

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 103: LEGAL WRITING AND DRAFTING

THURSDAY 17TH NOVEMBER, 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) One of the major problems with lawyers is the inability or refusal to write in plain English. They use arcane phrases to express common place ideas. Word-wasting idioms are a good example of this. What are word-wasting idioms and how do they affect the quality of written communication?

(5 marks)

- (b) Edit the following sentences to omit word-wasting idioms:

- (i) Pursuant to the terms of the license, the licensee could operate a 24-hour entertainment facility.
- (ii) At such times as the shop closes, the alarm system is activated.
- (iii) This is a situation with respect to which mandatory injunctive relief is inappropriate.
- (iv) Subsequent to her release from prison, she was confined at home for a period of not less than six months.
- (v) There can be no doubt but that the learned judge has to recuse himself from this matter.
- (vi) The action was barred by reason of the expiration of the time period specified by the statute of limitations.
- (vii) The Court of Appeal must give consideration to the question as to whether there is a conflict between the Constitution and the Penal Code on the death sentence.
- (viii) Until such time as the plans receive the approval of the design review committee, commencement of construction is prohibited by the rules adopted by the homeowners' association.
- (ix) In the majority of instances, the insurance adjuster will, at the outset, deny the claim.
- (x) Instigation of a law suit in the absence of a good faith belief that the underlying claim is supported by a legal and factual basis can result in professional indiscipline of the advocate, in addition to the imposition of litigation sanctions on both the advocate and on the client as well.

(10 marks)

2. To make legal writing easy to understand, most declaratory sentences should follow the normal English word order. Revise the following sentences putting the subject, verb and object together and near the front. Omit as many surplus words as you can.

- (i) A building contractor, after complying with a property owner's request to make a significant deviation from the plans and specifications previously agreed upon, may impose a reasonable additional charge for the deviation.

(3 marks)

- (ii) A lawyer having offered her client's testimony in the belief that it was true, and having subsequently come to know that the evidence is false, must make "reasonable remedial measures."
(3 marks)
- (iii) "Reasonable remedial measures" includes as a first step remonstrating with the client in confidence, telling the client about the lawyer's duty of candour to the court, and seeking the client's cooperation with respect to the withdrawal or correction of false testimony.
(3 marks)
- (iv) The second remedial step, which should be taken if and only if there is a failure of the first step, described above, is for the lawyer always seeking to cause the minimum amount of harm to the client and the client's legitimate objectives to consider withdrawing from representation, if withdrawal will undo the effects of the false testimony.
(3 marks)
- (v) Disclosure of the false evidence to the court, which is the third and ultimate step and which is to be taken only after it becomes apparent that the first two steps are unavailing, is a drastic step in that the lawyer is allowed, in situations where it is necessary, to reveal information to the court that would otherwise be protected by the advocate – client privilege and/or the ethical duty of confidentiality.
(3 marks)

SECTION B

3. You are a Senior Associate in the firm of Wakili & Co. Advocates. Read the following communication from a Kamau Otieno, a Senior Partner in the firm and respond to it.

Wakili & Co. Advocates
Internal Memo

To: Senior Associate
From: Kamau Otieno, Senior Partner
Date: 17 November, 2011
Re: Nafula Mrembo

We are currently engaged in a dispute involving our client Nafula Mrembo and Naivasha Holiday Resort. We have filed suit against Naivasha Holiday Resort for personal injuries sustained by Nafula as a result of a rock climbing accident in which Kabaka Kudumbe, an employee of Naivasha Holiday Resort collided with her. All of the events took place in Naivasha Holiday Resort. The discovery process has yielded the following facts:

At the time of the accident, Kudumbe was employed by Naivasha Holiday Resort as a Chef at the Sundance Restaurant. Occasionally Juma Patel, the Manager of Sundance Restaurant, which was located at the eastern end of the resort, and the Sky Club Restaurant ("Sky Club") which was located at the western end of the resort, directed Kudumbe to make periodic stops at Sky Club to monitor operations. Prior to the accident, Kudumbe had made several inspection trips to Sky Club. Kudumbe was paid for these trips.

On 15 March, 2011, the date of the accident, Kudumbe was scheduled to begin work at the Sundance Restaurant at 3.00 p.m. Prior to beginning work, he had planned to go rock climbing with Kigen Mutiso, who was also employed as a Chef at the Sundance Restaurant. Naivasha Holiday Resort preferred that their employees know how to rock-climb since it was a major attraction at their facility. On the morning of the accident, Patel asked Kudumbe to inspect the operation of the Sky Club prior to beginning work at the Sundance Restaurant.

Kudumbe and Mutiso stopped at the Sky Club on their way to Sundance Restaurant. At the Sky Club they had a snack, inspected the kitchen and talked to the personnel for approximately fifteen to twenty minutes. Kudumbe and Mutiso then passed by the rock-climbing centre which was located at the centre of the resort, with the intention of thereafter heading to the Sundance Restaurant to begin their work there. Kudumbe decided to take several climbs to while away time. On his second descent, he decided to take a jump of one crest on a blind side of the rocks. He had taken this jump many times before. A climber moving relatively quickly is able to become airborne at some point because of the steep drop on the downhill side of the crest. Due to this drop off, it is impossible for a climber above the crest to see climbers below the crest. This jump is well known to Naivasha Holiday Resort. In fact, the resort has often suggested to people not to jump off the crest. There was also a sign requiring caution at the crest. Kudumbe, however, decided to ignore the sign and jumped over the crest suddenly. Nafula had just entered the blind side at a point below the crest and had stopped to catch her breath. When Kudumbe jumped, he collided with Nafula and hit her in the head. Nafula was severely injured.

I have recently spoken to the advocate of Naivasha Holiday Resort: she has indicated that she plans to file an application to strike out our suit as not disclosing a reasonable cause of action. Please give me your opinion on the viability of our suit.

Signed:
Kamau Otieno

(15 marks)

4. You are an Associate in Lulu & Co Advocates. The following assignment has been placed for your attention.

Lulu & Co. Advocates

To: Associate
From: Senior Partner
Date: 17 November, 2011

Re: Intelligent Solutions Ltd

I have come from a meeting with the Managing Director of Intelligent Solutions Ltd. The company wants to employ a new Marketing Manager whose name is Ahmed Kaburu.

Use the information that follows to draft the employment contract. Consider defining any terms used repeatedly. The information is not in any particular order and I leave it to you to decide how to organize it.

1. New employee: Ahmed Kaburu. He lives in Nairobi. His address is P O Box 121212 – 00100 Nairobi.
2. Employer: Intelligent Solutions Ltd. The company is incorporated in Kenya with address P O Box 898989 – 00200, Nairobi. It has offices in Mombasa, Kisumu, Kampala and Kigali.
3. Intelligent Solutions Ltd is a wholesale distributor of computer software.
4. Kaburu's position will be Marketing Manager for Kampala and Kigali. He is expected to work from the Kampala office.
5. The agreement can be terminated for cause. For cause: means:- situations where there is a disclosure of confidential information or other violations of the agreement, dishonesty, inability to perform duties, neglect of duties, illegal conduct or doing competing business.
6. The agreement will be signed by the parties on 1 December, 2011.
7. Kaburu is to receive Kshs.720, 000 per month payable on the last business day of every month.
8. Kaburu is to receive an annual 10% commission of collected gross revenue of sales of computer software attributed to him in every year of service.
9. Payments of salary and commission will be paid in the Kenyan currency.
10. For purposes of calculating commission payments, revenues will be based on the current and fair rate of exchange for currency of the countries where the revenues were generated.
11. Kaburu is to promote to the distributors the sale of software. As a Marketing Manager, Kaburu's duties are to be those usual and customary for marketing executives in the same industry.
12. Kaburu reports to the Chief Operations Officer based in Nairobi.
13. Contract terms: 3 years renewable starting 1 January, 2012.
14. Kaburu wants 40 days annual leave. The company is agreeable to this. Kaburu has to request specific time for his leave. The leave requested is to be allowed unless he is needed by the company.
15. Housing will be paid by the company. Kaburu is to pay for furnishing as well as utilities for his residence.
16. Employee benefits: medical and dental plan, pension scheme, term life insurance, group motor vehicle and personal property insurance.

17. The company agrees to pay for necessary and typical travel expenses including costs for baggage, visas, hotel accommodation, ground transportation to and from airport to place of employment or house, gratuities and airplane tickets.
18. Oketch Kibet, Managing Director of Intelligent Solutions Ltd will be signing on behalf of the company.
19. Governing law will be the law of Kenya.
20. Any amendments or modifications are to be made in writing and signed by the parties, otherwise they are not effective.
21. If Kaburu's employment is terminated he is required to deliver promptly to the company all copies and originals of all the documents, data, materials and property (including hard copy and electronic form), that are considered property of the company or relate in any way to the business practices and techniques of the company.
22. The company can assign its rights and delegate its performance. Kaburu cannot.
23. The contract can terminate without cause at the company's election upon at least 30 days prior written notice delivered to Kaburu.
24. The contract can terminate for cause at the election of the company by providing Kaburu with written notice that states the reason for the company's action.
25. The contract can terminate for cause at the election of Kaburu by providing written notice to the company stating the reason for Kaburu's action.
26. Include a provision that Kaburu cannot compete with the company for 3 years after termination of employment with the company. He cannot compete (directly or indirectly) in geographic areas where he has been doing business for the company.
27. Include other general provisions that should be included in this contract.

15 marks)

SECTION C

5. You are a legislative drafter in the Ministry of Justice and Constitutional Affairs in the Republic of Kenya. You've been given instructions to prepare a bill establishing the Industrial Court with jurisdiction to hear and determine all labour disputes in Kenya, the court has the same jurisdiction as the High Court, the presiding judges must have similar qualifications as a person qualified to serve as a judge of the High Court.

Taking into account the provisions of the Constitution of Kenya, prepare a legislative plan, setting out clearly the checklist for legislation establishing and regulating the court.

(15 arks)

6. (a) The minister responsible for finance exercising his powers under section 17 of the Financial Institutions Management Act, No. 7 of 2010 has appointed Katana Mapeya to be Chairman of the Finance Management Board. He has further appointed Wanjiru Kithure, Sammy Otieno and Ali Hassan to be members of the Board.

Draft the order appointing the Chairperson and members of the Board

(8 marks)

- (b) Parliament of Kenya has just passed the Election Act, 2011 as part of the implementation of the Constitution. The Act gives the Minister the power to commence the Act through a gazette notice. The Act is scheduled to commence on 1st December, 2011.

Draft the gazette **NOTICE** on the commencement date.

(7 marks)

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. (10 marks)
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.

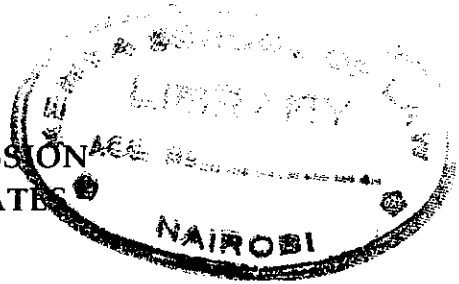
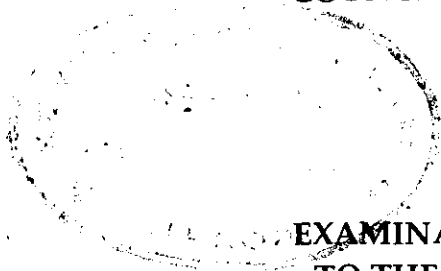
The NAASO will collect, analyse and publish relevant statistics on sexual offences on a quarterly basis. The authority will also promote victim and support services and rehabilitation of offenders.

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)



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 103: LEGAL WRITING AND DRAFTING

THURSDAY 4TH NOVEMBER, 2010

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) Discuss the origin of doublets and triplets in legal writing in England. (5 marks)
- (b) Discuss the psychology of writing and analyse how it plays a key role in the writing life of an Advocate in Kenya. (10 marks)

2. Attached is a summary of the ruling in the case of Ochieng, Onyango, Kibet and Ohaga Advocates -vs- Adopt-a-Light Limited (High Court (Milimani) Civil Case No.654 of 2006) – Date of Ruling: 30th July 2010.

Re-write the summary as a case-brief using the appropriate format.

(15 marks)

SECTION B

3. On 5th October 2010, a daily newspaper carried an advertisement for the sale of a plot of land at Maili Tano on the outskirts of Nairobi. The advert also had a contact mobile telephone number. Mtaka-Shamba got interested in the property. He called the number and was directed to go to Maili Tano. He met a man who introduced himself as Turu Mwenyemali. Turu showed Mtaka Shamba the plot. The two men conducted a search at the land registry and this showed that indeed Turu Mwenyemali was the owner of the plot. The two then negotiated the price, which was brought down from Kshs.850,000/- to Kshs.700,000/-. They went to the office of an Advocate, Wakili Mwandishi, who drafted the sale agreement. Both Turu and Mtaka Shamba signed the sale agreement. Mtaka Shamba paid a deposit of Kshs.300,000/- and the balance was to be paid within 30 days from the date of signing the sale agreement. Mtaka Shamba then sent his workers to fence the plot. However, as the fencing was being done, another man appeared at the site and claimed that he was the registered owner of the plot. Mtaka Shamba tried calling Turu Mwenyemali on the mobile telephone number that Turu had provided but instead he got a recorded service provider's voice message that the number had been switched off. Mtaka Shamba then carried out investigations which revealed that the purported seller's real name was Kambo Weliveshi and not Turu Mwenyemali. Further, Mtaka Shamba established that Kambo had affixed his photograph on a fake National Identity Card bearing the names Turu Mwenyemali. Mtaka Shamba now seeks your opinion on his legal rights in the matter and what action he should take against Kambo.

Draft your legal opinion to Mtaka Shamba on his legal rights and set out clearly the nature of the appropriate civil action as well as the criminal charges that may be preferred against Kambo.

(15 marks)

4. (a) What is a demand letter? (2 marks)
- (b) Discuss FIVE key parts of a demand letter. (4 marks)
- (c) Mr. and Mrs. Kamau, an elderly couple, suggested that their close friends Mr. & Mrs. Zippori also an elderly couple, come and live with them. The Zipporis agreed with the proposal but pointed out that if they were to live with the Kamaus, they would have to sell their own house. The Kamaus replied stating that the problem could be resolved by the Kamaus leaving to the Zipporis a share of their house in their Will. The Zipporis

accepted this offer and sold their house. They lent part of the proceeds to their daughter to enable her to purchase a flat and moved in with the Kamaus.

However the parties soon began to disagree over certain matters and the result was that the Kamaus asked the Zipporis to leave. The Zipporis left the house to avoid being evicted and are now contemplating legal action against the Kamaus for breach of contract.

They have approached your firm to act for them.

- (i) Identify the legal issues arising. (3 marks)
- (ii) Draft a demand letter. (6 marks)

SECTION C

5. Study the following two statutory provisions and break up each provision into separate legislative sentences, in your own words, but without changing the meaning. Where possible, each sentence should begin with the relevant legal subject, then the legal action, and then the context. Make sure that you use proper numbering, punctuation and in – and out – denting.

Provision A

Section 86A (5) of the Income Tax Act, 1962 (amended by Section 58(1) of Act 60 of 2001).

(5) If an intending appellant wishes his appeal against a decision of the tax court to be heard by the Supreme Court of Appeal, the registrar of the tax Court shall submit the notice or notices of intention to appeal lodged under subsection (3) to the president of the tax court who shall, having regard to the contemplated grounds of the intended appeal or appeals as indicated in the said notice or notices, make an order granting or refusing, as he sees fit, leave to appeal against such decision to the said court, and the order so made shall be final.

(7 marks)

Provision B

Section 43(1) of the Customs and Excise Act, 1964 (amended by Section 124 of Act 60 of 2001).

- 1) If entry of imported goods has not been made under the provisions of section 38 –
- (a) In the case of goods in a container depot, within 28 days from the date the goods were landed; or
 - (b) In the case of any other goods, on expiry of the prescribed period, the master, pilot or other carrier, container operator, person in control of a transit shed or other person who has control of such goods shall furnish a list thereof together with all available documents to the Commissioner and shall remove the goods to –
 - (i) the government warehouse
 - (ii) such other place indicated by the Commissioner

(c) the Commissioner may -

- (i) where any such person fails to remove the goods as required in terms of subparagraph (i) or (ii), at the risk and expense of such person, so remove the good; or
- (ii) allow the goods, subject to such conditions as the Commissioner may impose, to remain under the control of such person.

(8 marks)

6. After the 2007 General Elections in Kenya, it became clear that during the campaigns, politicians and the media raised tensions through utterances which ultimately led to ethnic animosity, hatred etc. Accordingly, the Government decided to create a statutory body to among other things;

- promote the elimination of all forms of discrimination based on ethnicity;
- discourage discrimination or discriminatory practices on the ground of ethnicity;
- promote tolerance, understanding and acceptance of diversity in all aspects of national life and encourage full participation by all ethnic communities in the social, economic, cultural and political life of other communities;
- promote equal access and enjoyment by persons of all ethnic communities to public or other services and facilities provided by Government etc.

The body is to comprise three Commissioners including the chairperson. The Commissioners must be citizens of Kenya, of high moral character and proven integrity and must have knowledge and experience in matters relating to race, ethnic and human relations, public affairs and human rights. They can only hold office for a single term of 8 years.

PREPARE THE BILL establishing the Commission. The Bill should establish the Commission as a body corporate with all attributes of a legal person. Provide for appointment of Commissioners by the President upon approval by Parliament.

The Bill must clearly provide for:

- (a) appropriate title;
- (b) establishment of the Commission and its composition;
- (c) objects and functions of the Commission;
- (d) Term of office, and
- (e) Clause on offences.

Do not include provisions on reporting and finances.

(15 marks)

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

AUGUST/SEPTEMBER 2010

LEGAL WRITING AND DRAFTING

Instructions

- a) Answer **one question from each section** and a **fourth one from any of the three sections**
(Total number of questions answered should be FOUR)
- b) All questions carry 15 marks each
- c) Marks shall be lost for illegibility
- d) Time allowed is 3 hours

SECTION A

1. (a) Discuss the origin and use of plain English as a technique in legal writing. (6 marks)
- (b) Edit the following sentences to cure the separation of related words. Keep the subject, verb and object together at the beginning of the sentence.
 - (i) Mrs. Kikulacho, 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, at any time, by an instruction in writing executed by the trustee, with the concurrence of the City Council evidenced by a resolution, may accept the resignation of or remove any co-trustee appointed under this section (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)
2. (a) Define and distinguish the following terms:
 - (i) Thesis statement; and
 - (ii) Thesis paragraph. (5 marks)
- (b) Define a transition and explain the purposes for which transition words are used.

(5 marks)

- (c) Identify and write the transition words in the following paragraph:

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. The law provides that the testator's signature must be made in the presence of two witnesses.

(5 marks)

SECTION B

3. (a) Discuss the fundamental principles of legal drafting.

(5 marks)

- (b) John Kamau and Agnes Njeri of Post Office Box 200 Nairobi have lived as man and wife for quite some time. They claim that they got married under Kikuyu Customary Law in March 2003. They now want to join a self-contributory pension scheme as self-employed persons. They however need to prove that they are married and have sought your assistance as an Advocate of the High Court of Kenya.

Draft the appropriate instrument.

