

COUNCIL OF LEGAL EDUCATION.



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

ATP 103: LEGAL WRITING & DRAFTING

WEDNESDAY 23RD JUNE, 2021.

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **Four (4)** printed pages including the cover page, with a total of **Six** questions.
- (b) Candidates **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

In December 2019, a new Coronavirus outbreak was reported in Hubei Province, China. The new highly infectious disease was officially named Covid-19. Within weeks, the disease had rapidly spread across the world, prompting the World Health Organization (WHO) to declare the outbreak, first, as a Public Health emergency of International concern and later, as a global pandemic.

On 13th March 2020, the first case of Covid-19 was reported in Kenya. In the weeks that followed, reported cases of the disease spiked, placing severe strain on the country's Public Health system and the economy. By June 2020 however, the outbreak had been controlled, although regulating public gatherings, domestic and international movements of people and the operations of educational and business institutions had proven difficult throughout the period.

In the aftermath of the outbreak, the Kenyan Government now plans to develop a legal framework for effectively responding to similar Public Health emergencies. The proposed law would grant relevant government agencies the powers to curb the spread of infectious disease outbreaks, including placing restrictions on freedoms of movement and assembly, controlling entry into the country and regulating the operations of educational facilities and businesses. The law would also provide for offences, in addition to establishing a body corporate responsible for coordinating the control and management of infectious disease outbreaks.

Taking into account the relevant provisions of the Constitution of Kenya, 2010, prepare a Bill that would adequately align with the above objectives of the Government. (20 marks)

QUESTION TWO

"I am here on the invitation of the Principal of this great Bar School. She asked me to speak to you on the techniques modern drafters use;

- (a) to ensure that the documents they draft are plain English and
- (b) to organize large and complex legal documents."

"Towards (a), I have identified 5 sentences each of which contravenes a particular rule of plain English writing. Using these sentences, I will help you identify the mistakes which the original drafters made, and then show you how to re-write them to comply with plain English requirements. The sentences I have in mind are:-

- i. A judge's decision should reflect her own opinion
- ii. The benefits are subject to the provisions of the 2020 legislation
- iii. The company shall alienate, transfer and convey the property
- iv. Members other than the primary beneficiary may not receive these dividends
- v. We invest in funds assets in short-term market securities to provide you with liquidity, protection of your investment, and high current income."

Towards (b), I will use the example of complex merger and acquisition contracts."

You are the guest lecturer in the excerpt above. Complete your lecture.

(10 marks)

QUESTION THREE

Bob Tindi is a renown social media influencer in Kenya. He is a founding member of an online community known as "Kenyans on Twitter". He posts on and comments regularly on nearly all topical public interest issues and debates. He has thus gained a huge following in social media platforms including Twitter, Facebook and Instagram. On 16th May 2020, Bob tweeted about Honourable Joash Serekunda, a member of the National Assembly. The tweet reads as follows: ~"Serekunda is a big thief who has swindled CDF. He should be rotting in jail." The tweet was liked and retweeted by hundreds. The next day, Honourable Serekunda contacts you as you have been his lawyer for many years. He wants to file a defamation suit against Bob but wants to know the following two issues first.

- a) Is Bob's tweet protected under the constitution?
- b) Would the fact that he is a member of the National Assembly have a bearing on his claim against Bob?
 - a) Draft a legal opinion for Honorable Serekunda. (5 marks)
 - b) Honourable Serekunda instructs you to write a letter to Bob demanding that he pulls down the tweet as it is defamatory and publicly apologise for it. Draft the letter you would prepare and send to Bob. (5 marks)

QUESTION FOUR

Mr. Mali Mingi owns L.R. No. Nairobi/Block/55/01 situated in Nairobi and measuring 0.25 acres. Mr. Tafuta Shamba is desirous of purchasing the property from Mr. Mali Mingi. Mr. Mali Mingi's property is valued at Ksh. 4,000,000. However, after negotiations with Mr. Tafuta Shamba, they agreed to transfer the property for the sum of Ksh. 3,500,000. Mr. Tafuta Shamba agreed to pay this sum in seven monthly instalments of Ksh. 500,000 after which the property would be transferred to his name.

The parties further agreed that Mr. Tafuta Shamba may take possession of the property upon paying at least 50% of the sum due. It was also agreed that Mr. Tafuta Shamba would cater for all legal fees, statutory payments and disbursements pertaining to the transaction.

- a) Prepare a legal opinion advising Mr. Tafuta Shamba on what is required of him to acquire legal title to the property. (5 marks)
- b) Prepare a contract for the acquisition of the property by Mr. Tafuta Shamba. (5 marks)

QUESTION FIVE

The Cabinet Secretary in the Ministry of Finance in the Country of Olan has instructed your firm to prepare regulations for the payment of fees for the registration and licensing of fish mongers.

