

FROM THE BEST TEEPARKOTS INC. PUBLISHERS BEST
SELLING AUTHOR

THE LAWYERS' DESK

LET'S KEEP IT MOVING BY THE LAW



BY
The Best Selling Law Author

KIIZA SMITH

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My clients (all over the world, on the different firms I have been working with) always ask me a lot of questions however, they advised me to write a book about everything that a person may ask a lawyer for advice. I thus made all the possible research on the above topic and as well add my experience as a professional lawyer, I ended up binding all the findings into a single book that I named "The Lawyer's Desk", which is actually the one you have opened to read right before (... I mean this very one ...). I, therefore, dedicate this book to all my clients

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...THE LAWYER'S DESK...

“Please Note: This eBook is a guide and serves as a first guide. In addition, please get expert advice.”

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**THE
LAWYER'S DESK**

“Let's keep it moving by the law”

(First edition)

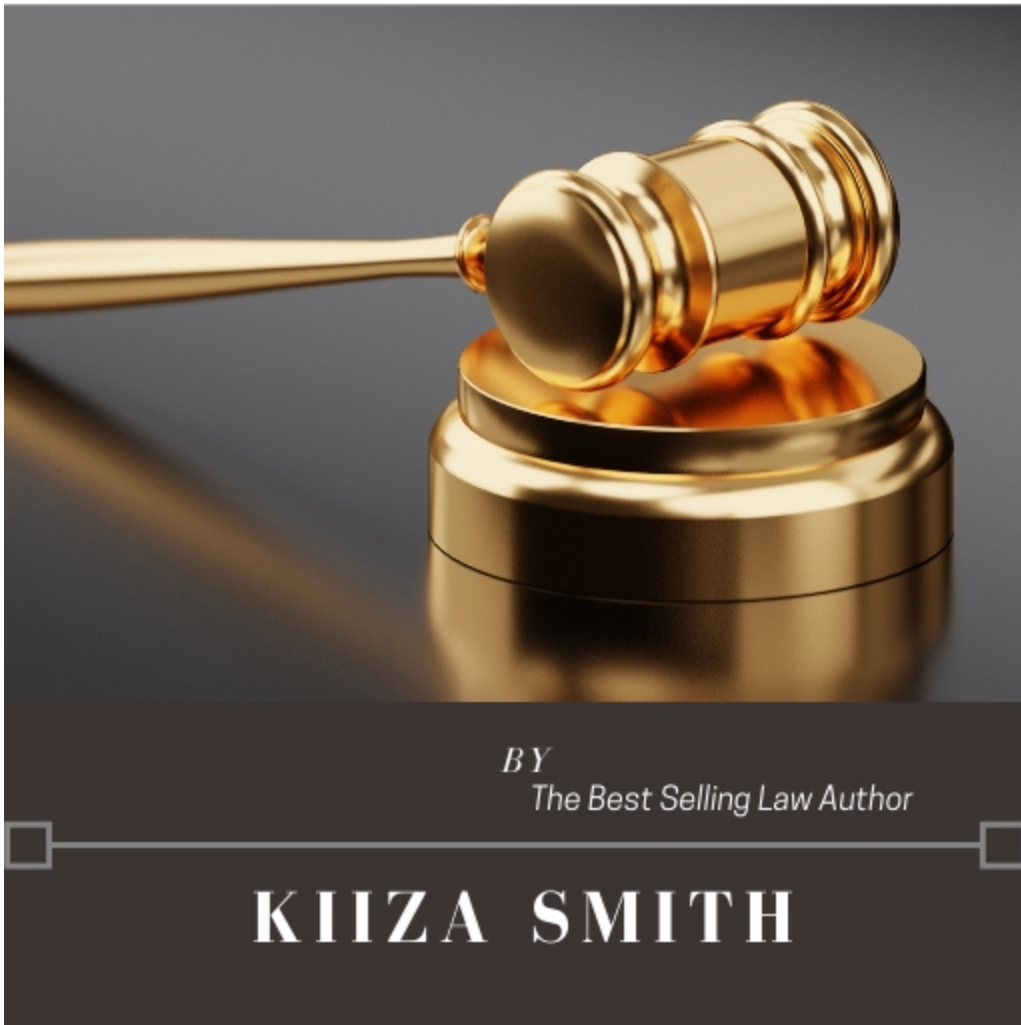
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Bestselling law author

From the same author of *“principles of intellectual property”*

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PREFACE

My clients always ask me a lot of questions however, they advised me to write a book about everything that a person may ask a lawyer for advice.

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I, therefore, dedicate this book to all my clients

LAW WORDS/TERMS & ANSWERS

1. What is an argument?

This is a series of statements, some backed by evidence and others not, that are presented in order to prove or disprove a given position.

2. What do you understand by the term logic?

This is the science of reasoning, thinking, proof, or inference that is used to create or generate conclusions from the evidence.

3. What is meant by an inference?

An inference is a process that allows the establishment of themselves truth of a certain conclusion of an argument

from the truth of other sentences which constitute the evidence of the conclusion.

