

**COUNCIL OF LEGAL EDUCATION.**



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

**ATP 103: LEGAL WRITING & DRAFTING**

**THURSDAY 18<sup>TH</sup> APRIL, 2024.**

**DURATION: 3 HOURS.**

**Instructions to Candidates:**

- (a) This paper contains SIX (6) printed pages including the cover page, with a total of SIX questions.
- (b) A candidate 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

- A. Study the following policy statements separately and translate them into legal rules. Assume that words have been defined and the legal rule for each of the policy statement should not be more than two legislative sentences.
- (i) Restaurants must provide smoking zones. (1 mark)
  - (ii) A firearm license may be issued by the Inspector-General of police. (1 mark)
  - (iii) To own an animal, one must first obtain a permit from the county executive committee member. (2 marks)
  - (iv) It is illegal to operate the business of a bar without a license. However, the period between application for renewal and when the license is issued, one is deemed to be licensed. (2 marks)
  - (v) The Authority can revoke a license for failure to comply with the Act or conditions of the license. (1 marks)
- B. Rewrite the following sentences to comply with simple and plain English requirements;
- i. All animals except those five, listed they should be, in the schedule to the legislations on livestock. (2 marks)
  - ii. Save for Kenya, Uganda every state must enroll their citizens to the platforms agreed upon by the contracting parties henceforth. (1 marks)
  - iii. Without prejudice to sub-clause 6, clause 6 is subject to clause 7. (1 marks)
  - iv. The Port of Apopo was full as ships and more ships continually docking and, in the meantime, more were arriving from London carry cement granted that everyone was constructing a fact that created congestion and made it very difficult for the government of Nigeria not to impose demurrage. (2 marks)
- C. You are the proprietor of Mkenya Halisi & Co Advocates a law firm based in Langata. Ching Chang Chung is a Sudanese national who intends to purchase a cottage in Karen. He requests you, as his advocate, to represent his company Ching Chung Investments Limited in whose name the property is to be registered. Draft the appropriate document that grants you the authority to transact on behalf of Ching Chung Investment LTD. (7 marks)

## QUESTION TWO

You are an advocate and have a client who is a renowned furniture designer of wooden products. Your client has crafted and made a bespoke dining table set. The set comprises a large, handcrafted mahogany table and six matching chairs. There is a buyer who has seen it and has offered to purchase it. Your client and the purchaser have agreed to a sale price of two hundred and fifty thousand (Ksh 250,000). Upon agreeing and signing the sale agreement, a deposit of 50% of the amount must be paid. The parties have agreed that delivery should be done within four weeks from the date of signing the contract. The balance of the sale price is to be paid within four weeks upon delivery of the set. Additionally, the agreement should contain clauses stipulating a six-month warranty against craftsmanship defects and a non-disclosure clause to protect the uniqueness of the table set. The client has approached you to assist in drafting the sale agreement.

Based on the facts given above, draft the agreement. (10 marks)

## QUESTION THREE

A. Identify the following from the passage below

- i. Paragraph sentence. (2 marks)
- ii. Arcane words. (2 marks)
- iii. Compound construction. (2 marks)

“The Commission may suo moto conduct an inquiry or so to speak not conduct one. Ipso facto, a decision by the commission whether or not to prioritize reference or proposal for reform of the nature prescribed in the manual is dependent on urgency of the proposed changes, the running programs of the Commission especially determined by the obligations in the extant performance contract and available resources, including research personnel. Where a commission is for any reason whatsoever unable to take up a reference or a proposal, a suggestion or an idea put forth de novo for consideration, a project committee comprising a presiding Commissioner and one or two legal research officers is constituted.”

B. Re-write the passage in (A) above to remove arcane and informal language, as well as redundant words. (4 marks)

## QUESTION FOUR

The Republic of Watu Wengi is composed of more than thirty ethnic communities. Majority of these ethnic communities are minorities. In fact, two ethnic communities make up sixty percent (60%) of the population of the country. As result of the

dominance by these two communities, a recent study on employment in the public service revealed that seventy-five percent of the employees are men, ninety percent come from the two dominant communities and persons with disabilities account for less than one percent. A recommendation was made for the establishment of an equality commission to be responsible for inclusivity in the public service.

The Cabinet Secretary responsible for public service believes that the current status must not be allowed to continue as it may lead to civil strife. This is particularly so because, except for the current Cabinet Secretary responsible for public affairs, persons from ethnic minorities have never held position of influence in government.

Consequently, the Ministry has resolved to embark on developing a legislative proposal to effect the recommendation on the establishment of an equality commission. It is envisaged that the equality commission will be an independent commission with a chief executive officer and staff. Further, the commission will have powers, on its own motion or on filing a complaint by any person, to investigate matters touching on inclusivity in government, summon witnesses, manage its finances, conduct hearings and make reports on its findings. In the event the commission makes a decision to investigate and in order to ensure fair hearing, the commission will be required to give notice to an entity intended to be investigated, hear persons likely to be affected and that statements made by persons to the commission shall not be used as evidence before a court. Finally, for purposes of oversight the commission will be required to annually submit to Parliament a report on its operations and a report on the status of employment in the public service.

Without concerning yourself with the long title, the enacting formula, schedules, financial, preliminary, miscellaneous and provisions on investigations, draft provisions establishing the proposed equality commission. (10 marks)

#### QUESTION FIVE

The Intergovernmental Relations Act, Cap 265F establishes the Council of County Governors. The Council of Governors consists of governors of the forty-seven counties and is responsible for considering matters affecting counties.

Whereas the Intergovernmental Relations Act has not established a secretariat of the Council of County Governors, the Council of County Governors has always had a secretariat responsible for the day-to-day administration of the affairs of the Council of County Governors. The Council of County Governors is seeking to lobby for the anchoring of its secretariat in law. It is believed that this will adequately protect the interest of the staff and boost their morale.

The Council of County Governors want to be responsible for appointing the secretariat. The secretariat is to comprise the secretary and other staff as currently constituted.

The secretary shall:

- (a) be the secretary and accounting officer to the Council of County Governors;
- (b) be a degree holder with at least six years' experience in administration; and
- (c) employed for only eight years.

The provisions providing for the establishment of the Council of County Governors include -

**19. Establishment of Council of County Governors**

20. -----

21. -----

**22. Reports of the Council**

**23. Joint committees of the Council**

Your firm has been contracted to advise on the matter. You have determined that there is need to amend the Intergovernmental Relations Act so as to actualize the intentions of the Council of County Governors.

Without concerning yourself with the interpretation provisions as well as other provisions likely to be affected by the proposal, draft the necessary legislative proposal to provide for the secretariat. (10 marks)

**QUESTION SIX**

- A. The government of Kenya, through the Cosmetic Regulatory Authority of Kenya (CRA), in response to the growing concerns over public health and consumer rights in the unregulated cosmetic industry, is working towards drafting a legislation. This legislation is supposed to address the issues of proliferation of substandard and harmful cosmetic products in the market. The new law aims to set stringent standards for cosmetic products including their labeling and packaging, mandate the registration and licensing of manufacturers and importers. It will also outline clear enforcement mechanisms. Additionally, it seeks to establish robust penal provisions for non-compliance with the law, ensuring accountability and protection for consumers. The law is championed by the cosmetic regulatory authority of Kenya

The CRA is thinking of proposing the following offences and punishments.

- Manufacture, distribution and sale of products not approved by CRA, a fine not exceeding Kshs 2 million. Or to imprisonment for a term not exceeding 5 years. CRA can also impose both a fine and imprisonment.

- If someone intentionally mislabels products, gives misleading information on its quality, nature or safety. Will face a penalty of a fine not exceeding Kshs 5 million. Or imprisonment for not exceeding 5 years. CRA can also impose both a fine and imprisonment.
- It is an offence to stop the CRA from doing its work by interfering, hindering or obstructs CRA in any manner to stop it from doing its duties. Will face a penalty of a fine not exceeding Kshs 5 million. Imprisonment not exceeding 5 years. CRA can also impose both a fine and imprisonment.

Draft the penal provisions correctly. (6 marks)

- B. You are a law student soon completing your pupillage at the law firm of Wakili Mkuu Advocates. The firm specializes in intellectual property law. Your pupil master entrusts you with researching and drafting a preliminary legal opinion on a complex copyright infringement case. The case involves a popular musician (client A) who is accusing a rival musician (client B) of plagiarizing a significant portion of their melody in a hit song.

Discuss the research strategies you would employ, to identify the relevant legal materials. This includes the following:

- i. Primary and secondary sources,
- ii. Specific key-words, databases and
- iii. Resources you would use for the research.

(4 Marks)