



# KENYATTA UNIVERSITY

UNIVERSITY EXAMINATIONS 2011/2012

## SECOND SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

LPR: 303: LEGAL AND LEGISLATIVE DRAFTING

DATE: THURSDAY, 19<sup>TH</sup> APRIL 2012

TIME: 9.00 A.M. – 11.00 A.M.

### INSTRUCTIONS

1. Answer Question ONE and any other two Questions.
2. You will be penalized for not answering Question One
3. Support your answer with relevant case law, statutes, conversations and any other references wherever necessary.
4. Write neatly and legibly.
5. Indicate your student registration number on your answer sheet.

### Questions

1. In the conventional view of legislative drafting, the knowledge and skills required by drafters are often narrowly conceived and training is treated primarily as a matter of acquiring experience on the job by observing how senior drafters worked underestimating both: (1) the scope of the knowledge and skills that are required in the drafting activity and (2) the range of techniques that can be used to teach and learn the required knowledge and skills. Describe the knowledge and skills required by legislative drafters. (30 marks)
2. Unless the contrary appears, most enactments are not intended to have retrospective operations under the general principle that legislation by which the conduct of mankind is to be regulated ought to deal with future acts and ought not to change the character of past transactions carried on upon the faith of the then existing law.

In *R v Governor of H.M. Prison Brockhill, ex p. Evans* (No. 2), the House of Lords considered a claim for damages for false imprisonment brought by a convicted prisoner against the Governor of Brockhill prison. Under a line of judicial authority as to the legal meaning of Criminal Justice Act 1967, s 67(1), known as the Gaffney approach, the release date of the prisoner had been calculated by the Governor as 18<sup>th</sup> November 1996, however, the Gaffney was in effect overruled in *R v Secretary of State for the Home Department, ex p Naughton*, on the normal declaratory principle of Judicial Precedent operated retrospectively so the respondent should with, hindsight have been released on 17<sup>th</sup> September 1996.

**Was she entitled to the damages from the Governor, even though at the relevant time he had applied the correct law as laid by the Gaffney approach? Discuss**

**(20 Marks)**

3. Describe any **two** of the four types of legislative interpretation commonly referred to as the interpretative criteria **(20 Marks)**

4. Given the importance of the legislative text as the source of law, it is the prime responsibility of the legislative drafter to make the underlying purpose clear.

Explain

**(20 Marks)**

5. Define any two of the following:

**(10 Marks each)**

- a) Statute
- b) Policy
- c) Explanatory notes
- d) Absurdity

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