Prepare a draft of these Regulations. The draft should consist of not more than five regulations.

Note:

- a) Section 2 of the Fisheries Act defines the term "Cabinet Secretary" as the Cabinet Secretary responsible for matters relating to fisheries.

- b) Section 16 of the Fisheries Act provides that the Fisheries Authority may impose a levy or require the payment of fees or charges for its services. However, this section limits the maximum amount chargeable to Kshs. 10,000.
- c) Section 34 of the Fisheries Act provides that the Cabinet Secretary, in consultation with the Cabinet Secretary in matters relating to Finance may make Regulations for the better implementation of the Act.

(10 marks)

QUESTION SIX

Peter and Jane married through a Mbuuni customary ceremony held on 19th December 2009. The ceremony was officiated by traditional elders at their shrine in Mbuuni. The couple have two children, Jayden and Drusilla born in August 2010 and April 2015 respectively. The family lives in Mbuuni which is in Uuni County. Peter has applied for a visa. One of the requirements for that visa is an Affidavit of Marriage. Peter has approached your office with instructions to help him draft this document.

Assuming that you have the requisite qualifications, draft the Affidavit of Marriage. (10 marks)

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**COUNCIL OF LEGAL EDUCATION
EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES**

UNIT CODE: **A T P 103** SUBJECT/UNIT ..LEGAL WRITINGS & DRAFTING.....

REGISTRATION NUMBER:

DATE: **29th June, 2021**

INSTRUCTIONS TO CANDIDATES

1. Enter the Unit code, Subject of the Examination, Admission Number and Date in the spaces provided. The admission number should be as it appears on the Examination Card.
2. Do not write your name anywhere in this booklet.
3. Attempt each question on a fresh page of the booklet.
4. If an additional booklet is used, it MUST be fastened at the END of this booklet.
5. Insert in the column headed 'Question Number' the numbers of questions answered in the order in which you have attempted them.
6. Kindly ensure your handwriting is LEGIBLE.

Question Number	Examiner		Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials
1.	25	KO				
2.	07					
3.	10					
4.	10					
5.	07					
TOTAL MARKS	54					

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Questions!

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either marginQUESTION ONE

THE PUBLIC HEALTH EMERGENCIES
BILL, 2021

ARRANGEMENT OF CLAUSESCLAUSESPART I - PRELIMINARY PROVISIONS

1. Short Title.
2. Interpretation.
3. Object and Purpose of the Act.

PART II - ESTABLISHMENT OF THE
PUBLIC HEALTH EMERGENCIESAUTHORITY

4. Establishment of the Public Health Emergencies Authority.
5. Functions.
6. Composition.
7. Qualification for membership.
8. Chairperson of the Authority.

PART III - MEASURES FOR THE
CONTAINMENT OF PUBLIC HEALTH
EMERGENCIES

9. Statement on limitation of rights and fundamental freedoms.
10. Limitation of the freedom of movement.
11. Limitation of the freedom of Assembly.
12. Entry into the Country.
13. Operations of Governmental facilities.

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either margin.

Questions I

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14. Business operations.

PART IV-FINANCIAL PROVISIONS

15. Funds of the Authority.

16. Accounts and Audits.

17. Financial Year.

PART V - FINAL PROVISIONS

18. Offences.

19. Rules and Regulations.

PART I -

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Questions)

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either margin

PART I - PRELIMINARY PROVISIONS
 THE PUBLIC HEALTH EMERGENCIES
 BILL, 2021.

A Bill for
 AN ACT of Parliament to provide
 for effective response to public
 Health emergencies due to the
 spread of infectious diseases
 outbreaks, establish the Public
 Health Emergencies Authority and
 for connected purposes;

ENACTED by the Parliament of
 Kenya as follows:

PART II - PRELIMINARY PROVISIONS

1. This Act may be cited as the Public Health Emergencies Act, 2021.

2. In this Act, unless the context otherwise requires -

"Authority" means the Public Health Emergencies Authority established under Section 4;

"Cabinet Secretary" means the Cabinet Secretary responsible for Health;

"Infectious disease" means a contagious illness; and

"Public Health Emergency" means a condition of utmost necessity, emergency from wide spread Infectious disease.

3. The objects of this Act are to:
- provide a legal framework for effective response to Public Health emergencies;
 - provide for measures to curb the spread of infectious disease outbreaks;
 - ~~establish~~ establish the Public Health Emergencies Authority; and
 - provide for connected purposes.

PART II - ESTABLISHMENT OF THE PUBLIC HEALTH EMERGENCIES AUTHORITY

4. (1) There is established an Authority to be known as the Public Health Emergencies Authority.
- (2) The Authority shall be a body corporate capable of the following:
- using and being sued in its own name;
 - entering into contracts; and
 - owning and disposing of property.

5. The Authority shall have the following functions:
- coordinating the control and management of infectious disease outbreaks;
 - advising the national and county governments on ^{effective} measures for the management of public health emergencies; and
 - conducting research on infectious diseases and public health management.

REGISTRATION NUMBER:

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Questions

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6. Membership of the Authority shall consist of the following-

- (a) a Chairperson appointed by the President;
- (b) three representatives of the Minister of Health appointed by the Cabinet Secretary;
- (c) three representatives nominated by the Private Health Sector Association;
- (d) two representatives nominated by the Law Society of Kenya.

7. A person qualifies to be a member of the Authority if that person-

- (a) has a degree from a recognized University in Kenya;
- (b) has at least three years experience in Medicine, Public Health or Nursing;
- (c) fulfills the requirements of chapter 6 of the Commission.

(i) The Chairperson of the Authority appointed under section 6 shall be responsible for coordinating the affairs of the Authority;

(ii) A person qualifies to be appointed as a chairperson of the Authority if that person-

- (a) has a degree from a recognized University in Kenya;
- (b) has at least ten years experience as a senior management position in the Health sector; and
- (c) fulfills requirements of chapter 6 of the Commission.

9.	PART III - MEASURES FOR THE CONTAINMENT OF PUBLIC HEALTH EMERGENCIES	
9.	a. The following rights and fundamental freedoms are limited in this Act : (1) The freedom of Movement to the extent provided for in section 9. (2) The freedom of Assembly in the manner provided for in section 10.	Limitations of Rights
10.	The Authority shall have the power to restrict the freedom of movement of any person for purposes of curbing the spread of infectious diseases.	Freedom of Movement
11.	The Authority shall have the power to limit, by regulations or otherwise, the freedom of Assembly in order to curb the spread of infectious diseases.	Freedom of Assembly
12.	Entry into A person shall not enter into the country during a Public health emergency, unless the person obtains permission or authorization from the Authority.	Entry into the Country
13.	The Authority shall ensure that in-person learning is suspended during a public health emergency.	Educational facilities
14.	A person shall not conduct any business operations without prior authorization of the Authority during Public Health Emergency.	Business operations

REGISTRATION NUMBER:

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Questions
.....Do not write in
either margin**PART IV FINANCIAL PROVISIONS**

15. ~~Funds of the Authority~~ The
 Funds of the Authority shall
 consist of :

- (a) monies allocated by Parliament;
- (b) gifts, donations and legacies
 to the Authority; and
- (c) any other funds allocated by any
 body with approval of the National
 Assembly.

16. (i) The Authority shall submit its
 accounts to the Cabinet Secretary
 at least three months before the end
 of the financial year.

(ii) The accounts of the Authority shall be
 audited in accordance with the
 Public Audit Act.

17. The financial year of the Authority
 shall be the period of twelve months
 beginning on 1st July and ending
 on 30th June.

PART V FINAL PROVISIONS

18. Any person who -

- (1) enters into the country without
 prior authorization of the Authority; or
- (2) conducts business operations or
 without prior authorization of
 the Authority;

commits an offence and is liable upon
 conviction to imprisonment for a
 term not exceeding six months or to

~~Funds of the Authority~~

~~Accounts and Audit~~

~~Financial Year~~

~~Offences~~

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Questions

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pay a fine not exceeding
forty thousand shillings or less.

19. The Authority in accordance with
the Cabinet Secretary may
make regulations for the better
carrying into effect of the principles
of this Act.

Regulations

REGISTRATION NUMBER:

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QuestionsA.....

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THE PUBLIC HEALTH EMERGENCIES ACT, 2021
MEMORANDUM OF OBJECTS AND REASONS

The Object of this Bill is to provide for aforesaid legal response to Public Health Emergencies; curbing spread of infectious diseases; establish the Public Health Emergencies Authority and for connected purposes.

Part I of the Bill provides for Preliminary matters. Part II contains the objects and purposes of the Bill. Part III of the Bill provides for the establishment of the Public Health Emergencies Authority. Part IV contains the financial provisions of the Bill and Part V contains the financial provisions.

STATEMENT ON DELEGATION OF POWERS

The Cabinet Secretary and the Public Health Emergencies Authority have power to make subsidiary legislation in this Bill.

STATEMENT ON LIMITATION OF RIGHTS AND FUNDAMENTAL FREEDOMS

This Bill limits the freedom of Movement and the freedom of Assembly.