(10 marks)

4. Kilumi, a banker by profession has been searching for a decent car to purchase. On 7th of August, 2010, Kilumi saw an advertisement in the local dailies by which the Government of Kenya was selling by auction, heavy duty vehicles. Kilumi is interested in purchasing a Mercedes Benz S320 registration number GK A137N. The vehicle has an engine capacity of 3000cc.

According to the advertisement, the car is subject to a reserve price of Kshs.3 million. Kilumi has Kshs.1.6 million and is hoping to persuade the seller to permit him to pay the balance in four equal instalments after paying the Kshs.1.6 million.

Kilumi's bid for the purchase of the motor vehicle at the auction has been accepted and he has successfully paid the Kshs.1.6 million. He has further managed to convince the seller to permit him to pay the remaining amount in three equal instalments beginning 30th September 2010. The last and final payment should be made on or before 30th April 2011.

Kilumi has requested you to draft the contract, taking into account all the issues of documentation, sale by auction and the payment mode among other things.

Draft the contract.

(15 marks)

SECTION C

5. The Government of Soko Mjinga has passed a resolution that smoking must be banned in all public places. Public places according to the order, include any places or vessel, including a motor vehicle which at the material time is carrying a passenger or passengers. As part of implementing the order, all local authorities have been instructed to designate places for smoking.

Hotels, restaurants and all places of entertainment have also been ordered to designate special areas for smoking and to mount clear visible signs to give the appropriate guidance. Failing to designate a place for smoking may lead to a fine of Kshs.1 million, or closure of the business.

Hospitals, schools, institutions of higher learning and government offices are places where smoking is absolutely prohibited. Smoking in public places attracts a fine of not more than Kshs 100,000 or imprisonment, of at most one year.

You are a student at the Soko Mjinga drafting office and has been requested to prepare the Bill.

Draft the Bill.

(6 marks)

6. (a) Study the following provisions and identify and explain the drafting errors in each of them.

- (b) Rewrite the provisions in proper style correcting the drafting errors.

"Notwithstanding this Act, the Council of Elders may -

- a. Advise the national government in relation to any of the following;

- (i) Matters relating to traditional leadership;
- (ii) The role of traditional leaders;
- (iii) Customary law; or
- (iv) The customs of traditional communities

- b. May investigate and provide information on traditional leadership and customary law;

- c. Shall at the request of the President advise him on any matter referred to in this section; and

- d. Shall present an annual report to Parliament on its activities."

"Subject to this Act, the Council -

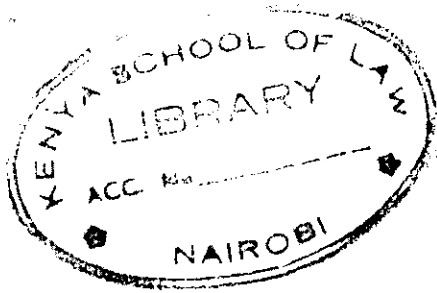
- a. Must appoint a registrar; and

- b. Employ such staff members as it deems necessary for the carrying out of its functions, on such conditions, including the payment of remuneration and allowances, as it may determine; and
- c. May dismiss any person so appointed.”

“Persons shall be allowed a deduction for any expenditure incurred in a tax year in respect of –

- a. Any educational institution and hospital established for the benefit of the person’s employees and their dependants;
- b. Any institute established for the training of industrial workers recognized, aided or run by the state or
- c. The training of any person under a scheme approved by the Commissioner for the purposes of this section, but such deductions shall be allowed only if indicated properly on the prescribed tax return form.”

(15 marks)



COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

NOVEMBER 2009

LEGAL WRITING AND DRAFTING

Instructions

- a) Answer one question from each section and a fourth one from any of the three sections
(Total number of questions answered should be FOUR)
 - b) All questions carry 15 marks each
 - c) Marks shall be lost for illegibility
 - d) Time allowed is 3 hours
-

SECTION A

1.
 - (a) Discuss the advantages of using active voice and the disadvantages of using passive voice. (6 marks)
 - (b) Discuss four instances when it is permissible to use passive voice instead of active voice as an exception to the general rule. Give one example under each instance. (4 marks)
 - (c)
 - (i) Define the term "nominalization" (2 marks)
 - (ii) Identify nominalizations contained in the sentence below and re-write the sentence to replace the nominalizations.

"To provide its customers with an extra measure of satisfaction, special authorization has been given by Family Mart Supermarket to its Supervisors to institute an exchange of merchandize within ten days following the purchase by the customers."

(3 marks)
2. Write a brief on the case of *Ichaura & 8 Others v. Nation Media Group* [2005] 1 KLR 499 (attached) using the IRAC (Issue, Rule, Application, Conclusion) method. Remember to apply the characteristics of good writing and writing in plain English. (15 marks)

SECTION B

3. On 10th January, 2009, Hefufi Recruitment Consultants (HRC), placed an advertisement in the Kenyan daily newspapers for the post of accountant. HRC stated in the advertisement that it was acting on behalf of its client, Macalder Mining Company Limited. Perminus Olweny submitted his application to HRC on 15th January, 2009. HRC wrote to Perminus on 14th March 2009 inviting him for an interview on 21st March, 2009. He was interviewed by two senior partners of HRC, Rick Lindhurst and Juvinalis Muteero.

HRC wrote to Perminus on 16th April 2009, asking him if he would be interested in an appointment upon the terms stated in that letter. The letter read in part:

"We refer to your application dated 15th January 2009 and to your subsequent interview. Would you be interested in an appointment as an accountant if we offered you Kshs.52,000 per month, plus 28 days' leave? The appointment includes a free house with light, water and other amenities. Please discuss the matter before we proceed further."

Perminus wrote a reply to the HRC on 26th April 2009, stating as follows:

"Following our discussion with Mr. Juvinalis Muteero on 25th April 2009, I wish to confirm to you that I accept the offer as stated in your letter of 16th April 2009. Regarding our discussion on the issue of my visit to the headquarter offices of Macalder Mining Company Limited, the visit can be arranged on any date on a working day."

On 30th April 2009, HRC wrote to Perminus stating as follows:

"With reference to your letter dated 26th April 2009, we are prepared to offer you an appointment as an accountant at a salary of Kshs.52,000 per month. You will be entitled to free housing with light, water and other amenities, together with 28 days' leave per annum. You will be put on probation for a period of three months. We note that you have tentatively agreed to accept the terms and conditions. Regarding your introductory visit to the offices of Macalder Mining Company Limited, Mr. Juvinalis Muteero will make arrangements with you."

