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CPA

Introduction to Law and Governance

April 2026

Level: Foundation Level

Question 1

 Nature, Purpose and Classification of Law, Alternative Dispute Resolutions (ADR) , Law of Contract , Introduction to corporate governance

(a) In relation to the law of contract, explain the following terms:

(i) Invitation to treat.

(ii) Counter-offer.

(b) With reference to the sources of law in Kenya, summarise FOUR advantages of written law over customary law.

(c) Outline FOUR roles of the government in relation to corporate governance in your country.

(d) Analyse FOUR essential features of arbitration as an alternative dispute resolution (ADR) mechanism.

✓ Answer for Question 1

(a) Law of Contract

(i) Invitation to treat

An **invitation to treat** is **not an offer**, but an expression of willingness to invite others to make offers.

- It signals readiness to negotiate, not to be bound immediately.
- The person responding (e.g., customer) makes the actual offer.

Examples:

- Display of goods in a supermarket
- Advertisements
- Auction announcements

Key point: It **does not create a binding contract** when accepted.

(ii) Counter-offer

A **counter-offer** is a response to an offer in which the offeree **changes or varies the terms** of the original offer.

- It **rejects and extinguishes** the original offer.
- It becomes a **new offer**, which the original offeror may accept or reject.

Example:

- A offers to sell a car at KSh 1,000,000
- B replies: "I'll buy it for KSh 900,000" → this is a counter-offer

Key point: Once made, the **original offer cannot be accepted later** unless revived.

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Introduction to Law and Governance

August 2025

Level: Foundation Level

Question 1b

 Administrative Law

Explain THREE types of delegated legislation commonly used in administrative law.

✓ Answer for Question 1b

Core Concept: What is Delegated Legislation?

Delegated legislation, also known as subordinate or secondary legislation, refers to laws created by an authority—such as a government minister, local council, or independent agency—under powers granted by a primary Act of the legislature.

This system allows for detailed, technical, and flexible rules to be developed without congesting the legislative agenda, enabling experts to address complex and evolving issues efficiently.

Common Types of Delegated Legislation

The specific names can vary, but the following are universally recognized types found in many common law systems.

1. Regulations

This is the most prevalent form of delegated legislation. They are typically created by national government ministers or departments to provide the intricate details necessary to implement the broad principles outlined in a primary Act.

- **Who makes them:** Designated government ministers or executive agencies.
- **Purpose:** To specify technical standards, procedures, and definitions. For instance, a primary health and safety act might be supported by regulations detailing exact equipment standards or permissible exposure limits to certain substances.
- **Example:** Regulations stemming from a data protection act that outline precise requirements for obtaining user consent or reporting security breaches.

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Introduction to Law and Governance

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Level: Foundation Level

Question 1c

 Administrative Law

Analyse FOUR principles that guarantee judicial independence in your country.

✓ Answer for Question 1c

Principles That Guarantee Judicial Independence in Kenya

1. **Security of Tenure**
   Judges of superior courts (such as the High Court, Court of Appeal, and Supreme Court) enjoy secure tenure as provided under the Constitution. They can only be removed from office on grounds such as misconduct or incapacity, and only through a formal process involving a tribunal appointed by the President on the recommendation of the Judicial Service Commission (JSC).

2. **Financial Autonomy**
   The Judiciary has an independent budget, as provided for under Article 173 of the Constitution. This ensures that it can operate without financial pressure or manipulation from the Executive or Parliament, promoting impartial decision-making.

3. **Independent Appointment and Promotion Process**
   Judges and magistrates are appointed and promoted by the Judicial Service Commission (JSC), which operates independently and follows a transparent, merit-based recruitment process that minimizes political influence.

4. **Separation of Powers**
   The Constitution of Kenya (Article 1 and Chapter 10) establishes a clear separation between the three arms of government: the Executive, Legislature, and Judiciary. This structure ensures that each arm functions independently and does not interfere with the others.

5. **Judicial Immunity**
   Judges are protected from legal action for acts performed in the course of their judicial duties. This immunity helps protect them from intimidation and promotes fearless and impartial adjudication.

6. **Operational Independence**
   The Judiciary independently manages its administrative affairs, including the allocation of cases, assignment of judges, and management of court registries. This minimizes external interference in its day-to-day functioning.

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Introduction to Law and Governance

December 2023

Level: Foundation Level

Question 3b

 Law of Tort

Martin is employed as a waiter by Jackson in his restaurant. One of his duties is attending to customers' orders. Jackson manages the restaurant by himself and expressly gives instructions to all his employees in the restaurant on how to do their work. One day while Martin was serving a customer, a hot beverage accidentally poured on a customer causing severe burns.

Required:

(i) Describe the legal principle in this scenario.

(ii) Determine the party or person to bear the liability for the injury suffered by the customer.

(iii) State FOUR reasons why the party or person identified in (ii) above will bear the liability

✓ Answer for Question 3b

(i) Legal Principle in This Scenario

The scenario involves the legal principle of **vicarious liability** (employer's liability for torts committed by an employee during the course of employment).

Key elements:

1. **Employer-Employee Relationship** – Jackson (employer) hired Martin (employee) to work in his restaurant.
2. **Tortious Act** – Martin negligently spilled hot beverage on a customer, causing injury.
3. **Course of Employment** – The accident occurred while Martin was performing his duties (serving customers).

Under **vicarious liability**, an employer can be held legally responsible for the wrongful acts of an employee if the act was done **within the scope of employment**.

(ii) Party Liable for the Customer's Injury

Jackson (the employer) will bear **primary liability** for the customer's injury, while **Martin (the employee)** may bear **secondary liability** if his negligence is proven.

(iii) Reasons Why Jackson (the Employer) Bears Liability

1. **Vicarious Liability Applies**
   - Employers are held liable for employees' torts committed during work.
   - Since Martin was performing his job (serving customers), his actions fall under Jackson's responsibility.

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Question 2b

Alternative Dispute Resolutions (ADR)

In the context of solving disputes through alternative dispute resolution:

(i) Explain four advantages of traditional dispute resolution mechanisms.

(ii) Summarise six grounds for setting aside an arbitral award.

✓ Answer for Question 2b

Advantages of Traditional Dispute Resolution Mechanisms:

1. **Familiarity and Cultural Sensitivity:**
   Traditional methods align with cultural norms and practices, enhancing cultural sensitivity.
2. **Preservation of Relationships:**
   Focus on reconciliation and restoration of relationships for ongoing positive interactions.
3. **Informality and Flexibility:**
   Less formal than legal proceedings, allowing for tailored, flexible resolution processes.
4. **Cost-Effectiveness:**
   More affordable than formal legal processes, contributing to cost-effectiveness.
5. **Community Involvement and Support:**
   Involvement of the community or respected elders fosters collective responsibility and support.
6. **Speedier Resolution:**
   Quicker resolution compared to lengthy court proceedings due to informality and local involvement.

Grounds for Setting Aside an Arbitral Award: