

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES.

ATP 103: LEGAL WRITING & DRAFTING

THURSDAY 23RD MARCH, 2023.

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **SEVEN (7)** 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. You are a pupil in a busy law firm known for pro-bono lawyering with a bias towards child maintenance cases. You secured the pupillage position because you were able to convince the firm that you were the best student in ATP 103, Legal Writing and Legislative Drafting. One of the firm's client, Mjeuri Sana has been served with the demand letter below from a lawyer acting for his estranged wife Utanijua Vizuri. The letter is pasted below;

Our ref: AMG/GI/2022 Your Ref: TBA Date: 24th December, 2027.

Mjeuri Sana
P.O. Box 124=0004000
Nairobi
Dear Sir

Ref: Maintenance of Master/Sir Mwerevu Sana

We have been promised to be paid by our client, to write to you and address you as follows;

You sired the above-named child with Utanijua Vizuri. After his birth you pretended to be broke and have since not been providing for the minor. To make it tragic, you blackmailed our client that unless she sends you "maintenance", you are going to expose her on social-media for being a "scoundrel." Your actions are so unconstitutional, Gosh!! Fortunately, the law has reliefs towards charlatans like yourself. The purpose of this letter is to demand, which we hereby do, a sum of Kenya Shillings Two Million (Kshs. 2,000,000) as alimony towards maintenance of the child. Also, stop hovering around our client as you are a witchcraft. Particulars are well within your knowledge. The legal battle that will ensue should you not respond to our letter within (ninety) 90 days from the day of this letter will make you know why chicken rarely urinate, if at all. We look forward to hearing from you.

Yours faithfully,

**WAKILI MKUBWA
FOR: MAWAKILI HATARI SANA**

- i. Identify any Four (4) errors and omissions in the demand letter.
(4 marks)

- ii. Assuming that your client, Mjeuri Sana has actually been maintaining the minor even though he is unsure if the minor is actually his biological son, draft an appropriate response to the letter. (5 marks)
- iii. You are a pupil in the firm of Mawakili Hatari draft a properly written letter to convey their client's grievance. (5 marks)

B. According to a leading Law School, the following passage offends the rules of plain English writing: -

The case before us alleges that the plaintiff was taken to the hospital by paramedics, where she underwent complicated surgery, and where she claims she obtained the infection by means of negligence. The parties are in agreement by stipulation that the only issues in this case are the surgeon's negligence and the staff's negligence. The trial itself should be short as, inter alia, the plaintiff's recollection included only two witnesses. As aforementioned, damages will only be discussed subsequent to the court's ruling on the issues. Assuming, arguendo, a verdict in favor of the plaintiff is returned by the jury, it is likely the plaintiff will receive a substantial award of damages.

- i. Identify any three (3) words, clauses, phrases or sentences that violate the rules of plain English writing. (3 Marks)
- ii. Illustrate how each of the words, clauses, phrases or sentences you identified in (B)(i) above can be simplified to comply with plain English writing. (3 Marks)

QUESTION TWO

Tom Yunis is an advocate of the High Court of Gura, recently admitted to the bar. He soon gets an associate position at Sina, Haraka & Wapole LLP. His boss, Hiva Haraka, immediately gave him his first brief to handle on his own. His first client is Mwepesi. On the 24th of December, 2022 the case came up for mention to confirm whether parties had complied with Order 11 of the Civil Procedure Rules, however, it failed to proceed since the court was not sitting. Both parties were in court. It was then fixed for a further mention on the 3rd of January, 2023 by the court clerk. On the said date, Yunis failed to attend court having been unable to secure a means of transportation back into the city. The case was subsequently fixed for hearing on 18th January, 2023. The opposing counsel was instructed to serve the hearing date upon Yunis. This did not happen and the case proceeded *ex parte* without the opposing counsel producing, before court, an Affidavit of Service confirming that Yunis had been served with the hearing date of 18th January, 2023. Yunis, still reeling from the December holidays hangover, was unaware

of this date having forgotten that the case even exists. On 14th February, 2023, Yunis is shocked when he is served with a Notice of Entry of Judgment by the law firm of Hatulali Sisi & Co. Advocates indicating that a judgment was delivered on 13th February, 2023 and his client being found liable to pay Kshs. 5,000,000 to the other party. He immediately goes into a panic, but even before the shock dissipates, he gets a call from none other than Mwepesi. Yunis, an introvert suffering from a lethargically-induced phone anxiety, does not want to confront Mwepesi over the phone. He decides that the best way to deal with the uncomfortable situation is to write to his client informing him of what had transpired.

(a) With the foregoing in mind:

- i. Identify the legal instrument Yunis would use to communicate to Mwepesi. (1 mark)
- ii. Draft the document, identified in (a) above. (9 marks)

QUESTION THREE

The Republic of Itikadi has, through its legislative assembly (the Assembly), introduced a new licensing plan (the Plan) to make sure that all persons who want to work as gallerists must hold a licence. On 6th January, 2023 the Assembly passed the Licensing (Art Dealers') Act No. 4 of 2023. The Act, at Section 5, creates a Licensing Board which is mandated to oversee the administration and implementation of the Plan. Meanwhile, Section 3 of the Act provides as follows:

- (a) The Licensing Board may issue a licence to an individual to act as a gallerist if the individual has not been convicted of a serious criminal offence and if the individual has a recognized qualification in an art-related subject from a recognized university in Itikadi.
- (b) Gallerists holding licences before the commencement of this Act must apply for a licence within three months of entry into force of the Act.