Before Perminus applied for the post advertised by HRC, he was an Accounts Officer with Maridadi Industries Limited earning a gross salary of Kshs.36,000 per month with no other benefits. He tendered his resignation in writing on 1st May 2009 by giving a notice of one month. Maridadi Industries Limited accepted his resignation in writing on 16th May 2009. The notice expired on 31st May 2009.

Meanwhile, on 31st May 2009, HRC wrote to Perminus as follows:

"As a consequence of your visit to the offices of Macalder Mining Company Limited on 19th May 2009, we regret to inform you that the management do not consider that you would be a suitable employee as an accountant."

Perminus wrote back to HRC on 2nd June 2009, explaining that on the strength of their letter of 30th April 2009 offering him the job, he had tendered his resignation to his immediate former employer, Maridadi Industries Limited. On 4th June 2009, HRC wrote to him stating, "We are afraid that at your interview, you were not impressive." Perminus was therefore left in the cold with no job. He has remained jobless since then to date. Each of the letters by HRC was copied to Macalder Mining Company Limited.

Perminus would like to file suit against Macalder Mining Company Limited claiming damages for breach of contract. He has engaged the law firm of Wakili Maarufu Advocates to act for him in the suit. You are newly employed Legal Assistant in this firm. Mrs. Felicity Hodari, a partner in the firm and who is handling this matter, has requested you to draft a legal opinion.

Draft the legal opinion.

(15 marks)

4. (a) Discuss any four parts of a client care letter. (5 marks)
- (b) Malilio was involved in a road accident where he survived by a whisker. After sometime, he has approached the firm of Wakili Mkubwa and Associates where you work to act for him as part of the claim. During his visit to your law firm, the firm agreed to act for Malilio. However, Malilio has requested that the firm charges him a fixed fee of Kshs.50,000/- because in his view, the case is a straight forward one that will not require a lot of court appearances. Malilio further insists that his matter must be handled by Wakili Mkubwa, the senior most partner who is in charge of conveyancing. Akili Mingi is the partner in charge of accident claims and litigation. Akili Mingi is supported by seven other lawyers. In a firm meeting held on 7th August 2009, it was agreed that Kajuma, the newest advocate in the litigation department would handle Malilio's matter and would be directly supervised by Susana, an advocate of 10 years standing with immense experience in insurance claims and litigation. Akili Mingi will be the overall supervisor.

It was further agreed in the meeting that the firm charges fees based on the work done and based on the Advocates Remuneration Order. Thus there is no room for fixed fee arrangement.

You are a legal assistant in the firm of Wakili Mkubwa and Associates. Prepare a client care letter to Malilio. (10 marks)

SECTION C

5. The Government has realized that the number of foreigners seeking residence in Kenya has more than tripled in the last three years. Foreigners from as far as Europe are coming into Kenya and setting up residence without any formal process. The Cabinet has directed the Ministry of Immigration together with the Attorney General to expedite the drafting of a law providing for the right of residence in Kenya.

The instructions are that the proposed law should apply to all foreigners who exit other countries and enter Kenya as workers or self-employed persons, and the spouses, children and dependants of the workers and self employed persons. A person and all the dependants must obtain a residence permit together with an alien identification card within thirty days from the date of arrival in Kenya.

When applying for the residence permit, the applicant must possess a valid passport, a copy of work permit of the worker or self-employed persons, a certificate of good conduct, a birth certificate, and any other document that the immigration officer may request. The Immigration Department must then issue the permit within thirty days from the date of application. Once a person has obtained a work permit, a residence permit must be issued as a matter of right within thirty days from the date of issuance of the work permit.

The work permit must be for a maximum duration of two years but may be renewed from time to time. The residence permit should be of equivalent duration to the work permit. The duration of the residence permit for a spouse, child or dependant of a worker or self employed person shall be equivalent to the duration of the worker's or self-employed person's work permit but must not exceed the duration of the validity of the passport of the spouse, child or dependant of the worker or self-employed person. A person whose residence permit is due to expire must apply

for renewal at least three months before the expiry date. The extension of the residence permit is subject to the extension of the work permit.

A dependant must also apply for a dependant's pass in order to be allowed to reside with the worker or self-employed person in Kenya. The application should be supported by a valid passport, copy of work permit or residence permit held by the worker or self employed person, a document certified by a competent authority showing the relationship between the applicant and the worker or self-employed person and any other document that an immigration officer may require.

The immigration office may deny a residence permit but the person denied may appeal to the High Court. Further the Government may cancel a dependant's pass where the work permit of the worker or self-employed person has been cancelled, the spouse ceases to be a spouse or the worker or self-employed person as a result of a divorce or nullification of a marriage, the spouse or child engages in employment or business or the worker or self-employed person dies.

Further the government may expel a worker or self employed person and their spouse, child or dependant on grounds of public policy, public security and public health or where a condition of the residence permit is not fulfilled or is breached.

You are the chief drafter in the Attorney-General's office. Draft the Bill. The Bill should contain a maximum of 11 clauses. **(15 marks)**

6. Re-draft the following measures taking into account proper drafting requirements:

(a) The office of the chairperson or the commissioners shall be vacant if the holder dies, resigns from office by writing under his hand addressed to the president, is removed from office in accordance with the provisions of this Act, is convicted of an offence involving moral turpitude, is unable to discharge his or her functions, is declared bankrupt or is absent from three consecutive meetings of the Commission without good cause. The president must notify every vacancy in the gazette. After a vacancy has occurred in the commission because of death, disability, resignation or removal of a commissioner, the president must appoint a replacement from among the shortlisted persons considered and submitted by the National Assembly. The person so appointed will hold office for the remainder of the term of the office of that commissioner. **(5 marks)**

(b) Draft provisions prohibiting, creating offences and imposing the necessary sanctions for the following:

- (i) The use of motor vehicles, bicycles and pets in a public park **(4 marks)**
- (ii) A company director who falsifies companies books of accounts and continues to repeat the wrong. **(3 marks)**
- (iii) Criminalizing the smoking of cigarettes in a public place. **(3 marks)**

COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

NOVEMBER, 2009

LEGAL ADVOCACY & DRAFTING SKILLS

Instructions

- (a) Answer question ONE and any other two (2) questions
- (b) Question 1 is compulsory and carries 20 marks
- (c) All other questions carry 15 marks each
- (d) Marks may be lost for illegibility
- (e) Time allowed is 2 hours

