

THE KENYA SCHOOL OF LAW



**EXAMINATION FOR ADMISSION TO
THE ROLL OF ADVOCATES**

LEGAL WRITING AND DRAFTING - ATP 103

24TH NOVEMBER, 2014

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer **one** question from each section and a fourth one from any of the three sections
- (b) All Questions carry fifteen (15) marks each
- (c) Marks may be lost for illegibility

SECTION A

Question 1

(a) With relevant examples, explain the meaning, types and purpose of transitions. (5mks)

(b) Identify the transitions in the following sentences:

- (i) The question of damages will be more difficult to predict. The court will probably enjoin those activities that constitute a private nuisance, but awarding damages for Peter's lost profits is less likely. (2mks)
- (ii) The prosecution's second allegation, that Mr. Mahoya's original advocate thwarted the discovery process, should be directed at Mr. Mahoya's original advocate, not at Mr. Mahoya. Mr. Mahoya was unaware that his original advocate shredded the requested document. He cannot be held responsible for the unsanctioned actions of his lawyer. (2mks)
- (iii) In the 1970's, the court narrowed the scope of the "discretionary" category by emphasizing that the State must show that "a policy decision, consciously balancing the risks and advantages, took place..." (2mks)
- (iv) The suspect was with his daughter at an amusement park till 11.00 p.m. that night. Therefore, he could not have committed the robbery. (2mks)
- (v) In the instant case, the son was not the executor of the will. While In the case at hand, there is no indication that the defendant intended to deceive the plaintiff about her rights under the contract. (2mks)

Question 2;

(a) What is plain English and how does it differ from plain language? (4 mks)

(b) Rewrite the following sentences in plain English.

(i) If there are any points on which you require explanation or further particulars we shall be glad to furnish such additional details as may be required by telephone.

(3 mks)

(ii) It is important that you shall read the notes, advice and information detailed opposite then complete the form overleaf (all sections) prior to its immediate return to the Council by way of the envelope provided.

(3 mks)

(iii) Your enquiry about the use of the entrance area at the library for the purpose of displaying posters and leaflets about Welfare and Supplementary Benefit rights, gives rise to the question of the provenance and authoritativeness of the material to be displayed. Posters and leaflets issued by the Central Office of Information, the Department of Health and Social Security and other authoritative bodies are usually displayed in libraries, but items of a disputatious or polemic kind, whilst not necessarily excluded, are considered individually.

(3 mks)

(iv) All modifications, additions, supplements, and/or changes to this contract are subject to and conditioned upon a fully executed, signed, and dated acceptance, approval, and confirmation at the Company's offices.

(2 mks)

SECTION B

Question 3:

John Muteti Kathonzo is a University Graduate from the University of South Africa. His primary school documents ^{bare} the names Johana Muteti, his birth certificate is John Mutet while all his High School and postgraduate certificates bare the names John Muteti Kathonzo. His employment records and passport ^{bare} the names John Muteti Kathonzo. Six months ago, John converted to Islam and his muslim name is Abdulrazak Muteti. He desire to change his name to reflect his new found faith and is in the process of changing all his legal documents to read the same name Abdulrazak Muteti.

John has approached you to undertake the transaction.

(a) Advise John as to the procedure to follow. (5mks)

(b) Draft the requisite document. (10mks)

Question 4:

Susan Kayenje, your longtime client has finally realized that her years are numbered. Susan is married ^{to} Joseph Kazito and has four children namely Carol, Juma, Felix and Mambo Yote. Susan has two adopted children namely Zakayo and Zubedi both men. The youngest of her children is aged 18 years. She intends to appoint her spouse as the executor of the Will, and has nominated one Mali Mingi as the trustee and Guardian. She has decided to give her residence to her spouse but if her spouse survives her; as for the ^{residual} ~~residue~~, she gives it to her spouse if the spouse survives ~~me~~. ^{residue}

Susan has several bank accounts as follows: standard chartered Bank, Kenyatta Avenue, 20m kshs; Equity Bank, 2 million shillings, KCB, 3 million shillings.

She owns a number of apartments as follows; Kilimani apartments, Runda Apartments and Ongata Rongai Apartments. Each of these apartments are worth 200 million shillings and she wants them distributed to the Boys only in equal shares.

She has shares as follows; one million Safaricom shares to be given to the adopted children in equal shares; five hundred thousand Kenya Airways shares to Carol; two million Stanchart Shares to Juma, Felix and Mambo.

She has three cars which she has decided to leave to her spouse.

