

# Legal Writing and Drafting

**ATP 103**

Mugambi Laibuta

# Key Outcomes

- Use effective oral and written communication skills in discharging professional duties.
- Conduct legal research and analysis in problem-solving.
- Draft correspondence, pleadings and other legal documents.
- Communicate clearly, concisely, efficiently and effectively.
- Demonstrate appropriate choice of language.
- Draft legislation.

# Course Content

- Introduction to legal writing
- Effective writing process
- Sentence and sentence transitions
- Effective paragraphing
- Syntax and Voice
- Advanced Legal Research
- Case Briefs and Case analysis

# Course Content

- Drafting Letters and other Correspondence
- Report Writing
- Drafting Legal Opinions
- Drafting specialized legal documents
- Introduction to legislative drafting
- The legislative process
- Policy and Drafting instructions

# Course Content

- The Legislative Sentence (words and expressions: syntax)
- Drafting a Bill
- Amending legislation
- Penal provisions

# Terms

- First Term – Legal language
- Second Term – Drafting legal documents
- Third Term – Legislative drafting

# Course Assessment

- The course will be assessed in terms of the Council of Legal Education regulations. This is:
    - Witten Examination Project work (Term 1): 20%.
    - Oral examination (Term 2): 20%.
    - Written Examination (Term 3): 60%.
- 100**



**LEGAL WRITING IS ALL  
ABOUT EFFECTIVE  
COMMUNICATION**



# Exercise

Imagine you are acting for a client who is claiming Ksh. 100,000 from a tenant. The tenant has not paid rent for three months. Your client instructs you to draft a demand letter to her tenant.

(The tenant is 60 years old and received minimal formal education)

- Draft two paragraphs of the demand letter

# Use of words

- Words are the dominant tool of trade for lawyers.
- Nothing of consequence can be done without use of words.
- Most important skill that marks out a good lawyer – ability to communicate.
- Good choice of words + good piecing together = effective communication.

# Use of words

- A lawyer communicates effectively by using words well:
  - To explain something to a client – put it in a way that client understands.
  - To get information from a witness – frame question in the right way.
  - To make a point to the court – express it in the most telling (persuasive) way.

# Use of words

- Key issues
  - Choice of words
  - Audience

# Audience

- Before considering the choice of words, a lawyer takes the audience into account. Is the audience...
  - Young?
  - Old?
  - Educated?
  - Professionals? Lawyers? Engineers? Doctors? Teachers? Etc
  - A corporation or organization?
- **Always choose your words with the audience in mind**

# Context

- What is the writing for
  - Formal v informal (slang/sheng/social media)
  - Report writing
  - Legislation
  - Opinion writing
  - Correspondence
  - Litigation/Dispute resolution – pleadings/court documents
  - Commercial transactions etc

# Qualities of good writing

## 1. Intention

The final version of what you are drafting should be what you intend it to be...

# Qualities of good writing

## 2. Clarity

- Being clear and easy to understand
- All writing must be planned and thought through.



# Qualities of good writing

## 3. Logical structure

- The whole piece of writing needs to be composed in a clear and coherent manner
- Logical structure refers to the way information in a document is organized; it defines the hierarchy of information and the relation between different parts of the document. Logical structure indicates how a document is built, as opposed to what a document contains
- Different documents different structures – letters/emails/pleadings/contracts etc

# Qualities of good writing

## 3. Logical structure

- You cannot make a point without explaining it.
- You cannot write an opinion without giving reasons for it.
- The reasons you give must lead to the conclusion you express.
- The reasoning process is a series of small links in a logical chain.
- Each link must be placed in the right order and connected correctly to the other links.

# Qualities of good writing

## 4. Spelling

- Good writing should be free from spelling errors.
- Spelling errors make you look unprofessional. Take all reasonable steps to eliminate them.
- Spell names correctly.

# Qualities of good writing

## 5. Grammar

- Writing should be free from grammatical errors.
- Correct tenses.
- Correct subject/object verb agreement.

# Qualities of good writing

## 6. Punctuation

- Punctuation is crucial to the meaning of a legal document.
- Take care to use full stops, commas, semicolons and colons properly and in the right places.
- The sense of a sentence can be destroyed by a comma in the wrong place or lack of one where it is needed.

# Qualities of good writing

## 7. Precision

- Using words that help create strong mental pictures and avoid wordiness.
- Using the fewest possible words without sacrificing meaning to make the writing more understandable.

# Qualities of good writing

## 8. Non-ambiguity

- Words may be used which mean precisely what we intend, but which are capable of having another meaning if looked at in a different context.
- In legal writing, be aware of all the different contexts from which your words may be seen.

# Qualities of good writing

## 9. Conciseness

- It should be succinct and straight to the point.
- Avoid repetition, long windedness or digression.



# Qualities of good writing

## 10. Completeness

- Writing must express the writer's ideas completely.
- If it only partially expresses those ideas, it is incomplete.

# Qualities of good writing

## 11. Elegance

- Elegance has to do with flow and rhythm.