LLB 101X– Legal Research and Writing

SCHOOL OF LAW
PROGRAMME: BACHELOR OF LAWS
Course Title: LEGAL RESEARCH AND WRITING
Course Code: LLB101TX
JANUARY 2020 Semester

Lecturer: Ms Marion Motari
LLM (Med Law with distinction); Msc (Med Sci); LLB (Hons); Dip Law (KSL)

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Consultation Hours: Wednesdays 1.00pm – 2.00pm

Class Venue: IR103  Time: 5.30 pm – 8.30 pm
Day: WEDNESDAY

Purpose
To equip students with legal research and writing skills.

Learning Outcomes
By the end of this course, the student should be able to:

• find legal research resources in a law library and in other places;
• utilize internet legal resources effectively and comprehensively;
• identify various sources of legal information;
• draft legal opinions using appropriate legal language and terminology; and
• apply OSCOLA writing style in legal writings.

Course Description
This course introduces students to concepts, purpose, and the practical conduct of legal research and writing. It facilitates the development of an effective writing style, which is characterized by accuracy, brevity and clarity. The course enhances the learner’s ability to conduct legal research, including using public records, statutes and constitutional law, legislative histories and Hansard reports, government documents, case law, treaties and international conventions. The course exposes the learner to the use of online legal resources and depositories such as Lexis-Nexis, JSTOR, HeinOnline, Kenya Law among others.

The learner is also introduced to the Oxford Standard for the Legal Citation of Authorities (OSCOLA). At the end the learner is expected to:

• use virtual (online) and physical law library resources to access legal material;
• effectively conduct computer assisted legal research;
• acquire legal reasoning, legal research and legal writing skills, and apply these skills contextually to meet different objectives;
• draft various legal documents e.g. contracts, agreements, pleadings, etc.; and
• make effective use of authorities/case law to develop legal arguments and reasoning.
• use the OSCOLA referencing method effectively.

Teaching Methodology
Lectures; case studies; pilot research project, presentations; problem-based learning; writing clinics
Instructional Materials and/or Equipment:
Computers; Internet; Statutes; Law Reports; Group discussions; Chalk/white boards and necessary accompaniments; Library; E-Journals; Online legal depositories as Kenya Law, Lexis-Nexis, HeinOnline, JSTOR etc

Student Assessment
The assessment of the course will have 4 components namely:
- A take-away assignment – 10%
- Sit-in test – 10%
- Oral test – 10%
- Moot court – 10%
- Final examination – 60%

Core Textbooks:

Recommended Reading and Reference Materials:

SCHEDULE OF WORK:

WEEK 1: 22 January 2020: INTRODUCTION

a) Introduction
b) An outline of Kenyan Legal system
   (i) The structure of the legal system
   (ii) Components of governing law
   • Legislature
   • Executive
   • Judiciary
c) Primary and secondary sources of law
d) Hierarchy of laws

Readings:

2. Pester pp 3-45;
5. Judicature Act, Chapter 8 of the Laws of Kenya
6. Executive Order No 1 of 2016
7. Executive Order No. 2/12013
8. *Bala v Attorney General* [2017] eKLR (HCt at Nairobi)
10. *Odinga v Independent Electoral and Boundaries Commission* [2017] eKLR (SCt) par 175 per Ojwang, SCJ (dissenting)
11. s. 68 of the Anti-Corruption and Economic Crimes Act (Act No. 3 of 2003) empowers the Minister to make regulations, and s .5 of the Architects and Quantity Surveyors Act (CAP. 525 of the Laws of Kenya) empowers the Board of Architects and Quantity Surveyors to make bye-laws subject to the approval of the Minister in charge of that docket;

12. In 

Evans Odhiambo Kidero & 4 others v Ferdinand Ndungu Waititu & 4 others [2014] eKLR (SCt),


16. Criminal Appeal No.12 of 2009 between Mukazitoni Josephine & AG

Assignment 1 – Take away – (to be submitted at Week 5 on 19 February 2020):

Question – see last page of this document.

Assignment 2 – Moot Court Question (see additional sheet) – due date – Week 15

WEEK 2: 29 JANUARY 2020-CITING AUTHORITIES

a) Introduction
b) Vancouver Style
c) Turabian Style
d) American Psychological Association (APA) Style
e) Oxford System of Citation of Legal Authorities (OSCOLA)

Readings:

3) OSCOLA 2006 - The Oxford Standard for Citation of Legal Authorities
   <http://denning.law.ox.ac.uk/published/oscola.shtml>, pp 1-44
4) OSCOLA 2012 - Oxford Law - University of Oxford

WEEK 3: 5 FEBRUARY 2020 – PRACTICALS - WAYS OF SEARCHING AND FILTERING SEARCHES

Developing a search question – practical session

Readings:

Wekesa (2018) Chap 7

WEEK 4: 12 FEBRUARY 2020 - SYSTEMS AND TOOLS FOR RESEARCH - PRACTICALS

a. The Physical Library
b. The Computer in Legal Research
c. Online Resources
   1. Kenya Law Reports
   2. GlobalLex
   3. WestLaw
   4. LexisNexis

Readings:

2. Pester pp 31-46, 47-52

WEEK 5: 19 FEBRUARY 2020 -
WEEK 6: 26 FEBRUARY 2020 – Understanding and working with Case Law

1. How case law is developed
2. Anatomy of a case
3. Structure of a case
4. Editorial enhancements and headnotes
5. Analysing a case
   a. assess the weight a court would give a case
   b. Read the cases critically
   c. Consider the reasoning employed in the case

Readings:
2. Donoghue v Stevenson (1932) All ER 1

WEEK 7: 4 MARCH 2020 – CONSTITUTIONS AND OTHER LEGISLATIONS

1. What is a Constitution?
   • How does it relate to other laws?
   • Who determines whether a law or action violates the constitution?
   • Where can the constitution be found?

