



KISII UNIVERSITY

UNIVERSITY EXAMINATIONS

THIRD YEAR EXAMINATION FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS SECOND SEMESTER, 2021/2022 (FEBRUARY - JUNE, 2022)

LLBK 322: LEGISLATIVE DRAFTING

STREAM: LLBK 3 S2

TIME: 2 HOURS

DAY: FRIDAY, 12:00 – 2:00 P.M.

DATE: 20/05/2022

INSTRUCTIONS

- 1. Do not write anything on this question paper.*
- 2. Answer Question ONE [Compulsory] and any other TWO Questions.*
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.*

QUESTION ONE

In the recent past the wild animals have attacked residents of the village of Jiki. The National Government of Kenya now wants an Act that would provide for compensation to be awarded to those affected by the attacks by the Wild animals. The attacks have occasioned extensive losses to the property of the people who live in Jiki Village. In addition, the attacks have occasioned injury of the livestock and the people of Jiki Village. Some of the injured people and livestock have died. The Act that the Government intends to propose would provide a framework for the compensation of all the people affected by these animal attacks.

Prepare a Bill of not more than 15 Clauses that could adequately address the compensation of the losses suffered by the people of Jiki Village

(30 marks)

QUESTION TWO

In light of the independent Constitution, the Constitution of Kenya 2010 and the Kenyan legislative history, critically discuss the role of the Kenyan Executive, Attorney General, National Assembly and the Kenya Law Reform Commission in Legislative drafting in Kenya.

(20 marks)

QUESTION THREE

- a) Discuss the stages in which a draft Bill goes in Parliament **(10 marks)**
- b) Discuss the grounds under which the President or Governor may refuse to assent a Bill and whether it is mandatory for the President or Governor to assent to Bill. **(10 marks)**

QUESTION FOUR

Every person engaged in the legislative process must take into account certain mandatory considerations prior and during the process. Courts and independent tribunals also take due regards of these considerations when construing policies and legislative instruments developed by the Executive and endorsed by all the respective legislative bodies at either level of Government. Discuss any of the **TWO** of the following legislative drafting principles

- a) Statutory harmony **(10 marks)**
- b) Conflict of law **(10 marks)**
- c) International treaties and Conventions ratified by the State **(10 marks)**
- d) Territorial jurisdiction **(10 marks)**

QUESTION FIVE

Draft the clauses that would be required in the scenarios presented in the following

- a) The County Attorney of Kisii County has instructed your law firm to prepare a Bill that penalizes the pollution of the city by the defecation of pet dogs that is left lying around their owners.

Draft the clause that would make this conduct an offence. **(4 marks)**

- b) The Inspector General of Umbaku National Police Service has discovered the offence of terrorism in their statutes only attaches criminal liability to the perpetrators of the terrorist act

Prepare a draft clause that would attach liability to other persons who may be involved in a terrorist activity. Kindly note that the Prevention of Terrorism Act of Umbaku provides that the maximum penalty of the offence of terrorism is imprisonment for a term not exceeding twenty-five years. **(4 marks)**

- c) The following texts are drawn from the various Statutes of Kenya. However, the sections have been altered in a manner that offends the

principles of legislative drafting .Identify and draft amendment clauses that would ensure consistency with the principles of legislative drafting

i. The Physiotherapist Act 2014

Sec 9. Remuneration of Council Members

The Salaries and Remuneration Commission advises the Cabinet Secretary who determines what the Council should pay its members as allowances for expenses. **(2 marks)**

Sec.14 Financial Year

Each year the period of twelve months ending on the thirtieth of June, shall be the financial year of the Council. **(2 marks)**

ii. The Fisheries Management and Development, 2016

Sec. 34 County may develop fisheries Management Plan

The Fisheries management measures and plans for fisheries resources, developed by each county within its jurisdiction shall be proved in the Fourth Schedule to the Constitution. **(2 marks)**

Section 69 Engagement

Each person engaged in commercial aquaculture in Kenya, shall take a few or many measures to prevent or minimize the risk of the escape of aquaculture stock in the wild. **(2 marks)**

iii. The National Youth Service Act, 2018

Sec 23. Enlistment to the Service

A person is eligible to be enlisted as a member of the service if he or she is a youth, whose age is between eighteen years and thirty -five years, as defined under this Act. **(2 marks)**

Sec.68 Repeal of Cap 208

The National Youth Service Act is deleted **(2 marks)**