

COUNCIL OF LEGAL EDUCATION.



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

ATP 103: LEGAL WRITING AND DRAFTING.

TUESDAY 21ST NOVEMBER, 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

The country of Mantopia is located south of Manchuria on the African Continent. After elections in 2012, the president, H.E. Mavuna led a successful referendum to amend the constitution and extended the presidential term from four to nine years.

Many citizens of Mantopia were not only disappointed but were also angry at the blatant disregard for the hard earned constitutional freedoms. They were equally frustrated at president Mavuna's rigging during the referendum. Khalifa, a young man of 35 years who was a student leader at a local university in Mantopia recently announced that he would vie for presidency in 2021 when president Mavuna's term comes to an end. Mavuna and his supporters are afraid of losing elections to the young man. Their immediate fear, which is bigger than that of losing the elections, is that the country could plunge into violence.

The constitution of Mantopia is hailed as the best in Africa with the most expansive Bill of Rights. The only negative clause is that which extends the presidential term from four years to nine years.

Out of fear, desperation and political inexperience, Khalifa was counselled by his advisors that if he organised what they referred to as 'harmless violence', the citizens would succumb to panic, blame the government and vote for him enmass come 2021.

When the Government got wind of the plan, the leadership decided to follow the rule of law in order to protect public safety. Since this kind of situation was unprecedented, the Government realised that there was a need to set up an institution which would be responsible for investigating conduct that is injurious to the public order, safety and well-being of the citizens of Mantopia. There was also need to allow the state to detain persons in situations where it was felt that they were a danger to the society. It was noted that Khalifa was extremely active on social media. While none of his communication on social media was blatantly spreading violence, the state was concerned that Khalifa did not know the extent of his freedom of expression. The investigative organ to be created was supposed to ensure capacity with respect to the choice of political violence. However, in order to ensure that their capacity is supplemented by what existed in the criminal justice system of Mantopia, the highest body had to have the membership (or a representation) of the DPP, the Forensics Bureau of Mantopia, a reputable civil society organisation that deals with criminal justice and a representative of the Mantopia law society. (it is important to note that the criminal law in question should be considered as a specific component of the criminal justice as contained in the Penal Code of Mantopia)

You work for the state law office as a Parliamentary Counsel in Mantopia. You have received instructions to draft a Bill to be tabled in Parliament in three weeks' time. This Bill is intended to take care of the concerns of the Government that arise out of this scenario.

Using the facts provided, draft the most appropriate legislative instruments. You may be creative where necessary to accommodate facts without which the legislative sentences cannot exist.

The clauses drafted should be restricted to the following:

- i. The most appropriate heading of the Bill. (2 marks)
- ii. The most appropriate long title. (2 marks)
- iii. Substantive sections touching only on the enforcement part of the Bill. (8 marks)
- iv. The sections establishing a relevant body from the facts given. (8 marks)

✓ QUESTION TWO

During the legal awareness week of the Law Society of Kenya, a group of residents from Milango Nne Estate approached you for assistance. The Chairman of Milango Nne Estate who spoke on behalf of the group noted that they had a complaint against the Nairobi County. For almost three years, the county has used land adjacent to their estate as a dumping site.

The County did not consult the people of Mlango Nne Estate on the decision to have a dumping site there. Recently, a not-for-profit organization called "Doctors for Health" sent a team of medical specialists to assess the impact of the dumping site on the people of Milango Nne Estate. The specialists found that the dumpsite had negatively affected the children:

- Some children had developed breathing problems as a result of smoke from the burning rubbish at the dumpsite.
- Other children had skin conditions that the doctors noted may be traced to pollution caused by the dumpsite.

Furthermore, the residents of Milango Nne Estate complained that the value of their houses went down soon after the County decided to create a dumpsite near the estate.

The National Environmental Management Authority (NEMA) has issued a statement that the County never sought its permission to set up the dumping site and that an Environmental Impact Assessment was never done in respect of the dumping site. After discussions with the group, you have agreed to visit Milango Nne Estate on a later date to speak to all families affected and agree on the steps for legal redress.