-
1. (a) Discuss the fundamental principles of legal drafting. (8 marks)
- (b) John Kamau and Agnes Njeri of Post Office Box 200 Nairobi have lived as man and wife. They claimed that they got married under Kikuyu customary law in 2003. They now want to join a self-contributory pension scheme as self-employed individuals. They, however, need to prove that they are married and have sought your legal assistance. You are an Advocate of the High Court of Kenya.
- Draft the appropriate instrument. (12 marks)
2. Explain the meaning, method and purpose of the following trial processes.
- (a) Examination-in-chief. (5 marks)
 - (b) Cross-examination. (5 marks)
 - (c) Re-examination. (5 marks)
3. Make a detailed analysis of how to conduct a negotiation. (15 marks)
4. Discuss the main differences between trial advocacy and appellate advocacy. (15 marks)
5. Outline the salient features of a client interview. (15 marks)
6. Explain the importance of communication skills to a practicing advocate. (15 marks)
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COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

JUNE 2009

LEGAL ADVOCACY & DRAFTING SKILLS

Instructions

- (a) Answer **QUESTION ONE** and **ANY OTHER TWO QUESTIONS**
 - (b) **QUESTION ONE** is **COMPULSORY** and carries **20 marks**
 - (c) All other questions carry **15 marks** each
 - (d) Marks may be lost for illegibility
 - (e) **Two (2) Hours** are allowed
-

1. Alternative Dispute Resolution (ADR) is today recognized as an important avenue of settling disputes in society.

Set out the advantages of ADR and discuss five methods thereof.

(20 Marks)

2. (a) Explain the different approaches suitable for written communication between an advocate and
- i. his client;
 - ii. a fellow advocate;
 - iii. the court.

(9 marks)

- (b) Critically discuss the appropriate listening and communication methods you would employ while interviewing the following types of clients:-

- i. a client experiencing marital problems and who is contemplating divorce;
- ii. a losing parliamentary candidate who is seeking nullification of the election in his constituency.

(6 marks)

3. (a) With the aid of suitable examples, discuss the pre-trial process in civil cases and demonstrate its relevance to advocacy.

(8 marks)

- (b) Maximillus Kariuki who owns substantial properties in Karen area has come to your Chambers complaining about one of his tenants namely Praxidus Makhoha whom he claims is giving him serious problems over rent.

According to the tenancy agreement dated 18th April, 2000 which Mr. Kariuki has brought with him and shown you, he agreed to let his property known as L.R.NO12345/2 to Mr Makhoha at a monthly rent of Kshs.50,000 payable quarterly in advance.

However, since the beginning of 2007, Makhoha's fortunes appeared to have started dwindling and he started getting late and irregular in his rent payment. In fact Mr. Kariuki informs you that Makhoha ran into problems with Nairobi City Council after one of his business rivals claimed that Makhoha was supplying chalk in lieu of chlorine. The allegation led to Makhoha being put under investigation by the Kenya Anti-Corruption Commission and his contract including payment being suspended.

Makhoha has as a result of the ensuing stress, resulted to heavy consumption of alcohol and has of late become a nuisance to the neighbours who have complained to Mr. Kariuki about the noise he makes in the neighbourhood after his drinking sprees.

Mr. Kariuki further informs you that Mr Makhoha has recently started rearing chicken and pigs on the premises with neither his authority nor that of the Nairobi City Council.

Mr. Kariuki is obviously very agitated by these developments and would like to have Makhoha forcefully evicted from his property. In that respect, he informs you that he has discussed and agreed with M/s Beba Auctioneers on the logistics of doing so and all he needs is a letter from you to the auctioneers to effect this.

Mr. Kariuki as well would want you to instruct the auctioneers to levy distress for the arrears of rent now totaling to Kshs.150,000/= and which continues to accrue at the rate of Kshs.50,000/= per month.

- i. Advise Mr Kariuki on his proposed action and
- ii. Draft the necessary sample pleadings

(7marks)

4. Compare and contrast the following :

(a) Examination-in-chief and cross-examination

(5 marks)

(b) Trial advocacy and appellate advocacy

(5 marks)

(c) Affidavit and statutory declaration

(5 marks)

5. (a) Identify and discuss the fundamental principles of legal drafting.

(b) James Ondieki is a second year student at the Faculty of Law, Parklands. Following disturbances at the university after which the University was prematurely closed, Ondieki was summoned to appear before the disciplinary committee set up to handle cases of indiscipline at the university.

Ondiek was summoned to appear before the committee on 8th May, 2009 but when he turned up with his lawyer the committee chairman, one Professor James Mali ya Mungu, advised him that the committee did not wish to deal with lawyers but with students. According to the chairman, lawyers were a nuisance who thrive on introducing confusion and technicalities into straightforward issues purely for commercial gain. Following exchanges between Ondiek, his lawyer and the committee members, Ondiek was asked to appear again before the committee on 4th June, 2009 "without the company of strangers."

On 4th June 2009, when Ondiek appeared before the committee in the company of his lawyer, the members were very furious and ordered him to go home and await further communication. On 8th June, 2009 Ondiek received a letter from the committee advising him that he had been expelled from the University "for gross misconduct and interrupting the learning process at the institution." Part of the letter stated that "the committee did not find it necessary to hear your defence as (a) you looked and behaved as a guilty person (b) it is obvious that you have been a persistent trouble maker at the University and in any case the committee has more urgent matters to deliberate on."

Mr. Ondiek has approached you as a partner of the law firm of Tamaa & Co. Advocates and wishes to have your legal opinion on the matter.

Draft your legal opinion.

(15 marks)

6. Rasta Kariuki has been arrested by the flying squad on suspicion of having been involved in a spate of robberies in Ongata Rongai area of Nairobi. His father has called on you in connection with his arrest and informs you that Rasta is expected to be arraigned in court the following day.

Outline briefly the essential steps required of you as an advocate in representing Rasta upon his arraignment in court and throughout his trial.

(15 marks)

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COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

DECEMBER, 2008

LEGAL WRITING AND DRAFTING

Instructions

- a) Answer **one question from each section** and a **fourth one from any of the three sections**
(Total number of questions answered should be **(FOUR)**)
- b) All questions carry 15 marks
- c) Marks shall be lost for illegibility
- d) Time allowed is **3 hours**

Section A

1. *Assume that the passage below is an excerpt from an article.*
 - a) *Identify two flaws in the structure of the passage which are inconsistent with the characteristics of good writing and writing in plain English.*

(5 Marks)
 - b) *Applying these characteristics, re-write the passage in plain English and restructure it into four separate and logical paragraphs. Pay attention to the most appropriate place in the text to start each new paragraph. You may also omit some words or sentences as appropriate or rephrase the sentences without changing their meaning.*

(10 Marks)