STATEMENT ON WHETHER THE BILL IS A MONEY BILL UNDER ARTICLE 114 OF THE CONSTITUTION

This Bill may occasion additional expenditure in the National Government.

STATEMENT ON WHETHER THE BILL CONCERN'S COUNTY GOVERNMENTS

This Bill does not directly concern County Governments.

Dated at Nairobi, 26th June 2021.

John Kamau
Leader of Majority

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Questions 6

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QUESTION 6 (CIV)

REPUBLIC OF KENYA
IN THE MATTER OF THE OATHS AND STATUTORY
DECLARATIONS ACT
CHAPTER 15. LAW OF KENYA

AFFIDAVIT OF MARRIAGE

I, Peter of P.O Box 321-001 Mbuni ^{Unitary in} ~~Kenya~~ ^{Kenya},
make oath and declare as follows:

1. THAT I am an adult male of sound mind and
compe-^sons to sign this Affidavit.
2. THAT I ^{was} lawfully married to Jane ^{through} ~~in~~
a Mbuni customary ceremony held on ^{19th} ~~19th~~
December 2009.
3. THAT we have two children, Hayden and Dinally
born 17 August 2010 and April 2015 respectively.
4. THAT I reside with my family in Mbuni Ward
Mbuni Unit County.
5. THAT I support this Affidavit in support of my
application for Oris.
6. THAT what is stated herein is true and conforms
to the provisions of the Oaths and Statutory
Declarations Act.

SWEAR AT NAIROBI

By the said Person

This 26th day of June 2001

Deponent

Before Me

COMMISSIONER FOR OATHS

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Questions G

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either marginDRAWN AND FILED BYAAC ATTORNEYSP.O. BOX 30001-001, Valley Road, Fifth FloorMIGOSI

QUESTION 3 (THREE)

3(b) Demand letter

ABC AND COMPANY ATTORNEYS

Kasneb Towers, 5th Floor

P.O. Box 12822 -00100

Nairobi

Email: abc@amail.com

Our Ref: SK/0/001/2021

Your Ref: TBA

Date: 26th June 2021

To

Bob Tindi

P.O. Box 320-00111

Nairobi

Dear Sir,

RE: DEFAMATION OF HONOURABLE SEREKUNDA

We act for our client, Honourable Serukunda, under whose instructions we address you as follows:

On 16th May 2020, you tweeted about our client a tweet reading as follows:-

"Serekunda is a big thief who has swindled E.P.E.
He should be up rotting in jail"

This tweet was liked and retweeted by hundreds.

Our instructions are that this tweet was defamatory to our client, being a person held with high esteem throughout the country. This tweet, therefore,

REGISTRATION NUMBER: []

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Questions
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either margin

is a threat to our clients reputation and stands
being a highly regarded member of the National
Assembly.

Question - Therefore, our instructions are
to demand a public apology from you directed
to our client. This apology should be made on
your Twitter account within 24 hours of sending
of this letter, failing to do so in the event of your
failure to comply, our instructions are to commence
action against you in a Court of Law.

Yours faithfully

Amanat Bukary
FOQ ABC & COMPANY ATTORNEYS

cc: Client

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Questions 3(c).....

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3(c)

LEGAL OPINION

LEGAL OPINION ON DEFAMATORY TWITTERS

ABC COMPANY ATTORNEYS

Kashib Towers, 5th Floor

P O Box 12823-20100

NAIROBI

Email: abc@gmail.com

Our Ref: SK/D/001/2021

Your Ref: TBA

Date: 26th June 2021

To

JOASH SOKENDA

P O Box 309-00100

NAIROBI

Dear Sir,

RE: LEGAL OPINION ON DEFAMATORY TWITTERS

We write to you on the above matter.

The legal opinion requested is as follows:

LEGAL OPINION

SUMMARY OF FACTS

On 16th May 2020, Bob Tindi, a social media influencer tweeted about you as follows:

"Sokonda is a big thief who has ruined CDF. He should be rotting in jail."

This tweet was liked and retweeted by hundreds.

REGISTRATION NUMBER:

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Questions 24)

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ISSUES

From the above facts, you requested us to advise you on the following issues:

- (a) Whether Bob's tweet is protected under the Constitution.
- (b) Whether the fact that you are a member of the National Assembly has a bearing on your claim against Bob.

ANALYSIS OF THE ISSUES

No analysis of the law on the above issues follows:

(a) Whether Bob's Tweet is Protected Under the Constitution of Kenya Article 33 provides for the Freedom of Expression. This provision allows any person to communicate freely and express themselves.

However, the freedom of expression should be exercised without regard to other people's rights. Furthermore, this right can be limited as provided for under Article 24 of the Constitution.

(b) Whether the fact that you are a member of the National Assembly will have a bearing on your claim against Bob.

