

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 103: LEGAL WRITING AND DRAFTING

THURSDAY 21ST JULY 2011

DURATION: 3 HOURS

Instructions to Candidates

- (a) Candidates should attempt FOUR questions
- (b) Answer one question from each section and a fourth one from any of the three sections
- (c) All questions carry 15 marks each
- (d) Marks may be lost for illegibility

PLEASE TURN OVER

SECTION A

1. (a) For what purposes are transition words used? (5 marks)
(b) Identify the transition words in the following paragraphs and explain what the transition signifies in each case.
 - (i) For a petitioner to succeed in challenging the validity of a will on the ground of lack of attestation, he must show that the testator's signature was not made in the presence of two witnesses who were fully aware of the signing process. This is in accordance with Section ii(c) of the Law of Succession Act. This section provides that the testator's signature must be made in the presence of two witnesses.
 - (ii) A leading authority on the signing and attestation of wills is the English case of Smith v. Smith. In that case, the court held that if a testator signs his will in the presence of the attesting witnesses who see him in the act of writing and they attest, the attestation is valid, although they do not see the signature. The attesting witnesses to the will saw the testatrix writing something on the will before they signed, but they did not see what she wrote. Also, they did not know that it was a will. When they subscribed their names, they did not see the attestation clause, which contained the testatrix's signature, or any of the writing on the will. This is because the testatrix concealed it from them by holding a piece of blotting paper over it. In actual fact, there was a full attestation clause in the testatrix's handwriting.
2. (a) Discuss the use of plain English in legal writing. (6 marks)
(b) Edit the following sentences to cure the separation of words. Keep the subject, verb and object together at the beginning of the sentence.
 - (i) Agnes, in the course of her struggle to provide for her children as a widow, accrued huge debts to her family and friends (3 marks)
 - (ii) The trustee may, at any time, by an instruction in writing executed by the trustee, with the concurrence of the City Council, accept the resignation of any co-trustee. (3 marks)
 - (iii) The allegation in the original plaint that the first defendant was driving the vehicle as a servant of the motor vehicle owner was omitted. (3 marks)

SECTION B

3. Jim Jones was registered as a student of the Kenya School of Law in January 2010. In the course of the year it was discovered that he had not been attending classes as required and that his girlfriend Anne Agnes had been signing the attendance roll for him. This she admitted in writing to the School authorities.

On the date of hearing of his disciplinary case, the disciplinary Committee refused to listen to him saying the written confession of Anne Agnes was all it needed to deal with him. It recommended that he be expelled from the School. That recommendation was approved by the School Board which proceeded to expel him. The decision was communicated to him in writing in April 2011.

Jim Joe has approached you as an aspiring Advocate of the High Court to advise him on the legal issues arising and how best to deal with them to protect his interests.

Draft your legal opinion.

(15 marks)

4. (a) What are the critical issues that a lawyer must take into consideration when drafting a will? (2 marks)

- (b) Jane John is a single parent of two girls – Grace John and Gladys John, aged 12 and 9 respectively. She is a successful business person in Nairobi and is of Post Office Box Number 22222 – 00100 Nairobi.

She has instructed you, Wakili Lawyer to prepare her will. It is the first time she is making a will. She instructs you that in the event of her death.:

- (i) Her 2,000 shares in CFC Stanbic Bank be given to her sister Maggie John.
- (ii) Her Old Mutual Unit trust investment in the sum of Kshs.2,100,000 be given to her daughter Grace John.
- (iii) Her savings of Kshs.2,100,000 in a fixed deposit account with Standard Chartered Bank be given to her daughter Gladys John.
- (iv) Her property in Nairobi LR 456/290 in Loresho be held in trust for her children by her sister Maggie John and disposed of within a year of her death to cater for their education.
- (v) Her cousin John Martin, Advocate be the executor of her will.
- (vi) Her remains be interred at Langata Cemetery.
- (vii) The residue of her estate to cater for funeral and other incidental expenses.

Draw a draft will for her perusal.

(10 marks)

SECTION C

5. The implementation of the Sexual Offences Act calls for a multi-sectoral approach owing to provisions that require action by various sectors and institutions. Such approach requires a strong coordinating mechanism to sufficiently support implementation. A National Authority on Administration of Sexual Offences (NAASO) shall be responsible for the implementation of this policy. The Authority shall comprise a Chairperson and 8 other directors, who shall be appointed by the President on the advice of the Minister responsible.

The Vice Chairperson as well as sub committees as may be determined by the Board shall be elected on the first sitting of the Board immediately after appointment. NAASO will have a full time secretariat headed by an Executive director to monitor all programmes being implemented across sectors.

The Board which will meet once every three months, will be charged with the responsibility of bringing together (on an annual basis) all those involved in the administration of the law, to produce multi-sectoral annual plans with specific targets and outcomes which will be monitored on a regular basis and evaluated on an annual basis.

The NAASO will collect, analyse and publish relevant statistics on sexual offences on a quarterly basis. The authority will also promote victim and support services and rehabilitation of offenders.

Using the above instructions forwarded to you, prepare a Cabinet Memorandum.

(15 marks)

6. You are a drafter in the State Law Office. Using instructions in question 5 above, prepare an amendment Bill creating the Authority to implement the Sexual Offences Act.

(15 marks)