

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

ATP 103: LEGAL WRITING AND DRAFTING

TUESDAY 17TH NOVEMBER, 2015

DURATION: 3 HOURS

Instructions to Candidates

- (a) Candidates **MUST** answer **FOUR** questions.
- (b) Question one is compulsory**
- (c) Answer at least one Question from each section**
- (d) All questions carry 15 marks each.
- (e) Marks may be lost for illegibility.

PLEASE TURN OVER

SECTION A

1. During the period of the monopoly of the new reformed Telcom Kenya (previously known as Kenya Posts & Telecommunication Corporation) in the telecommunication sector, an applicant for a private telephone connection was subjected to very rigid procedural rules. One was required to disclose, amongst others, his personal details such as postal and physical addresses and their National Identification Number.

Towards the end of the 1990's the telecommunications sector was liberalized. Like in most other sectors the consequence of this was to open room for other players and competitors. It would appear that there were no adequate preparations for handling the plethora of activities that have been witnessed in the sector in the recent past. Several companies are now fighting for shares in the mobile phone industry. It is estimated that there are close to 18 million mobile phone subscribers in the country.

While the focus of the Government has been on the licensing and regulation of the sector's market players, little attention has been paid to the users of the services and products of the mobile phone Industry. There have been cases of criminals buying subscriber module (SIM) cards and then employing them in executing criminal activities. Phones are now used in aid of child abductors/kidnappers in extorting money from their targets.

Cases of ordinary individuals using temporary lines and SIM cards to make anonymous calls or send offending text messages using short message services (SMS) to abuse or threaten their enemies are still rampant. Mobile phones are also reportedly used to aid cheating by candidates in examinations.

Questions have emerged on the issue of who could own a mobile telephone line and whether some restrictions ought to be imposed on the users. Consequently the 2015 regulations on registration of SIM cards have been formulated.

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| (a) Draft salient points of the Government Policy to give effect to the regulations. | (5 marks) |
| (b) Prepare appropriate legislative drafting instructions. | (3 marks) |
| (c) Draft a Bill for introduction in Parliament, with due consideration of rights and obligations, supervision, penalties and transitional issues. | (7 marks) |

2.

- (a) "Good legal writing is best understood as writing that aids legal actors in making decisions in the course of their professional duties." *Anonymous*

Assess the relevance of this statement with practical examples. **(7 marks)**

- (b) What is the impact of plain English in legal writing/drafting in light of the work of a practising advocate in Kenya? **(8 marks)**

- 3..
- a) "Passive voice is not forbidden. Active voice is better and easier to understand hence adopted in legal writing." *Anonymous*

Assess this statement with examples. (7 marks)

- b) Edit the following passage to eliminate passive construction:

The Sunday magazine feature was written by John Ndungu. He argued that the National Assembly's domain must be protected from the courts in order to promote the doctrine of separation of powers. He argued further that we are in danger of the agenda of the National Assembly being set by an overzealous Judiciary and hence as enshrined in our constitution curtail the doctrine of separation of powers. **(8 marks)**

SECTION B

4. (a) Identify and explain the functions of five key parts of a demand letter. (7 marks)

(b) On 10th December, 2010, Ivy Wanjiru entered a Lease Agreement to lease residential apartment No.10 Baraka Villas on L.R. Plot No.490/2 Kirichwa Road, Kilimani, Nairobi at a monthly rent of Kshs.65,000/-. Pursuant to the said agreement, Ivy paid to the landlord a sum of Kshs.130,000/- being two months' rent deposit and the landlord acknowledged receipt of the same. It was a term of the agreement that a party could terminate the lease upon giving the other a notice of two months. Pursuant to this, Ivy gave notice to terminate the lease to the landlord on the 15th August, 2011 and receipt thereof was acknowledged.

In breach of the Lease Agreement the landlord Professor Kamau Ngugi has refused to refund the two months' rent deposit to Ivy. Ivy has approached you as an advocate to act for her and you have determined that she has a reasonable cause of action.