The elements of defamation are as follows:

- i. A false statement has been made against a person; and

- ii. The statement has damaged the person's reputation resulting in pecuniary loss.

Therefore, given that you are a member of the National Assembly, your claim to ownership in Kenya is a key factor in this claim. It would also make it easier for you to demonstrate the crucial elements of title to your claim.

CONCLUSION

Based on the above analysis, our conclusion is as follows:

- 1) Possession is protected under the Constitution but only to a limited extent;
- 2) The fact that you are a member of the National Assembly highly increases the chances of having a successful claim against Bob.

Yours faithfully,

GL

Amanat Bokuria

FOR: AFRIC COMPANIES ADVOCATES

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REGISTRATION NUMBER:

Questions 5

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QUESTION 5

THE FISHERIES REGULATIONS, 2001

APPROVEMENT

1. Citation
2. Interpretation
3. Application for Registration of Fisherman
4. Licensing of Fisherman
5. Forfeit

THE FISHERIES REGULATIONS, 2001

APPROVED (SECTION 34, FISHERIES ACT)

1. Citation.
2. Interpretation.
3. Prescribed Fees.
4. Offences.

THE FISHERIES REGULATIONS, 2001

(Section 34, Fisheries Act)

1. These regulations may be cited as the Fisheries Regulations, 2001. Citation
2. In these regulations, unless the context otherwise requires,
"Act" means the fisheries Act;
"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to fisheries;
"Prescribed Fees" means the fees charged under regulation 3. Interpretation

3. (a) A person applying for registration under the Act, as a fish monger, shall pay a charge of five thousand shillings to the Cabinet Secretary. Prescribed fees

(b) A person who wishes to buy a license as a fish monger, shall pay a charge of one thousand shillings to the Cabinet Secretary.

4. A person who - Offences

(i) fails to pay the prescribed fees for registering as a fish monger.

(ii) fails to pay the prescribed fees for licensing to operate as a fish monger,

commits an offence and is liable to payment of a fine not exceeding two thousand shillings.

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REGISTRATION NUMBER:

Questions 4

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QUESTION 4

9) Legal opinion

LEGAL OPINION ON ACQUISITION OF TITLE TO PROPERTY L.P.N. NO NAIROBI/BROOK/55/01

SUMMARY OF FACTS

You entered into an agreement with Mr. Mwangi Muriuki to purchase L.P. No. Nairobi/Brook/55/01, a plot of land in Nairobi, measuring 0.25 acres. The property is valued at Kshs. 4,000,000, but you have agreed that the property will be transferred to Kshs 3,500,000. You agreed to pay this sum in seven monthly installments of Kshs. 500,000 after which the property will be transferred to you.

ISSUES FOR DETERMINATION

Based on these facts, one main issue above analysed is:

- The procedure of acquiring legal title to land property

RULE OF LAW

The procedure for acquiring legal title to property is provided for in the following legislations, i.e.

- i. The Land Registration Act, 2013
- ii. The Land Act, 2013
- iii. The Land Registration (Conveyance) Regulations, 2017
- iv. The LSK Conditions of Sale.

ANALYSIS OF THE LEGAL PROCEDURE

From the laws above, the procedure is as follows:

i. Payment of the balance of the purchase price
After finalizing ^{the} payments, Mai Mingi will
create a Transfer in your favour.

ii. Registration:-

The next step will be to register the Transfer instrument
at the Land Registry in the prescribed form, after
on payment of prescribed fees, the Registrar
will issue you with Certificate of Title or
the said Property.

Conclusion

From the above procedure, we advise you to adhere
to the terms of the agreement you have with
Mai Mingi. You should then follow the steps
outlined, after which you will acquire legal
title to the property.

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SALE AGREEMENT.

BETWEEN

MALI MINGI OF P.O BOX 320-10006 - bmo Purchaser
VENDOR

AND

TAFUTA SHAMBA OF P.O BOX 901-00200 ("bmo Purchaser")

Dated 26th June 2021

The vendor agrees to sell and bmo Purchaser
agrees to buy the property known as LR No.
Nairobi / Block/55/b1 situated in Nairobi, Kenya
measuring 0.25 acres in the following terms:

1. Consideration

The property vendor agrees to sell the property
to the purchaser at Kshs. 3,500,000

1.2. The amount of Kshs. 3,500,000 will be

payable by the purchaser in seven monthly
installments of Kshs. 500,000.

1.3. The purchase price will be paid at the
vendors bank account ABC109, EQUITY
Bank before the 5th day of every month.

2. Possession

2.1. Upon paying at least 50% of the purchase price
the vendor shall grant vacant possession of
the property to the purchaser.

