendor's and the Purchaser's Advocates are **FIRM 12 C AND COMPANY ADVOCATES, KIRICOP HOUSE, 3<sup>RD</sup> FLOOR, ROOM NO. 320, P.O. BOX 1186-10300, KAREN- NAIROBI, KENYA.**
8. If this transaction fails due to the default on the part of the Vendor, the Vendor shall refund the consideration paid to the Purchaser together with 40% interest and if such occurs due to default on the part of the Purchaser the Vendor shall refund to the Purchaser the consideration paid less 40% interest.

**Force Majeure**

9. Neither party hereto is liable for compensating the other party for any loss it may incur due to any failure or delay in fulfilling its obligations under this agreement as far as such failure nor is delay caused by Act of God, or any actions of Government Authorities.

**Dispute Resolution**

10. All disputes, controversies all differences which may arise between the parties here to, out of, or in relation to or in connection with this agreement, shall be settled by arbitration conducted by the Parties advocates within 14 days after a party to this agreement lodges such dispute or controversy.
11. A party aggrieved with a decision after arbitration in clause (10) may proceed to file a suit in Court. Such suit should not be filed until the arbitration process is concluded, and a decision is made.

**Governing Law**

12. This agreement shall conform to and be interpreted under the Laws of Kenya.

**Termination**

13. This agreement shall be terminated without requiring either party to notify the other upon fulfillment of each parties' obligations subject to this agreement.

**IN WITNESS WHEREOF** this Agreement has been duly executed by the parties hereto the day and year first hereinbefore written.

**PETER KAMAU**

**(VENDOR) SIGN.....**

**STANLEY JEFFERSON**

**(PURCHASER) SIGN.....**

**BEFORE ME ADVOCATE .....**

## **CONTRACT OF EMPLOYMENT**

THIS AGREEMENT is made on this date 28/08/2020 between FIRM9C& Company Advocates of P.O Box 456787-00100, KSL Building (hereinafter called “the Employer”) of the one part and Wakili Shupavu of P.O Box 78169-00100 (hereinafter called “the employee”) of the second part.

### **DEFINITIONS**

In this Contract, unless the context otherwise requires:-

1.1 “Appointment” means the term of the contract of service hereby created, the duration of which ascertainable in accordance with this Contract;

1.2 “Basic Salary” means the amount specified as such in the current Remuneration Contract;

1.3 “Commencement Date” means 28th August 2020;

1.4 “Normal Retirement Date” means the date when the Employee attains the age of sixty (60) years;

1.5 “Party” means either the Employer or the Employee;

1.6 “Parties” means both the Employer and the Employee.

### **2 EMPLOYEE’S DETAILS**

NAME: Wakili Shupavu

D.O.B: 06/11/1980

GENDER: MALE

PERMANENT ADDRESS: 541930-00100

TELEPHONE/MOBILE NO: 0712345678

EMAIL ADDRESS: wshupavu@gmail.com

I.D. NO: 78654213

NHIF NO: 2546878

NSSF NO: 87654321

PIN: B7635892Q

### 3 STANDARD TERMS OF EMPLOYMENT

Unless stated otherwise in the Employee's Letter of Appointment, the terms of the Employee's employment will be as follows:-

#### 3.1 Contract Duration/Validity

This Contract shall commence on 28/08/2020 and shall continue thereafter until it expires or is terminated by either party pursuant to the terms of this Agreement.

#### 3.2 Job Description

The employee shall perform the following duties:

- Interviewing clients and providing them with expert legal advice
- Researching and preparing cases and presenting them in court
- Writing legal documents and preparing written pleadings for civil cases
- Liaising with other professionals such as solicitors
- Specializing in specific legal areas
- Representing clients in court, public enquiries, arbitrations and tribunals
- Questioning witnesses
- Negotiating settlements

Other than the job details contained in the employee's job description, the employee may from time to time be assigned duties by the Employer as need arises.

#### 3.3 Probation

The Employee shall be on probation for the first three (3) months of his employment during which employment may be terminated by either party by giving the other party seven (7) days' notice. If the employee's employment is neither confirmed nor terminated in writing then his probation period will automatically be extended for a further three (3) months, at the end of which he will either be terminated or become a regular employee of the Firm.

### 3.4 Remuneration

The Employee is entitled to a consolidated gross salary payable in monthly arrears as stipulated in their letter of offer.

### 3.5 Benefits

Every Employee will be entitled to:-

#### 3.5.1 Medical

Regular Employees of the Firm will be entitled to participate in the Firm's Medical scheme as maybe in effect from time to time.

### 3.6 Duties and Responsibilities

The duties responsibilities under this contract are as set out in the Job Description for every employee. These duties may be amended by the management from time to time.

Notwithstanding the Employee's job title and job location, he/she may from time to time be required to perform such or other duties or in such other locations as may from time to time be assigned or specified to him or her by the Law Firm.

### 3.7 Working Hours

The Employee's usual working hours will be from 8 00AM to 5 00PM Mondays to Fridays.

However, the employee may be requested to work longer or different hours to meet the exigencies of the Firm. During each working day, he will be entitled to

1 hour lunch break at the convenience of the Firm.

Overtime will only be worked if agreed upon between the parties from time to time and the pay shall be KSH 3,500 per hour.

### 3.8 Annual Leave

The Employee will be entitled to twenty one (21) working days leave. The days will exclude Saturday, Sunday and Public Holidays, which will be additional to the said Twenty –one days.

Application for leave must be made in writing at least 4weeks in advance of the date of commencement, and will be given at the discretion or convenience of the Firm.

### 3.9 Paternity Leave

The Employee shall be entitled to a paternity leave of two (2) weeks with full pay and on expiry of paternity leave, the Employee shall have the right to return to work immediately prior to his paternity leave or to a reasonably suitable job within the Firm.

### 3.10 Sickness

#### 3.10.1 Sick Leave

Every Employee shall be entitled to sick leave of not less than (7) seven days with full pay and thereafter to sick leave of (7) seven days with half pay, in each period of twelve consecutive months of service, subject to production by the Employee of certificate of incapacity to work signed by a duly qualified medical practitioner or a person acting on the practitioner's behalf in charge of a dispensary or medical aid center. The Firm also reserves the right to terminate an employment contract in the event of repeated illness period amounting to more than 24 weeks in any one year.

For an Employee to be entitled to sick leave with full pay hereinabove, the Employee shall notify or cause to be notified as soon as is reasonably practicable to the Firm of his absence and the reasons for it.

### 3.11 Exclusivity and Conduct

The Employee is expected to maintain a high standard of personal conduct so as to avoid any possible damage to the reputation of the Firm.

The Employee will devote his whole time and attention to the Firm and will not accept any other form of employment without prior consent of the management.

#### 3.11.1 Confidentiality

The terms and conditions of this Agreement are absolutely confidential between the parties and shall not be disclosed to anyone else, except as shall be necessary to effectuate its terms. All the dealings in the firm shall also remain confidential and are not to be disclosed to any third party except with the permission of the employer. Any disclosure in violation of this section shall be deemed a material breach of this Agreement.

