

COUNCIL OF LEGAL EDUCATION.



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

ATP 103: LEGAL WRITING AND DRAFTING.

TUESDAY 18TH JULY, 2017.

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** 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

Assume that you are asked to draft the definition section of the Millennials Control Bill, 2017. Assume further that you have instructions to include the definition of the word “child” and “consent” in the definition section of this Bill.

Your research shows that “child” is defined in the section 2 of the Children Act, No.8 of 2001, Laws of Kenya to mean “any human being under the age of eighteen years” and “consent is defined in section 32 of the Millennials Control Bill as follows: “for the purpose of this Act, a person consents if he or she agrees by choice, and has the freedom and capacity to make that choice”.

(a) Draft the definition of “child” in the Millennials Control Bill, 2017. (2 marks)

(b) Draft the definition of “consent” in the Millennials Control Bill, 2017. (2 marks)

(c) Assume that your assessment of the Bill is that it requires the definition of the term “father”. On conducting further research, you discover that the Interpretation and General provisions Act, Chapter 2 Laws of Kenya, defines “father” to mean “In the case of any person whose personal law permits adoption, includes an adoptive father”.

Advise on whether the Millennials Control Bill, 2017 will still include the definition of “father”. Explain your answer. (2 marks)

(d) Assume further that your assessment of the Bill requires that you define the phrase “Human Immunodeficiency Virus, HIV”, which is not defined in any other legislation.

Draft this definition. (2 marks)

(e) Assume that section 7 of the Millennials Control Bill provides “There shall be a Managing Director appointed by Cabinet Secretary in consultation with the Millennials Control Council.

Draft the definition of “Managing Director”. (2 marks)

(f) Present/Draft the entire definition section of the Millennials Control Bill, 2017 including the definitions drafted in (a), (b), (d) and (e) above. Your answer should comply with the ordinary format/structure of Bills in Kenya. (4 marks)

(g) Assume further that you have been asked to draft the entire Millennials Control Bill, 2017, provide the broad framework showing the main parts of the Bill. (3 marks)

(h) Explain the purpose(s) of the parts mentioned in (g) above. (3 marks)

QUESTION TWO

The Council of County Governors has invited you to a meeting to discuss the implications of the Water Act, 2016. During the meeting, the chair of the Council points out that one of the problematic provisions in the law is Section 65. The Section, which is headed "Waterworks Development Agencies" reads thus:

- S.65 (1) The Cabinet Secretary may, by notice in the Gazette, establish one or more waterworks development agencies and define the geographical area of jurisdiction of each such agency.
- (2) The water works development agencies shall be bodies corporate with perpetual succession and a common seal and shall have power in their respective corporate names to sue and be sued and in the exercise and performance of their powers and functions to do and permit all such things as may lawfully be done or permitted by a body corporate.

The main concern of the Council is that the provision above takes away the power of Counties to carry out waterworks for the provision of water services. A constitutional expert pointed out that Counties can, through section 5 of the Public Finance Management Act establish an entity to carry out waterworks.

The Council proposes two ways of addressing this challenge. First, the Council wants an amendment to section 65 drafted and presented to the Senate. Secondly, the Council wants to develop a Bill to be passed by County Assemblies that will provide for the establishment of County Water Corporations.

- (a) Draft an amendment to section 65 of the Water Act, 2016 to reflect the concerns of the Council of Governors. (4 marks)
- (b) Prepare an outline of the County Water Corporation Bill including the essential components of the Bill. (limit your answer to the facts provided) (6 marks)

QUESTION THREE

The Managing Partner of William & Associates, where you work as an advocate, has summoned you urgently. A client, Bilal Shanil, has been arrested at the Jomo Kenyatta International Airport (JKIA). Mr. Shanil is a Nairobi-based businessman with business interests in Dubai.

On this occasion, he was arrested after returning to Nairobi from Dubai. He had informed the Managing Partner that he was arrested on suspicion of trafficking drugs.

During his arrest, the police confiscated his luggage and other personal belongings, allegedly for further investigations. After carrying out the arrest, the police commandant in charge of JKIA addressed the press and stated that "Mr. Shanil is a well-known drug dealer and today was his unlucky day". Mr. Shanil denies any dealings with drugs and is particularly disturbed by the statement of the Police Commandant at JKIA.

The Managing Partner has asked you to draft an appropriate legal opinion on the basis of facts above, that will be discussed in the next firm meeting in preparation for the defense of Mr. Shanil.

Draft the appropriate legal opinion.

(10 marks)

QUESTION FOUR

Philip Salman, the CEO of Trailblazer Ltd pays you a visit in your office. He is excited about a tender he has been awarded by the Ministry of Transport and Infrastructure to supply a special type of cement called "Bitucem". Due to its good quality and effectiveness, Bitucem is currently in high demand and low supply. However, Mr. Salman, an astute businessman, has secured the commitment of Smelter Importers Ltd to reserve at least 100,000 bags of Bitucem every year.

During the meeting, Mr. Salman informs you that the parties had agreed on a number of issues, including:

- Smelter Importers Ltd will supply at least 100,000 bags every year to Trailblazer Ltd.
- The cost of each bag will be Kshs.900/-.
- Smelter Ltd will deliver the bags in three batches as follows:
 - 30,000 bags in August;
 - 30,000 bags in September; and
 - 40,000 bags in December.
- Trailblazer Ltd will pay one-third of the amount at the beginning of the transaction month (August, September and December) and the rest after delivery.
- Fearing that the Government may revoke its import licence, Smelter Ltd was keen to point out that it can only live up to its commitments as long as its importation licence is in place.
- Smelter Ltd and Trailblazer Ltd agreed that they can terminate the contract by giving a one-month notice.
- Because of uncertainties, both Smelter and Trailblazer agreed that the contract will be renewed on an annual basis.

Prepare a draft contract that Mr. Salman can send to Smelter Importers Ltd for review.

(10 marks)

QUESTION FIVE

The following paragraph appears in an essay on the status of legal education in Kenya:

"These factors have left the legal education sector in a serious crisis that urgently calls for address. Law students are not committed to the pursuit of academic and professional excellence. Most teachers are lazy and incompetent. Legal education in Kenya is currently in shambles. The legal education service providers are more interested in profits than in providing quality education."

- (i) Does this paragraph comply with the essentials of good paragraph writing? Explain your answer. (2 marks)
- (ii) What do you consider necessary to bring unity, order, coherence and completeness to the paragraph? Explain your answer. (2 marks)
- (iii) Re-write the paragraph taking measures to ensure that it has unity, order, coherence and completeness. (6 marks)

QUESTION SIX

Malimingi owns fifty (50) acres of land in Karen, Nairobi. His friend Ng'ombemingi owns one hundred (100) heads of cattle but has no land for grazing. He resides in the neighbouring Ngong Hills Estate. The two have agreed on the following key points:

- (a) That Ng'ombemingi will graze his heads of cattle on Malimingi's land;
- (b) That in exchange, Ng'ombemingi shall provide security services to Malimingi's property;
- (c) That Malimingi shall ensure unlimited access to his land during the contract period;
- (d) That Ng'ombemingi shall ensure that his heads of cattle do not destroy Malimingi's house, trees, other valuable assets on the land;
- (e) The contract shall run for a renewable period of one year beginning 1 January 2018.
- (f) The postal address for Malimingi and Ngombemingi shall be 00310, 00100, Nairobi and 0147, 00200, Nairobi, respectively; and
- (g) That Mkuki and Muona shall witness the signing of the contract.

While observing the basic rules of legal drafting and the general structure of a contract, draft the lease agreement. (10 marks)

END