4. What is forensic rhetoric?

This is the persuasion adopted by lawyers who represent the interests of their clients to persuade the court to accept their position.

5. What is meant by deliberative rhetoric?

This is a system adopted by judges in seeking to arrive at a rationalized decision that is justifiable in the overall interest of the parties and the society.

6. State any two advantages of legal reasoning.

It helps judges too clearly, methodically, analytically, sensibly, and reasonably.

It helps lawyers to clearly express and explain themselves.

It helps judges to identify and stop wrong arguments that are capable of misleading the court to lead to a wrong judgment.

7. State any two forms of legal reasoning.

Deductive reasoning.

Inductive reasoning

8. What is a legal argument?

This is a dispassionate appeal to reason constructed from the evidence and applicable legal rules as applied to a set of facts.

9. What is the deduction?

This is the reasoning process that draws a conclusion from the logical relationship of two assertions usually a broad judgment and more specific assertions.

10. What is the task of a lawyer when constructing a deductive argument?

The lawyer's task is to defend the truth of his premises.

11. State any two differences between deduction and induction.

Deduction involves reasoning from known premises presumed to be true whereas induction involves drawing

uncertain inferences based on probabilistic reasoning.

The conclusions reached under deduction are certain, inevitable, and inescapable whereas the conclusions under induction are probable, reasonable, plausible, and believable.

The validity of a deductive argument is determined by its structure whereas the structure of an inductive argument has little to do with the perceived believability or credibility apart from making it clearer and well organized.

12. What is analogical reasoning?

This is the making of an argument by considering the similarity of cases.

13. What are the three stages of analogical reasoning?

The similarity of cases is observed.

The ratio decidendi inherent in the first case is stated.

That rule is applied to the case for the decision.

14. What name is given to the creative process which tends to argue around the data based on hypothetical matters rather than those known?

Abductive reasoning

15. What is a fallacy?

This is an error in reasoning.

16. State the two broad categories of fallacies.

Fallacies of relevance

Fallacies of ambiguity

17. What do you understand by the term non sequitur?

This refers to an irrelevant conclusion arising out of an error in reasoning.

18. What name is given to a fallacy consisted of treating as a cause what is not or what shouldn't be assumed as a cause?

A false cause.

19. What name is given to a fallacy when a person moves too quickly to establish a broad principle or general rule based on specific factual observations?

Hasty generalization

20. What name is given to a fallacy where one assumes the truth of what one seeks to prove in the very effort to prove it?

Circular argument.

21. What name is given to a fallacy that occurs when the question that is subject to reasoning is phrased in such a way as to presuppose the truth of a conclusion buried in that question?

Complex argument.

22. When is a fallacy of ambiguity committed?

This is when a keyword or phrase is used to have two or more different meanings in the same argument.

23. When is a fallacy of composition committed?

This fallacy is committed when the judge or lawyer mistakenly imputes the attributes of a part of a whole to the whole itself.

24. Mention the fallacy committed when the judge or lawyer mistakenly argues that attributes of a whole must also be present in each part or constitute a whole.

The fallacy of division

25. At the trial, counsel for the defendant submitted that the evidence of a witness's criminal past proves that the witness was lying. And that this independently proves that the witness was lying. Which fallacy is highlighted in the scenario?

It is an ad hominem argument.

26. What is meant by an argument from force?

It is a fallacious argument that substitutes yielded threats for logical persuasion or when it suggests that something must be the case because that's just the way things are.

27. Which fallacy occurs when expressive language designed to excite an emotion like outrage or pity is used in place of logical conclusion?

This is called an appeal to emotion.

28. Define a judicial precedent.

This refers to a judgment or decision of a court of law cited as an authority for deciding a similar state of fact in the same manner on the same principle or analogy.

29. State any two principles of law that have grown as a result of the doctrine of stare decisis et non quieta movera.

Provocation

Self-defense

30. State the vertical application of the doctrine of precedents.

A superior court binds all courts subordinate to it and it has the power to overrule principles of law laid down by courts of inferior jurisdiction.

31. State the horizontal application of the doctrine of precedents.

A court (usually appellate courts) is bound by its own previous decision and the decisions of courts of coordinate jurisdiction.

32. State any four justifications for the doctrine of precedents.

It achieves equality by treating all cases alike.

It promotes efficiency by saving time where the issue has previously been considered by a superior court.

It promotes certainty because the law is able to furnish a clear guide for the conduct of individuals.

It promotes the appearance of justice by creating impartial rules of law depending on the personal views or biases of a particular judge.

33. Which part of a judicial precedent is binding?

The ratio decidendi

34. State the factors that affect the degree persuasiveness of a judicial decision.

The nature of the other jurisdiction.

The level of the court which decided the precedent case.

The date of the precedent case. (On the assumption that the more recent the case, the more reliable it will be)

The judge's reputation (in some cases)

35. What do you understand by the term ratio decidendi?

This refers to the rationale that a judge or a court uses to support a decision or a judgment in a court case.

36. State any four techniques used by judges to avoid following a judicial precedent.

Overruling

Reversing

Distinguishing

Conflicting decisions

Decisions made per incuriam

37. When is a decision of court said to be overruled?

This is when a court higher in the hierarchy departs from a decision made in the lower court and thus rendering it non-binding in the future.