- (a) Prepare a letter to the Milango Nne Estate residents detailing the legal issues arising out of these facts and possible ways of redressing them. (5 marks)
- (b) Prepare a letter of demand to Nairobi County on behalf of the residents of Milango Nne Estate. (5 marks)

✓ QUESTION THREE

- (a) "Clear and effective legislation is essential to good governance. It is also a critical point of the democratic process. It gives effect to policy, translating abstract principles and very specific provisions into legal remedies while mediating between the (often) conflicting objectives, views and expectations of legislators and user"

Office of the Parliamentary Counsel (UK), When laws become too complex: A review into the causes of complex legislation (March 2013)

instructions
facts
claim
demand
period of compliance
consequence of non-compliance

Critically discuss the statement above in the context of benefits of plain language drafting. (4 marks)

- (b) As part of its "Access to Justice Programme, the International Commission of Jurists is preparing a simpler version of Civil Procedure Rules that can be used by individuals who want to represent themselves. They have requested you to re-draft part of the rules below using simple and plain English.

Order 2, Rule 11: Admissions and denials

11. (1) Subject to subrule 4, any allegation of fact made by a party in his pleadings shall be deemed to be admitted by the opposite party unless it is traversed by that party in his pleadings or a joinder of issue under rule 10 operates as a denial of it.
- (2) A traverse may be made either by denial or by a statement of non-admission and either expressly or by necessary implication.
- (3) Subject to subrule 4 every allegation of fact made in a plaint or counterclaim which the party on whom it is served does not intend to admit shall be specifically traversed by him in his defence or defence to counter claim; and a general denial or such allegations, or a general statement of non-admission of them, shall not be sufficient traverse of them.

Re-draft this rule using ordinary and plain English. (6 marks)

✓ **QUESTION FOUR**

Use the scenarios below to identify the most convenient form of written communication to use. Draft the said communication, giving reasons why you have chosen this mode of communication.

Scenario A

As a junior associate at Mandu and Mina Co. Advocates, you have had serious disagreements with your boss. He alleges that you never inform him of your whereabouts, and you always take too long in the washrooms. He also complains that you always return from lunch break 20 minutes past the required time.

He is particularly angered by the fact that you have not informed him of the Luciana case. Luciana, an old client of Mandu and Mina Co. Advocates has had the judge schedule a mention for her case on the 8th June 2017 (HCC No.207 of 2006). The direction was given by the judge at the High Court. At that time, the judge mentioned that the parties to the matter should use the time to prepare themselves as the matter would be heard two weeks after it was mentioned in court. (5 marks)

Scenario B

The law firm of Muga and Co. Advocates where you work, represented Kamlesh Mwangi in a charge for fraudulent misrepresentation where he had been sued by the Kenya Posters Association. Mr. Mwangi had business dealings with the Kenya Posters Association for 5 years and had amassed over 9,000 worth of pages of receipts, licences, audit records, accounting records and letters among others.

In the pre-trial directions, the firm was instructed to furnish all the documents relating to any transactions that Mr. Mwangi had engaged with the Kenya Posters Association. On the day following this directive, you made a call to Kenya Posters Association's advocate and you agree that you would send the document in two pickups to his office at about 10.00 a.m. the next day. Because of the many years in practice, he/she knows the impropriety of just sending a driver to deliver documents of this nature. (5 marks)

QUESTION FIVE

Each of the following sentences offends the basic rules of good legal writing. Edit and re-write them accordingly.

- i. A junior employee may petition the foreman, attaching to his complaint a copy of his contract of service. (1 mark)
- ii. The nation suffers when leaders loot the public coffers or by killing their own citizens. (1 mark)
- iii. We lost the case due to the fact that our advocates did not prepare adequately. (1 mark)
- iv. I do not quite understand why the judge ruled against our client. (1 mark)
- v. If it was insisted by Dr. Wafula that the contract had been breached by the Welfare Hospital. (1 mark)
- vi. The players made a decision to enter into an agreement with their old club. (1 mark)
- vii. It is important to note that we recommend plain English in drafting legal documents. (1 mark)
- viii. It is illegal to file documents in court without a practice certificate. (1 mark)
- ix. The applicant has denied ever witnessing the aforementioned contract. (1 mark)
- x. The final outcome of the disagreement was first and foremost the dissolution of the company. (1 mark)

QUESTION SIX

The head of investigations in your law firm is preparing submissions on a case dealing with the right to dignity and privacy in the Constitution. He specifically wants to know how courts have dealt with this right. He has identified A.N.N. vs Attorney General (High Court of Kenya, Nairobi Constitutional and Human Rights Division, Petition 240 of 2012) as a relevant case and has asked you to prepare a case summary.

Prepare the case summary.

(10 marks)

END