3. Completion

3.1. The vendor shall transfer the property to
the purchaser as soon as practicable after
the vendor purchaser makes a final payment
of the purchase price stipulated in item 1.1

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Questions

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4. Costs and legal fees

The Purchaser shall pay all legal fees, ordinary payments and disbursements arising from his acquisition.

5. Termination

The vendor or the purchaser may terminate this agreement by serving a thirty day notice indicating the intention to terminate the agreement.

6. Dispute Resolution

Any disputes arising during the transaction between the vendor and the purchaser shall be amicably settled by the parties.

SIGNED BY
WINGENDER ON

MALIMINGI

9/7/04

Signature

TARUTA SHAMBA

Signature

EX- WITNESSED BY

AJ

XZ A

COMMISSIONER

FOR OAHIS

THE PUBLIC HEALTH COMMISSION

STRUCTURE

ART III FA

ARRANGEMENT OF CLAUSES

AN ACT OF PARLIAMENT - Part I - Preliminary

to provide for the establishment of a

response by

Public authorities

to spread and

off

of infectious diseases

and membership

of public

membership

Part II - Powers of the Public Health

Emergency Measures Act

Part IV - Financial Provisions

Part V - Final Provisions

7 → BODY →

This is established by Commission

to be known as Public Health

Emergency Commission

(7) The Commission shall be

the body to manage

powers given to it

in section 10

and to exercise

The Commission

shall be composed of

1) 11 members

2) 1 person

4. 7-11 Members
5. 1 person
6. 4 from
7. 1 from
8. 11

1 person

2-10 → Diseases

3-11

4-10 powers

5-10 functions

6-10 qualifications

7-10 functions

8-10 person

9-10 measures to control

10-11 to limit or

6. 1 person - C.R.

7. 1 person - Inter.

8. 1 person - Inter.

9. 1 person - Inter.

10. 1 person - Inter.

11. 1 person - Inter.

12. 1 person - Inter.

13. 1 person - Inter.

14. 1 person - Inter.

15. 1 person - Inter.

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

UNIT CODE: **A T P I D 3** SUBJECT/UNIT **LEGAL PRACTICE**

REGISTRATION NUMBER: **.....** DATE: **23/6/2021**

INSTRUCTIONS TO CANDIDATES

1. Enter the Unit code, Subject of the Examination, Admission Number and Date in the spaces provided. The admission number should be as it appears on the Examination Card.
2. Do not write your name anywhere in this booklet.
3. Attempt each question on a fresh page of the booklet.
4. If an additional booklet is used, it MUST be fastened at the END of this booklet.
5. Insert in the column headed 'Question Number' the numbers of questions answered in the order in which you have attempted them.
6. Kindly ensure your handwriting is LEGIBLE.

Question Number	Examiner		Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials
1	00		01			
2	02		02			
3	02		02			
4	00		01			
5	00		00			
TOTAL MARKS	05		05			

PROPOSED BILL FOR THE MANAGEMENT OF PUBLIC HEALTH EMERGENCIES, 2021

PREAMBLE.

1. Following the outbreak of corona virus (covid-19) in Wuhan, China and the subsequent spread of the deadly virus to the rest of the world including Kenya, the Minister for Health has made proposals to the cabinet for Enactment of - Bill to curb the spread of the virus in the country.

2. THE PROPOSED BILL shall be named "THE MANAGEMENT OF PUBLIC HEALTH EMERGENCIES BILL OF 2021".

3. ENABLING FUNDING.

The Bill shall be anchored on the PUBLIC HEALTH AND SAFETY ACT, THE MINISTRY OF INTERIOR AND INTERNAL COORDINATION ACT, THE POLICE ACT, PUBLIC ORDER ACT and the CONSTITUTION OF KENYA 2010 and all enabling laws applicable in Kenya.

4. PROVISIONS.

- i) This Bill shall provide for the manner in which Pandemic Response shall be carried out by the Ministry of Health in conjunction with all relevant

Government bodies:

ii.) This ~~Bill~~ provides for the manner in which government responds in curbing the spread of infectious diseases outbreaks which will include:

a) provision of border checks in testing and early detection,

b) Determining and restricting entry into the borders of Kenya and exit from Kenya by setting up travel restrictions where necessary,

c) providing for the availing of rapid testing equipments for early detection, control and treatment in all public and private hospital

d.) providing for the composition of curfews and RESTRICTION OF MOVEMENT as a viral spread management strategy to be determined by the Minister for Health and implemented in coordination with the MINISTRY OF INTERIOR.

e.) providing for the closure or suspension of learning activities on advise from the MINISTRY OF HEALTH in collaboration with the MINISTRY OF EDUCATION.