### 3.12 Notice Period

In the event of the termination of the Contract of service with the Firm, a Notice Period of one calendar month will apply to either party. In the unlikely event of gross misconduct on the employee's part, the Firm reserves the right to terminate the contract without compensation.

The Firm reserves the right to add, amend or delete clauses to the above terms and conditions of service from time to time.

### 3.13 Read and Understood

Both the employer and employee have read and understood the terms each of the terms and conditions and are willing to be legally bound by the terms of the contract.

SIGNED AT ..... ON THIS ..... DAY OF ..... 2020

HUMAN RESOURCE MANAGER

EMPLOYEE

WITNESS

### GENERAL POWER OF ATTORNEY

I/We \_\_\_\_\_ (name/s and address) \_\_\_\_\_ do hereby nominate and appoint \_\_\_\_\_ (name/s and address) \_\_\_\_\_ with full power of substitution and revocation to be my/our true and lawful agent and attorney for me/us and in my/our name to apply for and obtain in Kenya and for the aforesaid purpose in my/our name to sign and lodge documents which they in their aforesaid capacity may deem necessary or desirable; to alter and amend such documents; to attend wherever necessary and defend my/our application from opposition; and I/we hereby confirm and ratify whatsoever said agent substitute or substitutes may lawfully do by virtue of these presents. I/We hereby revoke all previous authorisations, if any, in respect of the same matter or proceeding.

I/We also authorise the said agent to complete the entry of an address for service as part of any registration under the above authorisation.

Thus done and signed at \_\_\_\_\_ This day of \_\_\_\_\_

Signature \_\_\_\_\_

Before Me \_\_\_\_\_

Notary/Commissioner for Oaths \_\_\_\_\_ Or

Witnessed by \_\_\_\_\_ Dated this \_\_\_\_\_

### SPECIAL POWER OF ATTORNEY APPOINTMENT

I, MARY JANE, of P.O. Box 123, Nairobi, Kenya, hereby appoint KENYA COMMERCIAL BANK LIMITED of P.O. Box 231, Nairobi, Kenya (hereinafter referred to as 'the Attorney') to be my attorney with authority to do all or any of the acts and things hereunder specified on my behalf in relation to my property known as L.R No 209/34 (hereinafter referred to as 'the Property')

#### AUTHORITY

The Attorney has authority in my name and on my behalf and on such terms and conditions as seen to her expedient to:

1. To sell to any person all or any of my interest in the Property;
2. To charge or mortgage all or any of my interest in the Property for any sum at any rate of interest;
3. To lease all or any of my interest in the Property for any sum at any rate of interest;



4. To demand, collect and receive and take all necessary steps to recover all rents and other sums owing to me in relation to the Property;
5. To obtain or accept the surrender of any lease in which I am or may be interested in relation to the Property;
6. To exercise and execute all powers which are now or shall hereafter be vested in or conferred on me as a lessee or chargee under any Act of parliament in relation to the Property;
7. To represent me and to appear in my name and stead on my behalf before any Land Registry in Kenya and before any other official government or county officer or any other administrative offices or before any other authority in all matters pertaining to or connected with the Property and to sign and execute all certificates, documents, contracts and declarations before such authorities and to perform all actions and matters which may be required by law in connection with this Power of Attorney;
8. To enter and permit others to enter the Property;
9. To take any action to abate any nuisance;
10. To do all other things incidental to the above powers of which it thinks necessary or expedient in relation to the Property as fully and effectually as I could do them myself.

**REVOCATION**

I shall not revoke this Power of Attorney as long as I remain indebted in any manner to the Attorney.

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND SEAL THIS                      DAY  
OF        2021.

SIGNED AND SEALED BY ME, the said MARY JANE

In the presence of:

Advocate:

X & X Advocates  
1st Floor, Blue Building, Black Street  
P.O. BOX 123  
Nairobi

---

OUR REF:

YOUR REF: TBA

DATE:

Mary Jane  
P.O. BOX 345  
Nairobi

Dear Sir/Madam,

**RE: PROFESSIONAL UNDERTAKING FOR THE SALE AND PURCHASE OF  
LR NO. 123 BETWEEN MARY JANE (VENDOR) AND JOHN DOE (PURCHASER)**

We refer to the above matter in which we act on behalf of Kenya Commercial Bank, the financier, who has agreed to enter into a financial agreement with the purchaser, John Doe, in form of a loan for the purchase of the property after the registration of transfer. As security for the loan, the financier will register a charge over the property.

To enable us to register the transfer of title in favour of the purchaser and the charge in favour of the financier, we hereby issue our unequivocal and unconditional professional undertaking as follows.

1. That we shall pay into (a) Account Name, (b) Account Number, (c) Bank, (d) Branch, a sum of Kshs 1,000,000 within 14 days of successful registration of the transfer in favour of the purchaser and a charge in favour of the financier. To enable us to do this, we request from you the following completion documents
  - i. Original title deed
  - ii. Rent and rates clearance certificate
  - iii. Stamp duty valuation form
  - iv. Kenya Revenue Authority Pin
  - v. 3 passport size photos
2. That we shall hold the said documents at your pleasure and only use them to register the transfer and charge.
3. That if you do not receive the stated amount within 14 days of registration of the transfer and charge or 45 days after issuing the documents then we shall return to you the said documents in the same condition in which they were received.
4. That we hereby declare unconditionally and unequivocally that we are liable for this undertaking in case of any breach.

5. This undertaking will remain in force until such a time when you will discharge us from it.
6. Time shall be of the essence in respect of our obligations.
7. This undertaking is governed by the Laws of Kenya.

Yours faithfully,  
John Mwangi  
For X & X Advocates

Where there is no financing bank, eg. Nov 2018, question 4. (difference is there is no charge)

X & X Advocates  
1st Floor, Blue Building, Black Street  
P.O. BOX 123  
Nairobi

---

OUR REF:

YOUR REF: TBA

DATE:

Mary Jane  
P.O. BOX 345  
Nairobi

Dear Sir/Madam,

**RE: PROFESSIONAL UNDERTAKING FOR THE SALE AND PURCHASE OF  
LR NO. 123 BETWEEN MARY JANE (VENDOR) AND JOHN DOE (PURCHASER)**

We refer to the above matter in which we act on behalf of the purchaser, John Doe, who entered into an agreement for the sale and purchase of ....

To enable us to register the transfer of title in favour of the purchaser we hereby issue our unequivocal and unconditional professional undertaking as follows.

1. That we shall pay into (a) Account Name, (b) Account Number, (c) Bank, (d) Branch, a sum of Kshs 1,000,000 within 14 days of successful registration of the transfer in favour of the purchaser.  
To enable us to do this, we request from you the following completion documents
  - i. Original title deed
  - ii. Rent and rates clearance certificate
  - iii. Stamp duty valuation form
  - iv. Kenya Revenue Authority Pin

- v. 3 passport size photos
- 2. That we shall hold the said documents at your pleasure and only use them to register the transfer.
- 3. That if you do not receive the stated amount within 14 days of registration of the transfer or 45 days after issuing the documents then we shall return to you the said documents in the same condition in which they were received.
- 4. That we hereby declare unconditionally and unequivocally that we are liable for this undertaking in case of any breach.
- 5. This undertaking will remain in force until such a time when you will discharge us from it.
- 6. Time shall be of the essence in respect of our obligations.
- 7. This undertaking is governed by the Laws of Kenya.