38. When is a decision of a court said to be distinguishable?

This is where facts of the case are deemed sufficiently different so that the previous case is not binding on the court.

39. What are conflicting decisions?

This is where there are two decisions of equal weight that stand for the legal proposition that has been cited but with different conclusions.

40. Define legal research?

This is the process of identifying and retrieving information necessary to support legal decision making.

41. How is legal research different from other forms of research?

When confronted with a legal issue, the researcher must endeavor to locate any potentially relevant authority which would be binding on the applicable jurisdiction.

Cases or statutory provisions which seem to favor a client's position cannot simply be ignored but can be distinguished.

Law is organic and the researcher must learn to appreciate the need to update and verify every source upon

which he intends to rely on in developing a legal argument.

The use of analogy in legal reasoning.

42. State any three research skills.

Formulating the research question into issue and sub-issues that need to be researched.

Identifying materials (primary and secondary sources) or the type of materials that need to be searched for to answer the questions at hand.

Searching for, locating, and retrieving relevant research materials.

Ranking the relevance and importance of the materials retrieved.

Reading the materials (sources) in appropriate detail, taking notes, and making a critical assessment of them where appropriate.

Putting together an overall view of these different sources.

Summarizing the above processes, the decisions and issues involved.

43. What is the relevance of the mischief rule in statutory interpretation?

It enables the court to interpret a statute to correct the mischief it was enacted to correct.

44. What do you understand by the intrinsic aids to statutory interpretation?

This refers to the assistance provided by the Act itself in interpreting a statute.

45. State any two examples of internal aids to statutory interpretation.

Title (Long title and short title)

Preamble

Punctuation

Headings

Marginal or side notes

Provisos

Schedules

Interpretation clauses

46. Define statutory interpretation.

This is the process of interpreting and applying legislation.

47. What is the ejusdem generis rule?

This is the rule that provides that where specific words are followed by general words, the general words are limited to things of the same kind.

48. What do you understand by expressio unius est exclusio alterius?

This means that the express mention of one thing excludes others not mentioned.

49. What is a private member's bill?

This is a proposed law that originates from a member of parliament or a committee of parliament.

50. State the documents that accompany a bill.

Certificate of financial implications

Explanatory memorandum

INTRODUCTION

BECOMING A LAWYER

Are you a law student or an aspiring law student? Are you confused about the course and you don't know if there are benefits accrue to being a law student? Below are reasons the law is the best professional course.

DEVELOPMENT OF SELF CONFIDENCE

The first thing you developed as a law student is self-confidence, studying law is an empowering experience, law students often work in groups and actively participate in debates, discussions and moot court appearances such environment nurture good self-esteem and confidence.

BETTER COMMUNICATION SKILL

Law students develop the ability to argue from a basis of evidence in a way which can be hard for others to do, this actively cultivates advanced communication skills and the capacity for independent thinking.

MASTER CRITICAL THINKING AND STRONG REASONING.

The knowledge and skills gained from studying law facilitate students to analyze both sides of complex situations or problems and to devise the best solution based on strong and critical thinking.

RESPECT AND PRESTIGE

To be a lawyer it's not easy, it's tough and takes hard work and determined soul to overcome, if you can scale through the hard and tough times and uphold Justice you are most deserving of respect.

AWARENESS OF RIGHTS AND RESPONSIBILITIES.

Studying law aware you of your rights and responsibilities unlike laymen and allows students to understand reason behind the rules and regulations.

FINANCIAL STABILITY

This professional qualification allows you to enjoy more job security and a higher salary compared to others. Lawyers earn more.

Always look forward toward your future, fill your vision and mind with motivation, project yourself and boost your capabilities to achieve what you want, may you gain confidence and believe in what you do or want.

CHAPTER ONE

THINGS TO KNOW ABOUT A LAWYER

COMMON MISTAKES NEW/YOUNG LAWYERS MUST AVOID

The following are some common mistakes made by lawyers in their first five years of practice, along with some tips on how, and why, to avoid them.

Some things are obvious so we will not spend much time on them. Actively avoid lying. Fight hard but fight fair. Don't promise what you cannot, or won't, deliver. Enjoy your life outside the law, and if you don't have a life, get one!

1. Not Knowing When to Ask for Help.

A failure to communicate limits and availability regarding work load can lead to missed deadlines and a failure to meet expectations of colleagues and clients. This can, in turn, create a reputation of poor work ethic and unreliability. It is perfectly acceptable to ask further and more probing questions of the person who assigned the work (lawyer or client) to determine how to prioritize files and assignments. You may find that the deadline can be extended if you simply ask! You may find yourself in a situation where you cannot complete the task within the deadline in any event. This gives the assignor an opportunity to seek out alternative arrangements or allow an opportunity for you to delegate different tasks.

1. Being Afraid to Admit a Mistake.

Everyone makes mistakes. It is your ability to handle those mistakes that determines your ability to be a good lawyer. Most mistakes can be fixed, but many can become bigger problems if left too long out of embarrassment or