

**COUNCIL OF LEGAL EDUCATION.**



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

**ATP 103: LEGAL WRITING & DRAFTING**

**WEDNESDAY 17<sup>TH</sup> JULY, 2019.**

**DURATION: 3 HOURS.**

**Instructions to Candidates:**

- (a) This paper contains **Four (4) printed pages** including the cover page, with a total of **Six questions**.
- (b) Candidates **MUST** answer **FIVE** questions.
- (c) **Question ONE** is compulsory and carries **20 marks**.
- (d) **All other questions** carry **10 marks** each.
- (e) Answers **MUST** be supported by relevant case law and statutory provisions where required.

**PLEASE TURN OVER**

### QUESTION ONE

Mr. Jay is a motor vehicle salesman. He owns and manages Gari Chap Limited, which trades in both second-hand and first-hand motor vehicles. He has employed several members of staff as salesmen who are paid a commission at a fixed rate of ten per cent on the sales made. Mr. Jay, on occasion sells a motor vehicle which he has not purchased, on behalf of his clients. When he does this, the commission charged is based on the agreed rate between the clients and him.

On the 22<sup>nd</sup> of August 2013, Jacinta Wangeci brought her Mercedes Benz C-Class to Gari Chap Limited. Jacinta and Jay agreed that the commission payable for the sale of the Mercedes Benz would be seven percent of the amount paid. They further agreed that the commission charged would not exceed Kshs.50,000. Jacinta left the motor vehicle with Mr. Jay and proceeded to her home.

On 31<sup>st</sup> of August 2014, Tim, one of Jay's salesmen successfully negotiated and sold Jacinta's Mercedes Benz to Paul for Kshs.800,000. Tim later informed Jay of the sale and remitted Kshs.720,000 to Jay.

On the 4<sup>th</sup> of September 2014, Jay informed Jacinta of the sale of her Mercedes Benz and requested that she collect her cheque. When Jacinta came to collect her payment, Jay handed her a cheque for the sum of Kshs.670,000/- as the payment for the Mercedes Benz after deducting Kshs.50,000 as commission.

On the 17<sup>th</sup> of June 2019, Paul wrote to Jacinta and requested her to approve his request for transfer of ownership of the Mercedes Benz online. Jacinta subsequently proceeded to approve the transfer of the ownership of the Mercedes Benz in favour of Paul. However, she noticed that the purchase price indicated by Paul in his request was Kshs.800,000.

- (a) Assume that Jacinta has come to your law firm for legal advice on how to recover her outstanding payment. Draft a demand letter on the issues raised. (5 marks)
- (b) Assuming that you have received instructions from Jay alleging that he has violated the law, draft an appropriate response to the demand letter in (a) above. (5 marks)
- (c) Assuming that your law firm has received the response referred to in (b) draft the appropriate documents to be filed in court that would adequately enable Jacinta to recover the amount sought. (10 marks)

### QUESTION TWO

The Association of Commonwealth Lawyers in Africa (ACLA) has noticed that most of its members still draft documents in traditional English, thus most legal documents in the region;

- (a) Use gender-insensitive language;
- (b) Use legalese and jargon;
- (c) Use foreign language;
- (d) Have complex paragraphs and sentences; and
- (e) Are wordy.

ACLA has retained you as the resource person to train its members on the techniques they could use to transition from traditional to plain English.

Write your presentation.

(10 marks)

### QUESTION THREE

The following statements appearing in various affidavits offend certain rules of drafting affidavits.

- (i) Under Chapter 5 of the Constitution of Kenya, I have the right to property.
- (ii) Why should I have to be the one to spread the bed?
- (iii) I could tell she was happy to meet Tom.
- (iv) There are rumours Mary intends to sue for child support
- (v) I was shocked to learn that John stays with his mother.

Apply your knowledge and skills in drafting legal documents to:

- (a) Identify the anomalies in the drafting. (5 marks)
- (b) Suggest alternative statements that comply with the applicable rules without altering the meaning. (5 marks)

### QUESTION FOUR

"Sophists prided themselves in their ability to win debates on any subject even if they had no prior knowledge of the topic through the use of confusing analogies, flowery metaphors and clever word play."

The above quote demonstrates the value of persuasion and its inexhaustible possibilities. The whole philosophy of advocacy and representation by lawyers is hinged on the fact that the advocate is better equipped to make the case of another person than that other person would do for themselves. This is particularly so when lawyers are invited to prepare written discussions to defend, appraise or critique including appellate briefs and pleadings.

- (a) In the above context, prepare a persuasive write-up to convince a group of young lawyers that one can be upright and ethical and still be successful in the legal profession in Kenya. Maximum of one and half pages. Ensure to title your work appropriately. (5 marks)
- (b) Distinguish this kind of writing from objective writing. (1 mark)
- (c) What styles, tactics or methods of persuasion have you employed in the essay? Identify and explain at least two (2). (4 marks)

### QUESTION FIVE

Identify and draft the necessary document(s) that would enable a person to change his/her name. (10 marks)

### QUESTION SIX

Draft the clauses that would be required in the scenarios presented in the following:

- (a) The County Attorney of Nairobi City County has instructed your law firm to prepare a Bill that penalizes the pollution of the city by the defecation of pet dogs that is left lying around by their owners.

Draft the clause that would make this conduct an offence. (2 marks)

- (b) The Inspector General of Umbaku National Police Service has discovered that the offence of terrorism in their statutes only attaches criminal liability to the perpetrators of the terrorist act.

Prepare a draft clause that would attach liability to other persons who may be involved in a terrorist activity. Kindly note that the Prevention of Terrorism Act of Umbaku provides that the maximum penalty of the offence of terrorism is imprisonment for a term not exceeding twenty-five years. (2 marks)

- (c) The following texts are drawn from various Statutes of Kenya. However, the sections have been altered in manner that offends the principles of legislative drafting. Identify and draft amendment clauses that would ensure consistency with the principles of legislative drafting.

i) **The Physiotherapists Act, 2014**

Sec. 9. Remuneration of Council Members

The Salaries and Remuneration Commission advises the Cabinet Secretary who determines what the Council should pay its members as allowances for expenses. (1 mark)

Sec. 14. Financial Year

Each year the period of twelve months ending on the thirtieth of June, shall be the financial year of the Council. (1 mark)

ii) **The Fisheries Management and Development Act, 2016**

Sec.34. County may develop fisheries Management Plan

(1) The fisheries management measures and plans for fisheries resources, developed by each county within its jurisdiction shall be proved in the Fourth Schedule to the Constitution. (1 mark)

Sec. 69. Engagement

(1) Each person engaged in commercial aquaculture in Kenya, shall take a few or many measures to prevent or minimize the risk of the escape of aquaculture stock in the wild. (1 mark)

iii) **The National Youth Service Act, 2018**

Sec. 23. Enlistment to the Service

A person is eligible to be enlisted as a member of the service if he or she is a youth, whose age is between eighteen years and thirty-five years, as defined under this Act. (1 mark)

Sec. 68. Repeal of Cap. 208

The National Youth Service Act is deleted. (1 mark)

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END