f.) providing powers to the MINISTER FOR HEALTH to order the closure of businesses including RESTAURANTS and HOTELS as a measure

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Questions 1

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to curb and control the spread of
corona virus.

g) To provide for offences under
the proposed Bill to apply to
offenders of Government directives,
orders and restrictions prescribed
in this Bill.

b) To provide for the formation
of NATIONAL PANDEMIC RESPONSE
COORDINATING COMMITTEE that
shall comprise of the following;

i) THE MINISTER FOR HEALTH
and officials from the MINISTRY
forming the Technical team.

ii) THE MINISTER FOR INTERIOR
who shall be charged with enforcing
the committee findings and resolutions
in relation to public order.

iii) THE MINISTER IN-CHARGE
OF NATION IMMIGRATION,

iv) THE CHAIRPERSON OF
the COUNCIL OF GOVERNORS.

v) THE ATTORNEY GENERAL
who shall be the secretary of
the Committee.

This committee shall be chaired
by the MINISTER FOR HEALTH
and Report directly to the
president to brief on the status
of the pandemic in Kenya and the
steps taken to mitigate attendant
challenges.

5. This Bill shall recommend for the provision of personal protective equipments to be availed to all Healthcare workers in the frontline of the health pandemic.

6. This Bill shall provide for the setting up of a covid fund by the Treasury to channel monies into the expenditures in the MINISTRY OF HEALTH in buying vaccines and availing them to the population starting with the frontline workers and most vulnerable in the society.

7. This Bill shall be interpreted in line with the Constitution and all other relevant laws in Kenya.

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Questions ... 3 : a, b

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The convention of Plain English writing in the five sentences can be rectified as follows:

i) A judge's decision should reflect their opinion.

ii) The benefits of profile auto legislation.

iii) The benefits are provided for in the auto legislation.

iv) The company will recover the property.

v) Members eligible for dividends are the primary beneficiaries.

vi) We invest in funds assets, in short-term market securities to provide you with incomes, security over investment and high regular income.

b.) Merger and acquisition contracts are complex and usually large legal documents. They provide for the processes and procedure in which large business firms acquire ownership of smaller business firms which may either be businesses dealing in similar line of operation or related in their chain of business an example being a Chocolate Company dealing in the processing of Cocoa buying stocks in a firm that is involved in buying and supplying

case Cocos Plant. This form of acquisition between different firms carrying out business different businesses but in the same line of operation is called an acquisition and may either be hostile acquisition where the larger firm acquires whole State in the smaller firm or a friendly acquisition where the state in the smaller firm is owned fifty divided in fifty fifty shareholding.

Mergers between firms occurs where firms within the same operation of business say two banks like NIC Kenya and EBA bank Kenya, decide to merge their operations and management to increase their market share and broaden their client. This kind of merger is operationalised by contracts of merger regulated under the Companies Act 2013.

The Act prescribes the conditions to be met before the respective directors can institute merger processes among them is;

a) that they must operate within the same line of business.

b) they shall provide audited accounts for the previous 5 years for their approvals to be considered.

c) That the Directors of the respective companies must have received and presented the same proposals to effect a merger to their shareholders and obtained consent;

d) That the respective companies must be tax compliant.

e) That the respective companies must be sound and not insolvent.

f.) That the merger must be approved by the Central Bank of Kenya in relation to matters in the Banking Sector.

Given the except above, it is important to note that when a drafter is considering to draft, the audience intended for the drafter should inform their choice of language.

2. The drafter must carry out research and ensure that there is enough material in facts, precedent and statutory provisions in order to make an informed draft.

3. The drafter must ensure that a holding contained at is succeeded by a proper rationale.

4. The drafter must avoid the use of archaic words, latin and word-wasting idioms like 'until' and 'unless'.

5. The drafter must ensure that the draft is written in the first person utilising "I and You" and avoiding static language that may be disinteresting to the reader.

6. The drafter must ensure that the draft is intelligible to the average reader by the use of common English words the reader can easily make sense of without the need to make further references.

7. The drafter must ensure that the draft it uses one idea in each sentence and avoids compound sentences.

3. Legal opinion on the Tweet by Bob Tindir in relation to Honorable Serah Munda.

The law on defamation in Kenya relates to words of speech made by a party in relation to another that goes beyond ordinary criticism by casting aspersions on the integrity of another and without proof with the intention of being derogatory or demeaning to the person in question in the eyes of the general public.

The tweet by Bob Tindir the social media influencer is not protected in law on the following grounds that first it casts aspersions

on the character of the Honourable Member of parliament Mr Sekunda denoting that the member of parliament is a big thief. Secondly does not offer any proof to substantiate the claim alleged.