Mwanasana works for a gallerist in Itikadi. She is not sure whether she needs a licence since, at present, she does not sell art but only values it. She has no criminal convictions and has a Bachelor Degree in Art (History) from Huru University within the state of Itikadi. She applies to the Board for a licence just in case she needs to have one. Her application is refused. The Board informs her that she must stop her work immediately as she does not have the required qualification and is therefore not a fit and proper person to be a gallerist. In the letter, the Board informs her that the decision is final and cannot be challenged in any court of law whatsoever. Mwanasana makes a call to the Board to see whether she really needs a licence and speaks to the decision-maker,

one Vallejo. Vallejo informs her that he considers that women neither make good gallerists nor valuers.

Mwanasana becomes animated and calls the local newspaper who run an article in their daily publication, *Art is Life*, about Mwanasana's situation. An avid reader of the publication, Mbea Hatari, hears of the problem and approaches Mwanasana to let her know that he would be willing to challenge the decision on her behalf. Mwanasana is confused and distraught and comes to you for legal advice.

Draft the necessary legal instrument advising Mwanasana about her case and Mbea Hari's suggestion to her about his role in bringing an action on her behalf. (10 Marks)

QUESTION FOUR

Study the following excerpts from the Judgement of the Supreme Court of Kenya in the 2022 Presidential elections petition, *Raila Odinga & others v. William Ruto & others*, P.E.P. No. E005 of 2022. The extract has been slightly modified for purposes of this question.

[177] Under Article 88(4) of the Constitution, IEBC is not only responsible for the continuous registration of voters but also for the regular revision of the voters' roll. This later role is critical in cleaning up the voters' roll by removing from the roll voters who have died, or become ineligible to vote for other reasons or updating it with newly registered voters or those who have transferred their votes to other stations. Yet this process may be turned into a tool of mass disenfranchisement, purging eligible voters from the roll for illegitimate reasons or by design retaining deceased voters. A single purge can stop many people from voting. Often, voters will only learn they have been erroneously purged when they show up at the polls on election day and when it is too late to correct the error, considering that not every voter utilizes the window before election to verify their details in the roll.

[192] The 1st respondent's response to these claims was through the affidavit of Ashif Kassam sworn on 26th August, 2022. Ashif Kassam is an Executive Chairman of RSM Eastern Africa LLP, a firm of certified accountants licensed by the institute of Certified Accountants of Kenya. He was instructed by the 1st respondent to undertake an analysis of the votes captured in Form 34A and 34C and to respond to the issues raised by the petitioners. His evidence was to the effect that the vote differential in respect of the eight counties cited by petitioners related to votes from prisoners, who voted only for the President and not the other positions. The other factor to be considered was the rejected votes and stray ballots which are not included in the count for valid votes.

- a) In not more than 140 words, rewrite paragraph [177] with a view to remove verbosity without changing the information being communicated. (3 marks)
- b) Identify two instances where gender neutral language may be used in paragraph [192] and rewrite those sentences using gender neutral language. (4 marks)
- c) Explain what gender-neutral language is and by using examples, explain ways in which gender-neutral language can be achieved in legal writing. (3 marks)

QUESTION FIVE

Article 2 (5) of the Constitution of Kenya 2010 provides as follows:

“The general rules of international law shall form part of the law of Kenya.”

You have just been employed at the Attorney General’s office as a legislative drafter. The Attorney General has instructed you that the government, using the parliamentary initiative, intends to (a) amend article 2 (5) of the Constitution to remove the phrase, “rules of international law” and replace it with the phrase “principles of law recognized by civilized nations;” and (b) to insert a new provision being Article 2 (5) (a) that recognizes “international customary law” as a source of law in Kenya.

Draft an appropriate bill to convey the Attorney General’s instructions. (10 marks)

QUESTION SIX

The government of Kenya has identified technology as one of the key drivers of the country’s economy. In order to bolster the role and place of technology in the development of the country, the Ministry of Information, Communication and Technology has identified various gaps in the technology space in the country. One of the identified gap is inadequate collaboration within the different institutions in the government and the private sector. To remedy this gap, the Ministry has proposed changes to the Science, Innovation and Technology Act, No. 28 of 2013. Among the changes proposed is to amend section 5 of the Act with a view to -

- i. reduce the number of persons appointed under section 5(1)(f) from three to one; and
- ii. include the chairperson of the Commission for Universities Education established under section 4 of the Universities Act and the chairperson of the Technical, Vocational Education and Training Board established under section

8 of the Technical and Vocational Education and Training Act as members of the board.

The following is an extract of section 5(1), (2) and (3) of Science, Innovation and Technology Act.

5. Board of the Commission

(1) The Commission shall be governed by a Board of which shall consist of nine persons appointed by the Cabinet Secretary as follows -

- a) the Chairperson, who shall be an eminent scientist in any of the scheduled sciences set out in the Second Schedule;*
- b) the Principal Secretary in the Ministry for the time being responsible for research, science and technology;*
- c) b) the Principal Secretary in the Ministry for the time being responsible for finance;*
- d) the Director of the Kenya National Innovation Agency established under section 28;*
- e) the Director of the National Research Fund established under section 32;*
- f) three persons, appointed by virtue of their knowledge and experience in science, technology and innovation;*
- g) one person nominated by the body currently recognized as representing the private section; and*
- h) the Director-General who shall be an ex officio member and the Secretary to the Board.*

(2) The members of the Commission, other than the ex officio members, shall hold office for a period of three years and shall be eligible for reappointment for one further term.

(3) The members of the Commission shall be appointed at different times so that their terms of office expire at different times.

As a draftsman, you have been instructed to draft a legislative proposal to effect the envisaged changes to section 5 of the Science, Innovation and Technology Act. Using the information provided above, draft a Cabinet Memorandum. (10 Marks)