Yours faithfully,  
John Mwangi  
For X &X Advocates

X & X Advocates  
1st Floor, Blue Building, Black Street  
P.O. BOX 123  
Nairobi

---

OUR REF:

YOUR REF: TBA

DATE:

Mary Jane  
P.O. BOX 345  
Nairobi

Dear Sir/Madam,

**RE: REQUEST FOR RELEASE FROM PROFESSIONAL UNDERTAKING**

Subject to the professional undertaking we had written to you earlier on concerning the sale and purchase of land reference number LR/NGONG/123 between Mary Jane (vendor) and John Doe (purchaser), John Doe has deposited the required full purchase price amount to your bank account you provided us. The transfer has successfully been registered in favour of our client.

We write to you requesting to be released from the professional undertaking as we have honoured it.

Yours faithfully,  
John Mwangi  
For X &X Advocates

## **LEGISLATIVE DRAFTING**

- It is one continuous process.
- Primary features - things that are mostly examined.
- Two questions in the LWD paper - one will be a primary topic, the other from a secondary topic.
- Question 1 rotates - plain english, legislative drafting and drafting (employment contract, sale agreement, etc) \*\*
- If legislative drafting is question 1 then it has to be a primary topic.
- Intro (not examinable)
- Role of drafter, qualities of a good drafter - secondary topic
- Legislative process - mostly an oral question, only been examined once - secondary topic
- Challenges of legislative drafting in Kenya - generally not examinable (2009-current)
- Drafting instructions - key secondary topic
- Designing a legislative solution - read as a by the way
- Policy process - primary topic (always comes as a 10 mark question)
- Structure of a bill - primary topic
- Legislative syntax - secondary topic (only 3 questions in the last few years)
- Amending bills/ legislation - primary topic

## **ROLE OF LEGISLATIVE DRAFTER**

- Legislative drafting is not just a technical exercise. A drafter is the advisor to the Government in its legislative capacity. The drafter must work in close collaboration with the instructing department and ensure that, so far as possible, legislation is based on sound legal principles, gives effect to the intended policy and is clear and understandable as practicable.
- Legislative drafters provide specialist form of advice. The relationship between a drafter and instructing department is similar to that between a solicitor and a client. The drafter must provide advice and drafting services in a professional and impartial manner. It is not the drafter's role to push through whatever an instructing department wants at all costs. On occasions, drafters have to speak the unpalatable truth or expose the weakness in a legislative scheme. This does not always make them popular with ministers or policy makers but it is a necessary part of their job.
- The drafter has a wider responsibility to ensure that, in the public interest, legislation as finally enacted by parliament or made by the Executive:
  - Complies with fundamental legal principles including constitutionalism.
  - Complies with guidelines.
  - Is workable and effective.
  - Is clear and unambiguous.
  - Will withstand challenge or adverse criticism in the courts and in law school.
  - Does not impose unnecessary or unreasonable compliance costs.
- A drafter must thus have a GOOD basic knowledge of the law of the jurisdiction in which he is operating and must be a person who shows the necessary interest in legislative drafting.
- The scope of the legal problems which will come in the way of the drafter is almost unlimited and the drafter will experience the fascination in the use of words and the correct choice of words for the solution of any particular problem. The work of the drafter must be related to practical goal of

preparing laws which can be readily understood and which will carry out the policies of the Government in a form acceptable to Parliament.

- A meticulous attention to detail and a clear systematic approach to problems are vital. An analytical mind is also essential to good drafting. A drafter must keep up to date with events in his or her country and events in the world generally. The drafter should be in a position to appreciate the political, economic and social policies that will undoubtedly be the background to the drafted legislation.
- The drafter must be prepared to be a team player both within the legislative Drafting Division and with other public officers.
- The drafter must be concerned with the practical and effective implementation of the law. This involves a clear understanding of the role of the drafter in the enactment process and the policy objectives and the administrative and other requirements necessary to include in the legislation to implement the policy.
- A drafter must always be prepared to accept criticism with tolerance and good humour and by so doing, quickly gain a reputation for reasonableness. This is important as on those occasions when the drafter does feel strongly on some matter arising in any drafting instructions or in the wording of a prepared draft. Any views expressed in a reasonable manner will be more readily accepted by those concerned.
- A drafter is required to undertake extensive legal and factual research beyond the drafting instructions.
- Typically, the drafter's work involves:
  - Receiving and reviewing instructions from the instructing department.
  - Raising issues with the instructing department that arise out of the instructions or seeking clarification.
  - Producing drafts that are clearly drafted and that give effect to the policy intent.
  - Devising solutions to problems that arise during the drafting process.
  - Assisting in resolving conflicts between departments over the policy or provisions in a draft.
  - In the case of bills, drafting amendments for select committees incorporating changes made during the parliamentary process and ensuring that the assent copies of enactments passed by parliament are completely accurate.
  - In the case of statutory regulations, certifying to the responsible minister that the regulations are in order.
- The drafter should work constructively with those providing the instructions, seek clarifications where necessary, endeavour to devise solutions to problems that arise during the drafting process and insist in resolving differences of opinion between departments.
- At the same time, however, if a drafter considers that the policy or some aspect of it does not comply with legal principle, or is or may be unworkable, or that the instructions are to draft something that will not be understood, the drafter must raise the matter with the instructing department and if necessary with the responsible minister and the attorney General.
- The drafter must attempt to reduce the legislative purpose or intention to simple terms in order to be able to express it simply. As far as possible, everyday language should be used. Where necessary, clarity of expression should take precedence over style. Drafting which is

grammatically correct and respects the rules of punctuation makes it easier to understand the text as well as its translation into other languages.

- Drafters cannot however control everything. They cannot control judges and they cannot control the future. Tying the hands of judges leads to overwriting, archaic expression and headaches for the drafter and the reader. The drafter should accept that interpretation of statutes can produce surprises.

## **POLICIES**

- Best practice dictates that policy precedes law. The bulk of bills emanates from policy proposals of the executive, civil society, professional bodies, private sector, individual citizens and other organised groups.
- Policy development revolves around the idea that a particular situation or social development need may require a law or regulation.
- Developing a policy to deal with the requirement, the direction after policy formulation and the decision to proceed from policy to legislation is critical in understanding and appreciating the concept of legislative drafting.

### **Definition of policy**

- A policy is a course of action adopted or proposed by government, party, businesses or individuals.
- In the context of legislation, policy is a document which outlines what a government or individual aims to achieve for a society.
- Policy sets out the goals and activities planned to achieve a certain purpose.
- Policy discussions revolve around whether or not a law is needed to achieve the aims set out in the policy or the most appropriate approach to solve a problem or embrace an opportunity
- All policies start as an idea, they then proceed to be guides that establish the perimeters for decision making and actions.