The courts in Kenya have established precedent of the law of defamation setting forth the following criteria to be applied when determining defamation causes:

- i) For a statement to be defamatory it must cast aspersions which cannot be proven by the author of the statement.
- ii) That the statement must be directed to the person raising the defamation matter
- iii) That the statement must be one that is likely to be construed by the ordinary audience or population to be demeaning or assassinate the character of the victim in their eyes.
- iv) That the statement must be directed to an audience.

The fact that Honourable Mr Sekunda is a Member of parliament does not in any way lower the sort or otherwise make it a lesser offensive statement. In fact, being a member of parliament makes the

Offense serious because it is meant to discredit the member of parliament and damage his Standing in the society especially in the eyes of his electorate.

Bob Tindi's Tweet is not protected under the constitution because there are limitations to the freedom of speech where the same is meant to incite to defame or otherwise break the rights of another. In this instant case, the freedom of speech as exercised by the social media influencer Bob Tindi violates the constitution.

b.)

Wachirawit (C. A.)
Kanda Street.
McGonigal House.
Nairobi.

23rd June 2021.

Bob Tindi

Dear Sir :

RE: Requirement by the forged of your tweet that you pull down the same and Apologise.

We have been instructed by our Client to claim

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Questions. 31.

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either margin

Kenyans on twitter have faced and retweeted your tweet posted on the 16th of May 2020 wherein you said as follows "Seyyiduna [Muhammad] is a big thief & who has swindled CDF. He should be rotting in jail". This tweet as has been written by you is defamatory to our client and is meant to portray him being a member of parliament in bad light in the face of his voters and the general population.

The same tweet by yourself is without reason and proof as to its substance.

The claimant Honourable Senator claims that you have defamed him and violated his rights.

REASON WHEREOF, the claimant seeks that with immediate effect from the date of receipt of this letter, you pull down the tweet and offer an unequivocal apology in the same platform and in bold for your reckless, defamatory and unsubstantiated sentiments.

Failure to act accordingly will necessitate with no choice but to file a claim for defamation at your own peril as to costs and damages there of.

WAHESHMINAS CO-ADVOCATES

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Questions

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(3, 5), 4621
Cc. Honorable Sonbhadra (lien)

(e) Legal title to property can be acquired through transfer from a vendor to a purchaser for value.

Mr. Jagutal Shambu needs to conduct a search at the Land Registry to ascertain the ownership of the K.R.N.O Nainwali / Block 155/101 so as to avoid being a victim of fraud. This due diligence will require that he presents at the Registry a copy of the title document and his identity card.

After ascertaining that Mr. Nainwali is the authentic owner of the property, Mr. Jagutal Shambu should proceed to pay the deposit price which is usually 10% of the purchase price by depositing the same to an Advocate for transfer to the vendor.

This transfer of funds is carried out when the respective copies of identification cards, passport photos and pin certificates have been deposited at the Land Registrars office for registration of the transfer.

For the buyer to pay the 50% due to effect transfer legal title to the property pending the completion of payment by further instalments, the vendor must sign and the attested transfer documents including the sale agreement, consents if any and execution of the contract of sale agreement.

CONTRACT FOR SALE OF LAND LR No Nair 2031/ BLOCK 1 (S5/01).

The vendor Mr. Muli Mwangi agrees the property namely ~~parcally~~ land LR No Nair 2031 (Block 1 S5/01) to one Mr. Tatuta Mchumba for a consideration of KSh 3,500,000 to be paid as follows:

(i) The buyer deposits 50% of the purchase price being KSh 1,750,000 in cash and further pay the remainder of the balance in equal installments of KSh 5,000.00 (Five hundred thousand) Kenyan shillings.

2. The vendor shall sign and execute the transfer document upon receipt of the purchase price as outlined above.

3. The purchaser shall transfer

the funds in full before the transfer
or upon the transfer of title
to property.

4. The deposit of 10% shall be paid by
the purchaser - a condition
for the deal is not refundable
in the event the purchaser
rescinds or is in breach of the
Agreement.

5. The Vendor reserves the
right to rescind the contract
if the purchaser is in breach
of any terms of the Agreement
above.

Question 5.

Regulations for the payment
of fees for the registration and
licensing of fish mongers.

1. Fish mongers are persons
who carry out fishing along
a lake or ~~waterfall~~ water
catchment area employing the
use of homemade fishing tools
and equipment.

2. The fish mongers shall
when conducting fishing in the
lake use nets which are
recommended by the fisheries

REGISTRATION NUMBER:

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Questions 5

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and Aquatic life Minister.

3. Fish mongers shall be in violation of the fishing regulations if they fish when prohibited areas or otherwise violate fail to pay the fees imposed on such fishing activities and the same shall attract a fine of not more than 10,000.