



LEGISLATIVE DRAFTING – KEY REFERENCE LAWS

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KEY REFERENCE LAWS

- The key reference laws for a drafter are the Constitution and the Interpretation and General Provisions Act.
- The above laws are extremely important to a legislative drafter because they inform the art of legislative drafting
- A drafter legislative must therefore be very conversant with these laws.

THE CONSTITUTION OF KENYA 2010

- A draftsman should use the Constitution as a mirror
- It is the supreme law of the Republic and binds all persons and all State organs at both levels of Government
- A draft Bill must therefore be drafted in line with the Constitution as it is the cornerstone of the Rule of Law

- Some of the key reference provisions in the Constitution on which legislative drafting is anchored include:
- i. ARTICLE 2:
- This article restates the supremacy of the Constitution
- Article 4, Sub-article (4) makes clear that all legislation must conform to the constitution. Do not therefore draft anything inconsistent to the Constitution as the same will be rendered void
- Sub-article (6) is also important because it links international law to the laws of Kenya → Policies, formulas and legislations enacted after the promulgation of the new constitution must respect the general principles of international law.

- ARTICLE 10:
- This states the national values and principles
- This section demands transparency, accountability, participation and inclusiveness. A drafter must therefore ensure that they incorporate these national values and principles in the legislation they seek to draft
- CHAPTERS 8, 9 AND 10:
- The Constitution provides for the Legislature, the Executive and the Judiciary
- These 3 arms of government are all important in legislative drafting → while the legislature is the key arm of government that is responsible for legislative drafting and enacting laws, even the Executive and Judiciary are equally important. The Judiciary must give a purposive interpretation to legislation drafted by the legislature, and the Head of the Executive must assent to a Bill before it is passed to become an Act of Parliament

- CHAPTER 8:
- It provides for Legislative authority at both National and County Government
- The National Government has 2 legislative houses: The Senate and the National Assembly– See Articles 93, 94 and 95
- The Constitution created 47 County Assemblies in the 47 Counties. The County Assembly’s core mandate includes oversight and passing of legislation
- County legislation is essential to enable full implementation of devolved functions

• **The Interpretation and General Provisions Act**

- This provides the basic rules regarding how the Courts should interpret the provisions of an Act of Parliament or subsidiary legislation made pursuant thereto. It defines certain words and expressions and removes the necessity to repeat the meaning in an Act.
- Apart from definitions and rules of construction, the Interpretation Act also includes substantive rules of law such as provisions related to the effect of repeal of an Act.
- The Interpretation Act therefore clarifies the rules of construction, avoids repetition and promotes consistency of language.
- It must be noted however that the meanings in an Interpretation Act can be ousted by a particular definition or provision in an Act.
- It provides substantive law on how laws are amended and repealed but you should bear in mind Article 260 too.
- The Act also provides for the time when laws come into operation
- Transfer and delegation of statutory authority are found here and in Article 187 of the Constitution.

OTHER KEY REFERENCE LAWS

- Other Reference Laws that are important for a legislative drafter are-
 - – Public Finance Management Act
 - - Public Procurement and Disposal Act, 2005 (No 3 of 2005)
 - – Government Financial Management Act, 2004 (No 5 of 2004)
 - – Public Audit Act, 2003 (No 12 of 2003)
 - – Revision of Laws Act (Cap. 2 Laws of Kenya)
 - - The Statutory Instruments Act
 - – Standing Orders of the National Assembly and Senate
- These laws are relevant to the drafter because of their cross-cutting nature and supremacy while dealing with the subject matter of the respective statutes.
- HOMEWORK: The Class SHOULD familiarize themselves with the provisions of these Statutes (why are they important to a drafter?) together with those of –the Constitution of Kenya; and the Interpretation and General Provisions Act (Cap 2 Laws of Kenya)



• QUESTIONS????