### **The Constitution and policy making**

- The Constitution recognises several instances that necessitate policy making, eg. formulate, debate, approve and implement policies, eg. the national land policy.
- The Constitution recognises the need for all arms of government to engage the public on the formulation of policies (public participation).
- All state organs, the state, public officers and all persons are obligated to apply and respect values and principles enshrined when making or implementing public policy decisions (article 10).
- Values and principles include:
  - Inclusivity
  - Equality
  - Good governance
  - Integrity



- Transparency
- Accountability
- Sustainable development

### **Who initiates policy?**

- Policy ideas may originate from the executive and executive entities, political parties, business associations, organised groups or individual citizens.
- The Constitution provides that any person may originate a policy idea since any person has a right to petition the National Assembly or County Assembly to consider any matter within its authority. Parliament or County Assembly may upon consideration translate the idea into policy.
- The political manifesto of the government of the day is also recognised as a source of policy. Pledges projected in a manifesto may require certain policies to be developed to facilitate their implementation, eg. free primary school for all Kenyans.

### **Public participation in the lawmaking process**

- It is one of the most salient\* features of our constitutional features, it provides for public participation in governance and other administrative capacities. The public can participate as individuals or organised groups representing minority rights and other interests.
- Civil society is an equal key player in public participation and engages policy makers and the government in policy formulation.
- Article 10 recognises public participation as one of the national values.
- Article 118 requires parliament to conduct its business in an open manner to facilitate public participation and involvement in the legislative and other businesses of parliament and committees. It prohibits parliament from denying the public and media access into its sittings unless there are justifiable reasons.
- Section 87 of the County Government Act promotes public participation within the county government as follows
  - Access to information and data pertaining to policy formation.
  - Reasonable access to the process of formulating policy and other government programs.
  - Protection and promotion of minorities within counties.
  - Recognition of non state actors in formulation and implementation of policies.

### **Factors to consider in policy making process**

- **Need to explain these points.**
- Necessity to formulate a policy that may be based on needs, emerging or possible changes that may be anticipated.
- How the proposed policy will be managed and resourced from formulation to implementation.
- The time it will take to formulate the policy, implementation and the period to enable the enabling legislation.
- Information requirements for the full understanding and implementation of the policy.
- Attention to the model and process of devolved government as a requirement of policy initiatives.

- Public participation, debate or input as a new variant in the policy arena and a consideration of how and where to involve the public in developing policy.
- The practical aspects, connection between the expected outcomes (goals) and the public policy.

### **Salient features of a policy framework**

A generic policy framework must comprise of the following:

1. Introduction
2. Situational analysis
3. Challenges, problems or issues to be addressed
4. An analysis of the existing legal framework (including international laws governing the matter)
5. Strategies for implementation
6. Actors or stakeholders and their roles
7. Targeted audience and their roles and obligations
8. Monitoring and evaluation mechanisms
9. Review measures
10. Conclusion and way forward
11. Provision of a legal instrument for its operation

### **Stages in the policy formulation process \*\*\*\*\* NB for exams**

#### **1. Policy initiation**

- Policy initiation is a function of the stakeholders, eg. government, ministries, departments, agencies, citizens and institutions.
- Once the proponent generates the idea, they inform the relevant national or county executive concerned who propels it to the ministerial level.
- The relevant ministry department agency formulates policy guidelines, which are reduced into writing for discussion purposes

#### **2. Research**

- Respective Ministry Department Agencies (MDA) will undertake comprehensive and comparative research on the matter to be regulated.
- Study visits may be undertaken within or outside the republic / county to ensure best practices from national or international level.
- Expert opinion should be sought
- National or county entity should work closely with state agencies tasked with the obligation of assisting the two levels of government, eg. Kenya Law Reform Commission.
- Task force committees and other consultative machineries may be constituted.

#### **3. Negotiation and public participation**

- Substantive content of the draft policy framework are debated and negotiated with various stakeholders, eg. political parties, the public, NGOs and interest groups.
- Discussion documents are prepared by the MDAs on the policy or law to facilitate the debate, feedback and comments.
- Stakeholder participation may take the following forms
  - i. Attending parliamentary committee hearings

- ii. Setting up meetings the Cabinet Secretary or departmental heads
- iii. Organising workshops
- iv. Seminars or retreats
- v. Using the media to outline the issues
- vi. Publication of extracts in the newspaper articles

#### **4. Finalisation of the policy**

- The policy has been properly debated, issues have been crystalised and available options drawn up in the final policy.

#### **5. Cabinet or county executive approval**

- Once the respective Cabinet Secretary or County Executive Committee member is satisfied that proper analysis has been conducted, different approaches have been identified and discussed and the policy document is the best option to address a situation, then the CS or County Executive Committee member submits the policy to the Cabinet or County Executive Committee respectively for approval.
- Adequate background information, salient features of the policy and justification has to be provided by the CS or the County Executive Committee member to enable the Cabinet or County Executive Committee to make adequate and informed decisions.

#### **6. Parliamentary or County Assembly Approval**

- Upon approval of the policy by the Cabinet or the County Executive Committee, the respective houses will ... for debate and approval.
- The respective legislative body shall in accordance with the standing orders introduce the policy document, subject it to the relevant house committee for scrutiny and further directions.
- The committee reports back to the whole house, and the policy document may be approved with or without amendments.
- The house may subject the policy to public and stakeholder consideration

#### **7. Assent**

- Upon passing by either level of the respective house at either level of the government, the speaker of the respective house submits the approved policy to the President or Governor to formally endorse by affixing the national or county seal and respectively signing the policy.
- This process is referred to as assent.

#### **8. Publication**

- Upon assent, the policy is published as white paper.
- The executive is expected to widely circulate the policy to keep the public informed of the likely effects of the policy.
- The white paper is a statement of intent and a detailed policy plan which forms the basis of legislation.

#### **9. Draft Bill**

- The policy (white paper) forms the basis of legislation.

- If it is determined at the ministerial level that a new law is necessary to achieve its objectives and aid implementation, the concerned MDA will commence the process of drafting the Bill to give effect to the policy directives.
- In its early stages before a new law is tabled in the House, it is called a legislative proposal.
- Once tabled, it is called a Bill.
- NB: Not all policies end up requiring legislative instruments to be implemented. Such policies are known as self executing policies.

### **STRUCTURE OF A BILL - Key concept for exams**

- After drafting instructions have been fully understood, the next step is the legislative scheme which is the plan for the Act following the practice of the jurisdiction.
- The drafter puts in logical sequence the provisions of the law. This can be done by listing the headnotes and may reveal gaps in the instructions.
- The broad framework is as follows:

#### **Preliminary provisions**

1. Arrangement of sections
2. Long title
3. Enacting
4. Short title
5. Commencement
6. Interpretation provisions

#### **Application**

#### **Principle provisions**

1. Substantive provisions
2. Administrative provisions

#### **Miscellaneous provisions**

1. Miscellaneous and supplementary provisions include financial matters, offences, power to make regulations, search, seizure and arrest.

#### **Final provisions**

1. Savings
2. Transitional provisions
3. Repeals and consequential amendments
4. Schedules

## **PRELIMINARY PROVISIONS**

### **Arrangement of sections**

- The arrangement of sections is on a separate page immediately before the Act. The wording is the same as that used for the headnotes or marginal notes in the Act and serves as a useful index to the Act.
- It does not form part of the Act and it is not the subject of debate in parliament.
- After enactment, it is necessary to check this again to ensure that the arrangement of sections is an accurate reflection of the action, its final form and that account has been taken of any amendments which have been made in the course of enactment.

