



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS

THIRD YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS
SECOND SEMESTER, 2023/2024
(JANUARY-APRIL, 2024)

LLBK 322: LEGISLATIVE DRAFTING

STREAM: Y3 S2

TIME: 2 HOURS

DAY: MONDAY, 12:00 – 2:00 P.M.

DATE: 08/04/2024

INSTRUCTIONS

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

QUESTION ONE (COMPULSORY)

The Council of County Governors has invited you to a meeting to discuss the implications of the Water Act, 2016. During the meeting, the chair of the Council points out that one of the problematic provisions in the law is Section 65. The Section, which is headed “Waterworks Development Agencies” reads thus:

S.65(1) The Cabinet Secretary may, by notice in the Gazette, establish one or more waterworks development agencies and define the geographical area of jurisdiction of each such agency.

(2) The waterworks development agencies shall be bodies corporate with perpetual succession and a common seal and shall have power in their respective corporate names and sue and be sued and in the exercise and performance of their powers and functions to do and permit all such things as may lawfully be done or permitted by a copy corporate.

The main concern of the Council is that the provision above takes away the power of Counties to carry out waterworks for the provision of water services. A constitutional expert pointed out that Counties can, through Section 5 of the Public Finance Management Act establish an entity to carry out waterworks.

The Council proposes two ways of addressing this challenge. First, the Council wants an amendment to Section 65 drafted and presented to the Senate. Secondly, the Council wants to develop a Bill to be passed by County Assemblies that will provide for the establishment of County Water Corporations.

- a) Draft an amendment to Section 65 of the Water Act, 2016, to reflect the concerns of the Council of Governors. (6 marks)
- b) Prepare an outline of the County Water Corporation Bill, including the essential components of the Bills. (24 marks)

QUESTION TWO

- a) Critically discuss the key reference laws in legislative drafting. (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 THREE

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 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) technical soundness or practicality concerns (10 marks)
- b) Policy parameters (10 marks)
- c) ethical and other concerns (10 marks)
- d) Territorial jurisdiction (10 marks)