

**COUNCIL OF LEGAL EDUCATION.**



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

**ATP 103: LEGAL WRITING & DRAFTING**

**WEDNESDAY 06 APRIL, 2022**

**DURATION: 3 HOURS.**

**Instructions to Candidates:**

- (a) This paper contains **Five (5) printed pages** including the cover page, with a total of **Six questions**.
- (b) Candidates **MUST** answer **FIVE (5) 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

Evelyne Tanoh Sikula has been married to Siakago Tim Baraka since 2010. She has always been addressed as Mrs. Evelyn Baraka; although she has never officially changed her name. She now wishes to drop her surname and adopt that of her husband.

Draft the necessary legal documents that she requires to lodge with the relevant authorities in order to change her name (20 marks)

### QUESTION TWO

"As a beginning lawyer, I was assigned to assist an older man, a business litigator. He hated verbosity. When I would bring what I thought was a finished piece of writing, he would read it quietly and take out his pen. As I watched over his shoulder, he would strike out whole lines, form clauses into phrases and torn phrases into single words. One day at lunch, I asked him how he did it. He shrugged and said "its not hard – just omit the surplus words."

Richard Wydick 'Plain English for lawyers' (1978) 66 California Law Review 727, 729

In the article above, Wydick recommends several ways of shortening unnecessarily long sentences: Cutting out excessive conjunctions or "glue words"; trimming verbose word clusters and; avoiding compound propositions and redundant legal phrases.

Considering his recommendations and the quote above, shorten the following sentences and briefly explain the approach you have taken to do so under each shortened sentence (10 marks):

- a) The agreement may be amended, revised or modified only by a written instrument duly executed by or on behalf of each party hereto and expressed in a common document
- b) The great people of Kenya demand as they should that the provisions of the constitution which touches on their fundamental rights and freedoms must be implemented without further undue or unreasonable delay.

(c) In witness whereof, this deed of transfer has been executed by the duly authorised representatives of the parties the day and year first written hereinabove which is for the avoidance of doubt 20<sup>th</sup> August 2020

(d) The High Court sitting in Kerugoya is considering the question as to whether the purported transfer of the powers of the county government to the national government is null and void in law

(e) In view of the directive issued by the Chief Justice who is the head of the Judiciary dated June 2020, this ruling has been delivered to the parties online.

### QUESTION THREE

Some of the following titles of sections appear in Part IV of the Central Bank Act, Chapter 491, Laws of Kenya, although in a different order.

- Deputy Governor
- General disqualification for all Board members.
- Establishment and functions of the Board of Directors
- Remuneration
- Meetings of the Board
- Governor
- Special disqualification for the Governor and Deputy Governor
- Composition of the Board of Directors
- Qualification for Governor and Regulatory Governor
- Delegation by the Board.

Arrange the sections to flow logically while explaining the principles guiding your action (10 Marks)

### QUESTION FOUR

"Legal drafters seek to give effective written expression to instructions from clients. The skills needed to undertake that task are sometimes formidable. And the skills are exercised in a context where the ultimate arbiters of meaning are not the clients or the

drafters, but the courts. This is not to say that drafters should write defensively, tailoring words and concepts for the judge alone. On the contrary, they write for their clients, who are the readers and users of the documents. But they must also appreciate that a document may end up before a judge, and so must strive to ensure that the judge will interpret their draft as they (the drafters) intend."

Peter Bult, *Modern Legal Drafting*, Cambridge, 2014 page 46.

Discuss any five (5) principles which judges use to interpret legal documents (10 marks)

### QUESTION FIVE

The State of Merca is located on the East African coast. The economy of this country has been adversely affected by effects of COVID-19, political instability and extreme weather conditions. Only recently, the Ministry of Land, Mining and Natural Resources delightfully announced the discovery of polymetallic nodules bearing nickel, iron and diamonds, off the coast of Merca. The location of the discovery is well within the exclusive economic zone limit of Merca.

The process of exploiting polymetallic nodules however is unlike any other that Merca has experienced. The technological aspects of it, the investment strategies, the financing, the aspect of the exploration that relates to environmental conservation are some of the aspects that the relevant Ministries must explore and plan for.

- a) As Parliamentary Counsel Intern in the Office of the Attorney General of Merca, explain why a policy would be the most appropriate legislative step at this point. (2 marks)
- b) Do you think there would be need to have a Bill in addition to the policy? Explain your answer. (2 marks)
- c) Discuss the main legislative steps to be followed in the envisaged policy making process. (6 marks)

### QUESTION SIX

Makunga School is a leading private School in Kenya. Mr. Ticha is its Chief Principal. Pesa Enterprises is a company that sells and distributes text books across Kenya. Mr. Tabu is its Managing Director.

According to the agreed terms of the contract, Pesa Enterprises will supply 1000 Lukha English textbooks each month for the entire year of 2023 at a unit price of 1300 Kenya shillings. On the other hand, Makunga School will pay the full amount due within 30 days of the delivery of every instalment of the text books. Either party may terminate the contract by giving one month's notice in writing. The parties agree further that in case of a conflict, the same will be determined through arbitration under Kenyan Law.

While highlighting the standard provisions of a common law contract, draft the contract (10 marks)