This paper is for the purpose of the making of a case for the enactment by Parliament of a law that will regulate lending and control interest rates charged by banks on loans granted to borrowers. A situation where banks charge exorbitant and unreasonably high interest rates on loans granted to borrowers is an anathema and therefore adverse to the economic development of any nation. Many banks in Kenya are known to charge sky-high interest rates of upto 20 per cent on the principal amount of loans. Banks have a field day as they charge borrowers extremely, exorbitantly and very high interest rates and in some cases the outstanding debt is as much as three times the amount initially borrowed due to the interest charged and as a result many borrowers are unable to repay their debts whereupon banks happily and with abandon engage in public auctions of the properties of the borrowers. The net effect of this is therefore that borrowers watch in disbelief and they suffer losses on their investments and lose all they have in an effort to repay their loans. The repercussions of such actions of the banks in charging such high interest rates on loans has far reaching effects on the national economy of a developing African country such as Kenya. Firstly, the level of investment can go down tremendously as no serious investment can be done successfully when banks are charging extremely and unreasonably high interest rates of upto 30 or 40 per cent as has been stated above. Secondly, with the decline in the level of

investment, the Gross Domestic Product (GDP) goes down. Unemployment increases and all its accompanying phenomena come on board. Thirdly, the fact that many banks and financial institutions are foreign owned means that the profits declared by them are of no consequence to Kenya as a country as the profits are repatriated abroad and dividends are paid to the foreign nationals and Kenya as a country does not benefit from these profits. The bog of misfortunes and the economic down turn and adverse effects on the economy resulting from the charging of high interest rates in the lending sector are undesirable for any country. In order to make provision for the protection of the borrower the enactment of relevant laws by Parliament is necessary to guarantee his financial safety while dealing with the over-enthusiastic capitalistic lender by regulating lending and controlling interest rates charged by banks. It is believed that this will encourage investment which is the key to economic development.

2. *Below is a brief on the judgment of the court in a criminal case. Re-write the brief, beginning with a topic sentence summarizing the holding of the court, re-casting the facts and using transitions in the IRAC process (Issue, Rule, Application and Conclusion).*

In this case, the accused was charged with the murder of his mother. When the hearing commenced, the accused objected to his trial on the grounds that he had been brought to court 23 days after his arrest. This, he said, was contrary to the provisions of the Constitution. The prosecution claimed that the exercise of tracing eyewitnesses was time consuming and this caused the delay in bringing the accused to court. The High Court was to decide whether the fundamental rights of the accused were violated by the delay. The High Court was also to determine whether the explanation for the delay in bringing the accused to trial for the alleged murder of his mother was satisfactory.

Section 72(3)(b) of the Constitution stipulates that a person arrested on reasonable suspicion of having committed a capital offence must be brought to court as soon as is reasonably practicable, but at any rate before the expiry of 14 days from the time of his arrest. This section also places the burden of proving compliance upon the prosecution.

The Court of Appeal in *Eliud Njeru Nyaga v. Republic* (Criminal Appeal Number 182 of 2006) provides incidents that would constitute satisfactory explanation for delay in bringing the accused to court. These include a case where an arrested person is taken ill within the stipulated 14 days and cannot therefore be produced in court or when there is no court of competent jurisdiction to which the accused can be taken.

The court found that the delay in bringing the accused to court after 23 days instead of within 14 days of his arrest was contrary to Section 72(3)(b). The court also found that looking at the evidence produced by the prosecution, it was clear that the delay was based on administrative and bureaucratic reasons. Difficulties in tracing eyewitnesses to the crime did not fall within satisfactory explanation for delay.

The court's conclusion, accordingly, was that the fundamental rights of the accused were violated and further that there was no cure to the nullity of the proceedings instituted after the expiry of the 14 days and the court therefore ordered the immediate release of the accused from custody.

(15 marks)

Section B

3. (a) Identify and describe the salient features of a properly drafted demand letter.

(5 marks)

- (b) Kapitol FM is a radio station owned and managed by the Venus Group Ltd. The radio station's operations started in Nairobi about two years ago. The Venus Group Ltd is a business outfit of one Kamau Shaboo. Mr. Shaboo has had a long standing business rivalry with Njoroge Madwana. Mr. Madwana has business interests in the East African region where they compete vigorously with Venus Group Ltd. The current rivalry is for the tender for the supply of radio equipment to the internal security department. The contract is worth some Kshs. 800,000,000/-.

In order to out manoeuvre Mr. Madwana, Mr. Shaboo offered himself for an interview on 5 October 2008 for an interview at Kapitol FM radio programme called "The Sunday Breakfast Show" for discussion on the topic "What Ails Our Economy?". In the course of the interview Mr. Shaboo said:

"The Kenyan economy is not inherently sick as such. The problem has been that some unpatriotic and unscrupulous businessmen have decided to loot the public coffers by evading duty payable to the Government and then stashing the money in some overseas accounts. A case in point is that one of our competitors the Madwana Companies, who I understand have not paid duty to the Government amounting to Kshs. 3 billion on account of VAT and import duties in the last one year. How are we expected to survive in a market flooded with crooks who evade duty and quote and sell at unreasonably low prices? The Government has to act on such crooks to save the economy from inevitable collapse..."

As a result of the airing of that interview by Kapitol FM, there was national and regional outrage. Madwana Holdings Ltd lost the tender for the supply of radio equipment to the internal security department and another major tender worth Kshs. 500,000,000/- for the supply of anti-riot gear to the Government of Uganda. The projected profits for the two tenders was Kshs. 130,000,000/-. The general business performance of Madwana Holdings Ltd over the last two years has fallen to 30%.

The allegations by Mr. Shaboo were without truth, unfounded and were merely aimed at generating bad publicity for Madwana Holdings Ltd. As a matter of fact, during the period referred to in the interview, Madwana Holdings Ltd had a gross turnover of Kshs. 1 billion covering all its outlets in East Africa.

The programme was not scripted and the broadcast was live. The Kapitol FM producer concerned had no prior knowledge of the contents of the answer given by Mr. Shaboo in the interview.

Mr. Madwana wishes to seek redress for loss suffered as a consequence of the interview and has approached your firm Mjuaji & Co. Advocates to act for him. You have chosen to proceed by way of a suit in defamation.

Draft a demand letter to the appropriate party.

(10 marks)

4. James Ondiek is a second year student at the Faculty of Law, Parklands. Following disturbances at the University after which the University was prematurely closed, Ondiek was summoned to appear before the disciplinary committee set up to handle cases of indiscipline at the University. Ondiek was summoned to appear before the committee on 8th August, 2007 but when he turned up with his lawyer the committee chairman, one Professor James Mali ya Mungu, advised him that the committee did not wish to deal with lawyers but with students. According to the chairman, lawyers were a nuisance who thrive on introducing confusion and technicalities into straightforward issues purely for commercial gain. Following exchanges between Ondiek, his lawyer and the committee members, Ondiek was asked to appear again before the committee on September 4th "without the company of strangers".