2. The Kenyan Constitutional Context
   • Doctrine of legislative supremacy
   • Classification of Acts of Parliament
   • How legislation is produced and codified
   • Legislative history
   • Anatomy of a statute
   • How to find statutes

4. Subsidiary legislation (Rules and Regulations)

Readings:
1) Wekesa (2018), Chap 3
3) Njowa & Ors v Attorney General & Anor [2004] 1 KLR 233 per Ringera, J
5) R v Mgunya [2010] eKLR (HCT) the court found a conflict between s.123 of Criminal Procedure Code and art.49 and declared the offending section null and void;
6) Kenya Bus Services Ltd v Minister for Transport, Petition No. 504 of 2008 (HCT) – the court found that s. 13A of the Government Proceedings Act violates art. 48;
7) Aborwa v IEBC [2014] eKLR – s. 76(1) Elections Act was found to violate art. 87;
8) Munene v Kingara [2014] eKLR (SCt) Munyaka v County Government of Kiambu [2014] eKLR (HCT) the court said that the Alcohol law by the Kiambu County Assembly was constitutional
9) Eric Cheruiyot & ors v Independent Electoral and Boundaries Commission & ors, Petition No. 1 of 2017 (ELRC - Kericho) an employment court found s.43(5) of the Elections Act, 2011 to be unconstitutional and therefore of no legal consequence.
10) Civil Procedure Act and Civil Procedure Code
11) Elections Act (N0. 24 of 2011)
12) Fair Administrative Action Act (Act No. 4 of 2015).
13) Judicature Act (CAP 8 of the Laws of Kenya)

WEEK 8: 11 MARCH 2020 – ANALYSIS OF SECONDARY SOURCES

1. Introduction
2. Kenya Law Reports
3. Uganda Law Reports
4. Tanzania High Court Digest
5. All East Africa Consolidated Index

Readings:
Wekesa (2018) Chap 5

WEEK 9: 18 MARCH 2020 – SECONDARY SOURCES CONTI...

8. All England Law Reports
9. Black’s Law Dictionary
10. Sudan Law Journal and Reports
11. Zanzibar Protectorate Law Reports

Readings:
Wekesa (2018) Chap 5

WEEK 10: 25 MARCH 2020 – BASICS OF LEGAL WRITING

a) Introduction
b) A historical Overview of ‘Legalese’
c) The Three Types of Compound Words

Readings:
2. Equist & Curie pp 171-200
4. Le Clercq & Mika pp 39-56

WEEK 11: 1 APRIL 2020 - Oral Assessments

WEEK 12: 8 APRIL 2020 - DISTINGUISHING FEATURES OF LEGAL WRITING

a) Citing authorities
b) Use of precedent
c) Vocabulary
d) Formality
Readings:


WEEK 13: 15 APRIL 2020 – LEGAL DRAFTING - PRACTICALS

a) Legal analysis
b) Predictive
c) Persuasive Writing
d) Drafting a Contract

Readings:

2. Le Clercq & Mika pp xv-xix, 1-36
3. Neumann & Tiscione pp 59-65, 67-76

WEEK 14: 22 APRIL 2020 – LEGAL DRAFTING – PRACTICALS

a) Drafting a Will
b) Drafting documents for Filing in Court
c) Ethical considerations

Readings:

2. Le Clercq & Mika pp xv-xix, 1-36
3. Neumann & Tiscione pp 59-65, 67-76

WEEK 15: 29 APRIL 2020 Moot Court Assessment

Presentation of Moot Court on the question given out in Week 1 (see additional sheet)

WEEK 16/17: EXAMS
Question
Identify and adequately describe at least ten (10) characteristics of the Oxford System of Citation of Legal Authorities (OSCOLA). Provide an example for each characteristic identified. (10 Marks)
MOOT COURT QUESTION
(To be presented during week 15 – 29th APRIL 2020)
Ms Jennifer Eli has just found her entire thesis document titled ‘Effects of Oil Spillage on Oceanic Phytoplanktons: A Study of the Indian Ocean’, which she successfully defended in 2016 at the prestigious Daystar University for the award of a Doctor of Philosophy (PhD) degree in the field of marine Science posted word for word on the official Website of Elite University a university based in the Republic of Kenya. As a result, Jennifer has gotten very excited thinking that her field of research which has long suffered from lack of visibility and recognition has finally begun getting recognition and acceptance in the world of academia.

On further perusing the Elite University website she discovers that her dissertation is credited to Mr Thomas Kesteren who is listed among students scheduled to graduate in the next 2 days at the 3rd graduation ceremony of Elite University. This turn of events distresses Jennifer because she realizes that her thesis which was as a result of hard work and sacrifice has been plagiarized. She moves to court seeking remedies. (10 Marks)

Notes on how the moot court session will be assessed:
• Mastery of the substantive/relevant law applicable to the question
• Drafting of moot court documents and the preparation of bundle of documents
• Mastery of relevant court procedure
• Presentation and usage of right legal terminology to address the court
• Appropriate division of tasks so that each team member has a clearly defined role to play
• An illustration of team work