### **Arrangement of parts**

- A Bill should only be divided into parts when each part stands alone to form the subject of another Act. Otherwise headings should be used to form provisions.

### **Headnotes or marginal notes**

- Each section is given a headnote or marginal note and this provides a guide to the contents of the section. It must be short and accurate and no attempts should be made to set out a summary of the whole content of the section.
- The appropriate headnote or marginal note is often difficult to draft. This occurs when the section is overloaded and is best solved by spreading the content of the section over two or more sections which can be given the appropriate headnote or marginal note.

### **Long title** \*\* One of the most examined sub sections written.

- This is the starting point of the Act and indicates the general purpose and intention of the legislation.
- It is a useful aid to ascertain the scope of the new aspects and should be wide enough to embrace the whole content of the Bill.
- Example from NLC Bill

A bill for

AN ACT of Parliament to provide for further functions and powers of the National Land Commission; qualifications and procedures for the appointment of members of the National Land Commission; to give effect to the objects and principles of devolved government in land management and administration; and for connected purposes.

### **Enacting** \*\* Also examinable

- This is generally provided for in the Constitution, the Interpretation Act or other legislation dealing with this and other matters concerned with the procedure of Parliament.

### **Short title** \*\* One of the most examined sub sections written.

- This is a convenient means of identifying and citing an act. It should be informative and brief.

- The year of enactment is added to the short title. Where the scope of legislation is restricted to a sector, a general topic may be followed by reference to the particular topic in brackets. Eg. Road Traffic (Towing of Vehicles) Act, 1999.
- Where the purpose is to amend another Act, this can be captured in brackets. Eg. Road Traffic (Amendment) Act, 1999.
- “This Act may be cited as the National Land Commission Act, 2012 and shall come into operation 60 days from the date of publication” - Example from NLC Bill (this is both commencement and short title)
- 

### **Commencement**

- Commencement is the day the Act comes into force and is to be distinguished from the day the Bill is passed by Parliament.
- It may take four forms:
  1. The date of entry into force may be in the Constitution or the Interpretation Act and may apply to the assent of the head of state or the date of publication in the Kenya gazette.
  2. Where the legislation specifies a particular date, it commences on that particular date.
  3. Where the legislation empowers an individual to fix the date.
  4. Conditional based on the occurrence of an event.

### **Interpretation provisions**

- An Act often contains an interpretation section which sets out definitions of various words and expressions used on more than one occasion in the Act.
- This section assists in conveying to the reader the intended purpose of the legislation in a simple and consistent manner and also avoid needless repetitions.
- This section is sometimes placed at the beginning of the Act immediately after the short title to inform the reader if any words are to be given special meaning.
- The drafter will find it better to leave the detailed drafting of this section until the draft of the Act has been completed, making a note on any words and expressions that can be usefully included in the interpretation section as the drafting progresses.
- Definitions are used by a drafter to avoid ambiguity and repetition. This is done by using “...” means or “...” includes.
- There are three main groups of definitions (**D E N**)
  - **Delimiting**
  - **Extending**
  - **Narrowing**
- Choose three to define: Commission, Registrar, Cabinet Secretary
- Look at NLC Bill for example

### **Delimiting definitions**

- They do not alter the definitions conventional meaning, but provide a degree of definiteness. This is useful for vague and ambiguous words which may have separate meanings. They set the limit of the meaning in the Bill without altering the normal meaning. Eg

- “Contract” means contract executed on 1st January 2021.
- “Advertisement” means publication through a medium operating with commercial interest.
- Without deviating from normal meaning, delimiting definitions can be used to relate a word of general significance to the subject matter of the legislation.

### **Extending definitions**

- An extending definition broadens the scope of the ordinary or common use of the term.
  - “Vegetable” includes carrots, cabbages and onions.
  - “Constable” includes a police officer of any rank.
  - “Child” includes a child born out of wedlock.

### **Narrowing definitions**

- A definition of this type stimulates a meaning which is narrower than the common usage of the term.
  - “Aircraft” means military aircraft.
  - “Animals” means cattle and horses.
  - “Accounting period” means one calendar month.

### **Dangers of definitions**

- It is possible for a statute to contain a definition which creates more problems than it solves.
- Not every technical, scientific or similar term needs to be defined if the meaning is clearly understood, eg. decentralisation.
- It is necessary for the drafter to check and check again that the meaning of the definition is constant throughout the draft. The stipulated definition should not be forgotten, and at the drafting stage a defined word can be distinguished by different coloured ink or italics.
- Vagueness in definitions which may lead the court interpreting the drafters definition should be avoided.
- A drafter should not rely on other definitions in another enactment in another definition. A definition should be self contained. Eg. “Legal practitioner” means a person admitted as a legal practitioner under the Legal Practitioners Act, 1999, Act 560.

### **Principles of definitions**

- A definition should not include substantive matters.
  - Eg. “Managing director” means the person directed to be Managing Director by the Minister. This cannot empower the Minister to make the appointment, the power to appoint should be included in the substantive text.
  - The definition can be rephrased as follows: “Managing director” means the Managing Director appointed by the Minister under section 7.
- Any reference in a definition to legislation should be precise and specific.
  - Eg. do not write, “Appointed member” means a member of the council appointed by the President of this Act. Instead write, “Appointed member” means a member of the council appointed by the President under paragraph 2 (f) of the Fourth Schedule.

- A definition should not be defined in an Act if it is in the Interpretation Act, except if a different stipulation is required.
- The drafter should not use definitions in referential legislation although there are exceptions.
  - Eg. “Veterinary surgeon” means a person for the time being licensed to practice as a veterinary surgeon under the Veterinary Surgeon Act, 1999.
- A definition should be complete in itself where a word or expression is defined it should never be used in a different sense in the Act.
- A drafter should not use “means” and “includes” in the same reference as this is contradictory. This is because one restricts and the other extends.

### **Objects and purposes in the act**

- Choose 3 ( get example from NLC Bill)
- The objects and purposes of this Act are to—
  - a. Provide for the management and administration of land in accordance with Article 60 of the Constitution and the National Land Policy;
  - b. provide for the operations, powers, responsibilities and additional functions of the Commission pursuant to Article 67 of the Constitution;
  - c. provide a legal framework for the identification and appointment of the chairperson, members and the secretary of the Commission pursuant to Article 250 (2) and (12) (b) of the Constitution;
  - d. provide for linkage between the National Land Commission, County Governments and other institutions dealing with land and land related resources.

•

### **APPLICATION**

- This provision gives an indication of the application of the act to remove uncertainties and can be used in the following circumstances
  1. Where the Act is to extend to circumstances arising before or pending at the date of commencement. Eg. In matters relating to taxation of pensions.
  2. The geographical area where only part of the country is to be affected.
  3. The particular class of persons or things to be affected.
  4. Whether the Act or part of it is to be given extraterritorial effect.
  5. Whether the Act is to bind the state.