On 4th September, when Ondiek appeared before the committee in the company of his lawyer, the members were very furious and ordered him to go home and await further communication. On October 2, 2007 Ondiek received a letter from the committee advising him that he had been expelled from the University "for gross misconduct and interrupting the learning process at the institution". Part of the letter stated that "the committee did not find it necessary to hear your defence as (a) you looked and behaved as a guilty person and (b) it is obvious that you have been a persistent trouble maker at the University and in any case the committee has more urgent matters to deliberate on".

Mr. Ondiek has approached the law firm of Wakili & Co. Advocates where you serve as a pupil to act for him. Mr. Wakili, a senior partner in the firm has asked you to research and prepare for him a legal opinion.

Draft the legal opinion that you would present to Mr. Wakili.

(15 marks)

Section C

5. After elections in 1987, it was discovered that the Electoral Body did not have the requisite autonomy to conduct a free and fair elections. Accordingly, the Government of Kusadikika decided to undertake radical reforms of the institution to restore confidence in the electoral process. To this end, the Government decided to disband the Electoral Commission of Kusadikika (ECK) and in its place, establish an Interim Electoral Board to replace the ECK pending the completion of a comprehensive constitutional review process. The interim body will comprise between three and five Commissioners including the Chairperson and will stand dissolved after 15 months. The Commissioners are to be vetted by the National Assembly and appointed by the President. A Commissioner can only be removed by a resolution of the National Assembly supported by the votes of not less than sixty-five percent of all its members (excluding ex-officio members). Upon such resolution, the Commissioner shall be removed from office through a gazette notice signed by the President.

Functions of the proposed Interim Independent Electoral Board include:

- Reform of the electoral process and the management of elections to institutionalize free and fair elections
- Promotion of free and fair elections
- Fresh registration of voters and the creation of a new voter register
- Efficient conduct and supervision of elections and referenda

COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

NOVEMBER, 2008

LEGAL ADVOCACY & DRAFTING SKILLS

Instructions

- (a) Answer **QUESTION 1** and **ANY OTHER TWO (2) QUESTIONS**
 - (b) **QUESTION 1** is **COMPULSORY** and carries **20 marks**
 - (c) All other questions carry **15 marks** each
 - (d) Marks may be lost for illegibility
 - (e) **Two (2) Hours** are allowed
-

1. Shirandula, a resident of Kibera for many years took advantage of post election chaos of January, 2008 and has since then stopped paying his monthly rent of Kshs. 1,000/- per month to his landlord Mr. Karanja Kinuthia.

Mr. Kinuthia, who owns several tenements in the slum, is concerned about the loss of income from the unit occupied by Shirandula and has come to you suggesting that you issue a twenty four hour notice to Shirandula to pay the arrears of rent which now stands at Kshs. 9,000/- and further vacate the premises on expiry of the notice. Kinuthia wants you to prepare to instruct Kamaliza Auctioneers to be ready to move into action and evict Shirandula in the event that he fails to move out.

Having recently qualified as a member of the Bar, you are of the opinion that the proposed actions by Kinuthia could be in breach of the law.

With reference to statutory and possible case law, briefly explain to Kinuthia why you think his actions are in contravention of the law setting out the correct procedure he should take in resolving his problem with Shirandula.

20 Marks

2. Maryanne has learnt that her husband for many years is unfaithful to her and she is contemplating filing divorce. In her devastated status she has come to your chambers at 1.00 o'clock and found you were preparing to go out for lunch with the Credit Manager for Kenya Commercial Bank to discuss how you can enhance your mutual business relations which of late has been facing stiff competition from rival law firms. Your Secretary has cleared Maryanne to see you but as soon as she walks in your chambers, you remember that you need to look at your bank statements to find out the financial position of the firm. Besides, you realized that you have

3. Write short notes on the following.
- a) Advocate-client privilege. (5 marks)
 - b) Preconceptions (5 marks)
 - c) Statutory declaration. (5 marks)
4. Discuss the order of presentation of oral evidence in criminal trial and outline the importance of each stage. (15 marks)
5. Comment briefly on the importance of communication skills to a practicing advocate (15 marks)
6. Make a detailed analysis of how to conduct a negotiation. (15 marks)

COUNCIL OF LEGAL EDUCATION
EXAMINATION FOR ADMISSION
TO THE ROL OF ADVOCATES

JUNE, 2008

LEGAL ADVOCACY AND DRAFTING SKILLS

Instructions:

- (a) Answer **QUESTION 1** and **ANY OTHER TWO QUESTIONS**
 - (b) **QUESTION ONE** is **COMPULSORY** and carries 20 marks.
 - (c) **All other questions carry 15 marks**
 - (d) **Marks may be lost for illegibility.**
 - (e) **Two (2) Hours are allowed.**
-

1. You act for Barclays Bank of Kenya who instructed you to defend them against a suit by Hezron Momanyi seeking to prevent the bank from recovering the sum of Kshs.5 million advanced to him to purchase a house. Mr. Momanyi's advocates Messrs Ox and Tail Advocates served you with an application for interlocutory injunction seeking to restrain the Bank from selling his house together with an ex-parte order.

The affidavit in support of the application claims that the sums being demanded by the Bank are oppressive as they consist of unauthorized interest and penalties as well as advocates fees. Mr. Momanyi does not appear to challenge the validity of the charge.

- (a) With the aid of relevant provisions of the law, identify and discuss the court papers you will need to file on behalf of the Bank. (Do not draft)

(5 marks)

- (b) With the help statutory and judicial authorities prepare a summary of possible arguments on behalf of the Bank.

(15 marks)

2. With aid of examples discuss the pretrial process and demonstrate its relevance to advocacy.

not called your spouse to ensure that the kids are picked up from school on time. You are obviously restless but you still think you can quickly attend to Maryanne and dash for the lunch.

Discuss your situation in the context of rules and practices governing client interviewing.

15 marks

3. "Cases are won in chambers". Discuss this statement in the context of pre-trial advocacy.
15 marks
4. Write short notes on the following.
 - a) Distinction between affidavit and Statutory Declaration.
5 marks
 - b) Principles that govern the Court of Appeal when determining an application for stay of execution under rule 5(2)(b) of the Court of Appeal Rules.
5 marks
 - c) Principles that the High Court considers in an application for injunction.
5 marks
5. "Negotiation is about winning for your client" Comment and outline the various stages of the negotiation process.
15 marks