Draft the appropriate demand letter. (8 marks)

5. On 15th November, 2015 you received instructions from your client Professor Bambe that he intends to employ 10 interns in his accounting firm effective 1st January, 2016. The period of employment will be one year with a remuneration package of Kshs.20,000/- per month. The working hours will be 8.30 a.m. to 4.30 p.m. from Monday to Friday.

Bearing in mind the legal framework under Contract Law and Labour Laws in Kenya, draft the appropriate instrument for your client which will be standard for all the prospective interns.

(15 marks)

6. (a) Citing relevant statutes and with the aid of appropriate examples, distinguish between an Affidavit and a Statutory Declaration. (7 marks)

(b) Julius Maruja is the Managing Partner in the law firm of Maruja, Nyangena & Wasike Associates. They specialize in the practice of conveyancing and wish to be placed on the legal panel for Kenya Commercial Bank.

Draft a comprehensive letter to Kenya Commercial Bank authored by the Managing Partner seeking for Maruja, Nyagena & Wasike Associates to be placed on its Conveyancing Legal Panel.

(8 marks)

7. (a) Critically analyse the functional and drafting differences between a legal opinion written to a client and one written to a professional colleague? (7 marks)

(b) Felix Owuor is a Kenyan citizen practising as an advocate in Kisumu County. He is the holder of Kenyan identity card number 1364499 and his address is P.O. Box 225 — 00100 Kisumu. Felix has been recruited by the Tanzanian Lawyers Association (TAWLA) as the Executive Director effective 1st December, 2015. He has nominated his younger brother Adams Owuor of ID No.1456722 as his agent with full powers and authority to generally manage and transact all his affairs in Kenya from 1st December, 2015 until 30th November, 2018 when his contract of employment expires.

Felix has approached you as an advocate to act for him and prepare the necessary legal document to protect his interests while he is out of the country.

Draft the appropriate instrument. (8 marks)

SECTION C

8. Use legislative drafting language and following the instructions given:

(a) Amend the following section by inserting a new section after it to provide for burning of vegetation in shared/common areas.

3. Burning of vegetation without authority
1) No person shall set fire to any vegetation which is not his property unless he has lawful authority to do so.
2) No person shall willfully or negligently kindle any fire, which by spreading may damage or destroy the property of any other person.

(5 marks)

(b) Amend section 10 below to read "a County Government' instead of a Local authority'

10. Engagement of fire-rangers

A Local Authority, for the purpose of controlling grass fires within the area under jurisdiction, may

- a) Engage such number of fire-rangers as the local authority may think fit, who shall be remunerated out of the revenue of the local authority;

b) Appoint any person to be an honorary fire-ranger (5 marks)

(c) Draft the following provisions in proper legislative language

The Cabinet Secretary may, in consultation with the Board, terminate the appointment of the Director-General if he or she —

- a) has been absent from three consecutive meetings of the Board without the permission of the Chairman
- b) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors
- c) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months
- d) is convicted of an offence involving dishonesty or fraud
- e) is incapacitated by prolonged physical or mental illness
- f) is found to have contravened the provisions of Chapter Six of the Constitution.
- g) fails to comply with the provisions of this Act relating to disclosure of interest

(5 marks)

9. t (a) "Public participation is one of the salient features of our constitutional framework that has fundamentally altered the legislative process in Kenya." *Anonymous*

Critically analyze this statement citing relevant statutes. (7 marks)

(b) Using information in question one (1) above, outline the stages in the policy formulation process. (8 marks)

10. (a) Under Section 36 (1) of the Universities Act, 2012, the Cabinet Secretary for Higher Education, Science & Technology has power to appoint a chairperson for Taita Taveta University College Council. On 11th October, 2015, the Cabinet Secretary appointed Prof. Hussein Ibrahim to the position of Chairperson of Taita Taveta University College Council for a period of three years.

Draft the appropriate instrument to legally confirm the appointment. (7 marks)

(b) .q "Prior to drafting a Bill, a legislative drafter ought to be provided with drafting instructions." *Anonymous*

Outline and explain the features of complete drafting instructions. (8 marks)