### **PRINCIPAL PROVISIONS / SUBSTANTIVE PROVISIONS**

- These sections set out the basic objects and main principles of the Act

### **ADMINISTRATIVE PROVISIONS**

- These sections provide for administrative and practical problems to implement the Act.

### **MISCELLANEOUS PROVISIONS**

- These sections cover matters arising out of the main object of the Act. This includes offences and penalties and the enabling section for subsidiary legislation.



## **FINAL PROVISIONS**

### **Savings, transitional provisions and repeals**

- In exams you may be told to draft the savings, transitional or repeal provisions.
- In practice, savings and transitional provisions are dealt with together. These matters become relevant where the law is changed either by the enactment of a new act or by the repeal or amendment of an existing act.
- Savings, preserve an existing law or existing right(s) which would otherwise disappear when the law is changed.
- A savings provision can be inserted to show that a new act is not intended to derogate from or impliedly repeal another existing Act.
- Where an Act is repealed, subsidiary legislation made under the repealed Act cease to have effect, and it may therefore be necessary to insert a savings provision in order to preserve subsidiary legislation until it can be replaced by subsidiary legislation made under the new Act.
- Transitional provisions are inserted in order to apply the provisions of a new Act to situations already in existence when the Act comes into operation. These provisions retain the validity of an existing appointment or license by providing that it shall be given the same effect as if made or issued under the new Act.
- Where a repeal of legislation is needed, a specific section to this effect should be inserted.
- A repeal provision should not be mixed up with other provisions, and if there are many it is convenient to insert them in a specific schedule for this purpose.
- Repeal by implication should be avoided.

### **Schedules**

- Schedules deal with matters of detail or procedure to make an act readable and simplify interpretation.
- They may be used for:
  - Repeals of several Acts.
  - A number of amendments.
  - Transitional provisions if they are long and complicated.
  - Constitutional and provisional matters in relation to a statutory corporation.
  - The text of international conventions and agreements.
  - Rates of taxes, duties or other charges.
  - Forms.
  - An agreement intended to convey statutory validity.
- There should be consistency between an Act and its schedule and reference should be made to 1st Schedule, 2nd Schedule, etc, not Schedule 1, Schedule 2, etc.
- Mike is going to send two bills to add here - go through the Bills and extract the parts mentioned above from this Act. Extract them in such a way that you can reproduce them in an exam room - simplify them and understand them.

## **AMENDMENT OF LEGISLATION**

- Usually 4/5 marks.
- There are two ways of drafting amendments
  - i. The textual direct method
  - ii. The non textual method

### **Textual amendments \*\*\***

- May take three forms:
  - i. Substitute a for b, where one word is being replaced.
  - ii. Redraft the whole provision stating that where a appears, put b.
  - iii. Reproduce the whole act where several amendments are to be made.
- The following may be done in an amending bill: **S A I D** \*\* NB for exams
  - i. **Substitute**
  - ii. **Add**
  - iii. **Insert**
  - iv. **Delete**
  - v. **Repeal**
  - vi. **Revoke**
- NB: Delete and repeal have similar meanings. But the term repeal is used with reference to the whole act.
- NB: The word revoke is used in subsidiary legislation.
- Where a section is being extensively amended or where a number of previous amendments have been made to it, the drafter should consider whether the meaning of the section can be clarified by the repeal and reenactment of the whole section.

### **Non textual amendments**

- Hasn't been examined in a while.
- A non textual amendment does not become part of the amending act, it stands on its own and amends the text by implications.
- Non textual amendments are not commonly used in commonwealth jurisdictions.

### **Principles of amending legislation**

- The principal / original and amending legislation must always be constructed to form one coherent whole. The drafter must take great care to acquaint themselves comprehensively with the law they are instructed to amend.
- The language and style of the amending act must be consistent with that of the principal act. This rule should be adhered to even if the drafter considers the language of the principal act to be archaic.
- The original numbering should not be disturbed in an amending enactment. If a new section is to be added it will be 2A, after section 2.
- The effect of the instructed amendment on other legislation must be studied and all necessary consequential amendments made.

## **Textual amendments examples**

### **Deletion**

- Section 2 of the principal act is amended by deleting the definitions of “Minister” and “District Committee”

### **Deleting and substitution**

- Section 3: “Minister” means a person appointed as a Minister of the government of Kenya under the Constitution, or the President, the Deputy President or the Attorney General.
- The amendment:  
Section 3: Delete the definition of the words “Minister” and “the Minister” and substitute therefore the following new definition in proper alphabetical sequence -  
“Cabinet Secretary” means a person appointed as a Cabinet Secretary of the government of Kenya under the Constitution, or the President, the Deputy President or the Attorney General.  
Delete here goes with substitution.

### **Deleting and substitution**

- The Kenya Ports Authority Act Section 2(3): This Act shall not apply to inland waterways ports run by the Kenya Railways Cooperation.
- The amendment:  
Delete and substitute therefore the following new subsection -  
(3) This Act shall apply to inland waterways ports.

### **Deleting and adding**

- The Copyright Act, section 28(5): All claims for compensation under this section shall be made through an organisation representative of producers of sound recordings.
- The amendment:  
Delete the full stop and add the words “and the compensation shall be collected by the board and distributed to the respective copyright collecting society registered under section 46.”

### **Inserting a new provision**

- Criminal Procedure Code, Section 123: Bail in certain cases.
- The amendment:  
Insert the following section immediately after s 123 -  
123A - Exception to right to bail  
123A(1) Subject to article 49(1)(h) of the Constitution notwithstanding section 123, the Court may decline to grant bail to a person to whom that section applies where ...

## **LEGISLATIVE SYNTAX**

- The legislative sentence is the means the drafter uses to translate policy into law. In each sentence there must be:
  - The legal subject — the person to whom the law is to apply
  - The legal action — the law which is to apply, and

- The circumstances in which the law is to apply.
- The legislative sentence is an arrangement of words to express a command or state a prohibition. It confers a power or imposes an obligation. It states:
  - *How*, the manner in which the law is to operate.
  - *What*, the nature of the legal action.
  - *When*, the conditions under which the law is to operate.
  - *Where* the circumstances in which the law will operate.
  - *Who*, the legal subject, the person given responsibility or on whom is placed an obligation or prohibition
  - *Why*, the policy considerations of the law.
- A drafter should use:
  - Short familiar words and phrases
  - Short sentences which state only one thing
  - Use the same word to express one meaning
  - Consistent spelling
  - The standard form language of the drafting office
- A drafter should not use:
  - Archaic words such as said, same, aforesaid, before- mentioned, herein before- mentioned, whatever, whatsoever, whomsoever, and similar words
  - Latin expressions.
  - More words than necessary

### **Tense**

- Laws are meant to be of continuing application and should be written in the present tense. This avoids complicated and awkward verb forms. The active voice should be used instead of the passive.
- Example
  - Do not write: The function of the board will be or will include or shall include.
  - Write: The function of the board is..... or includes
  - Do not write: A contravention of a provision of this Act shall be an offence
  - *Write*: A contravention of a provision of this Act is an offence
- Use of the passive voice should be avoided because:
  - A sentence in the passive voice does not assign responsibility clearly
  - The passive voice places the receiver of the action before the main person, and
  - Passive construction is confusing when used in legislation.
- Exceptions where the passive voice may be used are:
  - When the person to carry the act is unknown, unimportant or obvious
  - ***Example:*** The letters have been dispatched
  - To avoid the use of gender specific language
  - To put old or repeated information at the beginning of a sentence new information at the end of the sentence to stand out.