She also has tax arrears totaling ten million Kenya shillings which she wants paid from the estate.

Draft the will. (15 mks)

SECTION C

Question 5:

The global community has agreed on a Global Strategy for Women's and Children's Health in order to unlock the progress required to ensure the achievement of the health related Millennium Development Goals (MDGs 4, 5 and 6) by the 2015 deadline. In spite of Kenya's announced commitment to both the MDGs and the Global Strategy, women and children continue to die unnecessarily. Maternal mortality remains high at 488 maternal deaths per 100,000 live births. The Under 5 mortality rate is 74/1000 live births. The causes underlying this tragic and preventable situation include poverty, inequality (gender; urban-rural), under-investment in social services and infrastructure including education, water and sanitation.

Having realised that Kenya may not achieve the MDGs within the stipulated period, the Cabinet Secretary for Health has instructed you to draft a maternal, newborn and child law. The precise instructions as to content includes:

1. Bill should provide a comprehensive quality health services to meet the health needs of mothers, newborns and children; establish a coordinated structured system for the provision of quality maternal, newborn and child health services; provide a framework that is responsive to causes of maternal, newborn and child health services among others;
2. For unexpectant women, they should receive services that relate to the occurrence and course of future pregnancy including comprehensive family planning services; preconception care services as may be prescribed from time to time; and counseling and referral to licensed adoption services if indicated or desired.
3. Expectant women should receive the following services— early diagnosis of pregnancy; referral for and provision of prenatal care; referral to childbirth preparation classes as desired or to adoption services at licensed agencies if indicated; services in the intrapartum period; and services during the postpartum or postnatal period.
4. Services in the neonatal period and children up to 12 years include comprehensive newborn care including post natal follow up; health services that ensure child survival growth and development including optimal child nutrition, childhood vaccination, growth promotion and monitoring, developmental promotion and monitoring, and child protection; comprehensive assessment, diagnosis, treatment or referral and follow-up as may be prescribed in the guidelines; immunizations recognized standards recognized nationally; assessment, counseling and anticipatory guidance with referrals and follow-up as needed regarding child development, behavior counseling and provision of support services as required by children with chronic illnesses or handicapping conditions; and breastfeeding practices among others.

5. Women with special needs should at the bare minimum be entitled to maternal health services that are responsive to pregnant women; pregnancy related services as described for those who are pregnant; diagnosis and treatment or referral and follow-up of mental health problems, both acute and chronic, including emotional and learning disorders, behavioral disorders, alcohol and drug related problems, and problems with family and peer group relationships; provision of adolescent friendly services; provision of disability friendly services; provision of respectful and dignified care; and counseling and anticipatory guidance with referrals and follow-up of the adolescent or guardian as appropriate. Women with special needs include adolescents, women with disabilities, mental illnesses and women in marginalized areas.
6. In all these services, the Cabinet Secretary may prescribe additional services available by way of regulations.
7. There are instances where expectant women have been mishandled, accordingly the law should require that a person seeking maternal, newborn, and child health services should be treated with courtesy and respect for their individuality by employees of or persons providing service in a health care facility.
8. Health is a devolved function under the constitution although MDGs are international Commitment issues which do not fall under the purview of county governments. Accordingly there is need to create an Inter-ministerial Committee to spearhead the fight against maternal deaths, infant mortality and morbidity issues. The Committee should comprise of representation from the national government and county governments on a 50-50 basis and at least three persons representing the public. The Committee should comprise of a maximum of 7 members who should serve for a period of three years, renewable once. The Committee shall draw its secretarial services from the Department of Family Health Services of the Ministry of Health.
9. Further, the Bill should task County Government to provide sufficient funds for maternal, newborn and child health services in their annual budgets.

Using the above instructions, draft the Bill, assigning it an appropriate title. You should not draft any schedules or memorandum of Objects and reasons. (15 Mks)

Question 6:

The Constitution of Kenya, Article 132(1) (b) provides that the President shall address a special sitting of Parliament once every year and may address Parliament at any other time. Further, Standing Orders of the Senate and National Assembly also provide for a joint sitting addressed by the President. The President, His Excellency, Hon. Uhuru Kenyatta C.G.H., President and Commander-in-Chief of the Kenya Defence forces, is scheduled to address a Joint Sitting of Parliament on **Monday 1st December, 2014 at 3.00 pm** at the National Assembly. The respective Standing Orders 22 provide for the Joint Sitzings.

Draft the appropriate instrument convening the Joint Sitting of Parliament. (15 Mks).