### **Shall**

- The drafter should use “shall” to impose a duty or an obligation.
- **Example:** A driver shall provide a licence on demand.
- “Shall” should not be used to predict the future. Where the intention is to predict future action, the word to use is “will”
- A drafter should avoid the use of “shall” to confer a right.
  - Do not write: You shall receive
  - Write: You are entitled to.
- Do not use “shall” to state a rule of law or how it applies. This creates a false imperative.
- **Examples**
  - Do not write: *A person shall be eligible to apply for.....*
  - Write: *A person is eligible to apply for .....*
  - Do not write: *A person who commits an offence shall be liable .....*
  - Write: *A person who commits an offence is liable.....*
  - Do not write: *It shall be unlawful,*
  - Write: *it is unlawful.*

### **Any**

- ‘Any’ means one or some. It is often misused in a legislative sentence when one person or thing is being referred to. It can often be replaced by “a”

### **Each and Every**

- “Each” refers to two or more in a numerical context where there has been previous identification
- **Example**
  - There are ten attorneys in the Division
  - Each is a lawyer often years standing
- “Every” implies a class
- **Example**
  - Every attorney is a lawyer
  - The reference in this example is to each attorney of an identified class lawyers in the Attorney-General’s Department, the reference here is to the number.
- As there are seldom references to number in legislation, it is generally better to use “each” instead of “every”.

### **All**

- The word ‘all’ is a spurious form of emphasis and should not be used.

### **Such and Same**

- “Such” is misused in legislation and creates ambiguity. It should be substituted with the word “the”, “a” or “that”.
- “Same” is used as a preceding noun or phrase in legal jargon and does not add to a legislative meaning. It should not be used as it creates ambiguity. The word “it” or “them” can be used as a substitute

### And/or

- “And” is usually construed conjunctively and connotes togetherness while “or” is construed disjunctively and suggests a choice between two or more options.
- A drafter should use “and” to connect two or more phrases, conditions or events, all of which must occur while “or” should be use to connect two or more phrases events, conditions, when only one or more but not all need occur. Never use “and/or”, rather use “**A or B or both**”.
- **Example**
- The register includes;
  - each person who is seventy years or older,
  - each person who is permanently physically disabled, and
  - each person who. has been declared mentally incompetent.
- Or this rendition;
  - The register includes each person who
  - Is seventy years or older,
  - Is permanently physically disabled, or
  - has been declared mentally incompetent.

### A, An, The

- “A” is used as an indefinite article in legislative drafting to denote the singular, often as part of a general statement.
  - A citizen shall posses an identity card
- “An” is used before a vowel.
  - The citizen shall possess an identity card before applying for a passport
- “The’ is used as the definite article, It is placed before a noun.
  - The identity card must always be carried.

### Example

An entity that is required to be licensed must submit an application to the Commissioner

### Deem

- Deeming clauses should only be used to create a legal fiction. It may be used to provide for the retroactive operation of an Act.
- **Example:** This Act is deemed to have come into force on the first day of January 2000.
- In order to avoid a legalism, “consider” or “thinks” can’ be used instead of “deem’ in situations where a legal fiction is not being created.
- **Example:** A doctor shall be registered to practice medicine if the Registrar considers the doctor to be qualified.

### Before and after

- “Before’ and “after’ exclude the specified day.
- “After” is better than “from” because “from” is equivocal.
- **Example.**
  - After 13th March excludes March 13th.

- From 13<sup>th</sup> *March* is debatable although 13<sup>th</sup> March is probably excluded,.
- The phrase “on” and ‘after’ should be used when the specified day is to be included.
- **Example**
  - The phrase between 1<sup>st</sup> January and 1<sup>st</sup> *March* is ambiguous.
  - After 1<sup>st</sup> January and before 1<sup>st</sup> March is preferable.

### **Where**

- The use of the word “where” conveys a description of a factual situation
- **Example:** Where dogs are running at large.

### **When**

- The use of “when” in legislative drafting is to indicate a single or rare concurrence of a contemplated event;
- Example: When the fee has been paid .....
- The drafter may use “if” to state a condition in a legislative sentence.

### **Which and that.**

- “Which is non-restrictive, “that” is restrictive.
- If the insertion of a comma in the phrase does not change the meaning use “which”, otherwise use “that.”
- A non-restrictive clause is one that can be omitted or placed between brackets without destroying the meaning and is set off by commas.
- **Example**
  - Section 10 which was amended in 1956 was repealed in 1966.
- A non- restrictive clause does not need to be set-off by commas.

### **Punctuation**

- Punctuation is used by the drafter to assist the reader of the law to understand the text easily. There are general rules about punctuation as follows:
  - Punctuate sparingly and with purpose. Unnecessary punctuation can be very distracting, the drafter should ensure that every punctuation mark must serve a purpose.
  - Punctuate for structure and not for sound. A drafter should test every punctuation mark to see whether it assists in explaining the structure of the sentence.
  - Be conventional. While most other forms of prose writing admit a measure of individuality, legislative drafting does not. The drafter should adhere to the conventional use of punctuation marks.
  - Be consistent. Inconsistency is the most common error in the area of punctuation. A haphazard use of punctuation marks, especially the comma can destroy the value of punctuation.

### The comma

- A comma may be used to separate items in a series of words, phrases or clauses
- **Example:** Livestock means cattle, horses, goats, sheep and pigs.

### By, until, till

- Where action is to be taken by a stated date or until or till a date, action on that day is permitted.
- It is better to say “not later than” or “before”.

### Apostrophes

- Apostrophes are used to mark the singular and plural possessive terms.
- To separate long and independent clauses joined by coordinating conjunctions such as and, but, for, nor, or and so,
- To separate words or numbers in order to aid communication

### The colon

- A colon is placed after an expression that introduces a series of items.

### The semi-colon

- The function of the semi-colon is to show a relationship between elements of a sentence which a complete break into separate sentence may obscure. The semi-colon is also used to co-ordinate a series of paragraphs, subparagraphs or listed items.
- **Example:** The Commission shall be the co-ordinating agency for the enforcement of:
  - a. the Anti- Money Laundering Act, 2003 (Act 102);
  - b. the Proceeds of Crime Act, 1995 (Act 103);
  - c. the Miscellaneous Offences Act (Act 104); and
  - d. any other law or Regulations related to economic and financial crimes.

### Hyphen

- The hyphen should generally only be used when the word’s proper spelling includes the hyphen.
- The following are exceptions to this rule:
- Hyphenate if the second element of the word is capitalized or a figure
  - **Example**
  - Anti-Semitic
- They may also be used where reference is being made to important officials, statutory bodies or administrative bodies.
- The names *of* private organisations can be capitalized.

A drafter should state a rule or category directly rather than the rule or category by stating its exceptions.

- Example:
- Do not write: All persons except those eighteen years or older .....
- Write: Each person under eighteen years of age .....



When exceptions are used, the rule or category should be stated first before the exception.

- *Do not write. Draftaria, Transylvania must upgrade*
- Write: Each state except Draftaria and Transylvania must upgrade.

### **The proviso**

- Phrases with the words “provided that” should be avoided because they create ambiguity, they can often be removed or substituted by the word “if”,
- **Example**
- Do not write: Provided that the fee is paid
- Write: if the fee is paid

### **Split infinitives**

- A split infinitive is a grammatical construction where a word phrase, usually an adverb or adverbial phrase occurs between the marker “to” -‘ and bare infinitive form of the verb.
- In English, an infinitive verb fulfils the function of a noun and is formed with ‘to’; for example, to take, to laugh and to be. An example of a split infinitive is” .... to boldly go
- where no man has gone before”.
- *The infinitive is “to go” and it is split by the adverb “boldly”.*
- Example
- The courts intention
- Children television
- Farmers co-operative association (plural)

### **Positive writing**

- The drafter should write positively; if an idea can be expressed either positively or negatively, it should be expressed positively.
- Example
  - Do not write: the panel may not consider candidates other than those with second - class upper degrees.
  - Write: the panel will only consider candidate with second – class upper degrees
- The use of several negatives in one sentence should not be used. A negative can be expressed in a positive form such as:
  - Did not remember                      forgot
  - Left out                                      omitted
  - Did not pay attention to              ignored

### **Capitalization**

- The drafter should use capital letters sparingly. Capital letters should be used for proper names.
- Example
- Ghana
- Lesotho
- The use of capital letters should be restricted to cases where special attentions is drawn to particular circumstances.

### *Example*

- Do not write: Be sure to promptly attend to the clients.
- Write: Be sure to attend promptly to the clients; or be . to attend to the clients promptly.
- 

### **Nouns: singular or plural**

- The singular includes the plural and the plural in the singular.
- Use a singular noun instead of a plural noun. This will avoid the problem of whether the rule applied to each member of a class or to the class as a whole.
- **Example**
  - Do not write: The doctor will treat each patient suffering from typhoid fever and malaria fever.
  - Write: The doctor will treat each patient suffering from typhoid fever and each patient suffering from malaria fever.
- If the plural must be used in a compound word, the significant word takes the plural as shown below:

Do not write:

Attorney-generals :

Notary publics

Director – generals

Write:

Attorney general

Notaries public

Directors general

### **Abbreviations**

- The drafter should avoid abbreviations and acronyms.
- *Example*
  - The acronym should be written in full as non-government organisation
  - which can be shortened in the definition section to:
  - “organisation” means a non-governmental organization
- **An exception is where the acronym has become familiar to the public.**
- *Example*
  - AIDS rather than acquired immune efficiency syndrome
  - DNA rather than deoxyribonucleic acid.

### **Couplets**

- Where words have the same effect or the meaning of one word includes the other, the drafter should not use word pairs.

Do not write

Order and direct:

Authorize and direct

Write:

Order or direct

Authorize or direct

Means and includes  
each and every  
Null and void  
Full and complete

Means or includes  
Each or every  
Null or void  
Full or complete.

### **Listing**

- When listing membership of a body, use commas as the sentence is continuous.
- Use a colon at the end of introductory words and semi-colons at the end of each paragraph when listing objects and functions in tabular form. After the penultimate item, use “and” or “or” as appropriate.

### **Paragraphs.**

- Short paragraphs improve the clarity of a provision.
- Each paragraph should deal with a single, topic. Lengthy, complex or technical provisions should be split into a series of related paragraphs.

### **Gender — neutral language**

- The use of gender neutral language is best practice *in legislative drafting*,
- *The reflection of male dominance in the legislative sentence should be avoided.* Examples of alternatives and the use of alternate words *generally can be* found in Appendix 3. Gender specific pronouns should not be used.
- ***Example***
- Do not write: An employee must wear his identification card
- Write: Employees must wear their identification cards
- Do not write: He must present his application to
- Write: Each application must be presented to
- Do not write: The supervisor or his representative must ins. he work done
- Write: The supervisor or the representative of the supervisor must inspect the work done.
- Do not write: The director shall hold office until his successor is appointed.
- Write: The director shall hold office until a successor is appointed.
- It is often necessary to repeat words to achieve non-sexist language where a nominalization is placed with a verb form, for example.
- Do not write: a person who has stolen goods in his possession
- Write: A person who possesses stolen goods commits a crime.

### **Archaic words**

Legalese in archaic words should be avoided as it mystery “heretofore” or other similar words should not be used; a possible word “hereby” although the phrase “by this Act” can be used as substitute.

### **Expressing numbers**

- In legislation, numbers should be expressed in words to\*\*\*\* wrong figures can be typed accidentally if figures are used. In Schedules however, figures may be used.

### **Word economy**

- Verbosity should be avoided and legal language should be as direct as possible.

### **Sections and subsections**

- An Act of Parliament is divided into sections which contain one idea.
- If the sentence is long, it should be divided into subsections, when these are read together they should convey the same idea.
- ‘Sections are numbered in Arabic numbers consecutively and subsections are also numbered consecutively but in brackets..
- Where the section subsection is long, it is best to divide it into paragraphs to create a full sentence when read with the introductory words and possible including words. Paragraphs are numbered with lower case letters of the alphabet in bracket.
- Further sub-divisions of paragraphs are sub-paragraphs numbered with small L in numbers. The legislative sentences of a Constitution are called articles. The divisions are called clauses. In subsidiary legislation the sentences are referred as to regulations and the sub-divisions as sub-regulations.
- The family tree of sub-divisions be found in legislation is in Appendix 4.

### **Referential legislation**

- Where reference s made in one legislation to another, it is important to ensure at the imported legislation fits in.
- There may be problems with the meaning of words where this has changed due to judicial precedent.
- In order to avoid the situation where reference is made to another enactment to determine meaning, the provision from the referred text should be repeated.

### **Uses of precedents**

Very few things are novel, the drafter can benefit from information game from the laws of other jurisdictions, more especially with the access information communication technology has provided. This reference should however be handledl with c. on since the circumstances in each country differ. It may be better to base a draft on precedent within the jurisdiction than to modify foreign legislation carelessly.

**NB TOPICS**

**POLICY**

**BILLS**

**AMENDMENT OF LEGISLATION**

LEGISLATIVE SYNTAX \*\*

ROLE OF DRAFTER \*\*

\*\* ADD NOTES FROM WHATSAPP

### **LEGISLATIVE DRAFTING KSL CLASS**

We're drafting the digital currency bill.

Check slides

And

- And is usually construed conjunctively and connotes togetherness
- A drafter should use “and” to connect two or more phrases, conditions or events, all of which must occur.
- Eg. The register includes
  - Each person who is seventy years or older;
  - Each person who is permanently
- Hdfkd

SLIDES

- Never use and/or, rather use “A or B” or “both”, eg Public Audit Act
- Separate sub clauses with a semicolon. The last sub clause ends with a full stop.