

COUNCIL OF LEGAL EDUCATION.



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES.

ATP 105: PROFESSIONAL ETHICS & PRACTICE.

THURSDAY 30TH NOVEMBER, 2017.

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **Three (3) printed pages** including the cover page, with a total of **Six questions**.
- (b) Candidates **MUST** answer **FIVE** questions.
- (c) **Question ONE** is compulsory and carries **20 marks**.
- (d) **All other questions** carry **10 marks each**.
- (e) Answers **MUST** be supported by relevant case law and statutory provisions where required.

PLEASE TURN OVER

QUESTION ONE

At the induction of the 2017 Kenya School of Law (KSL) class, two leading professors from the University of Kenya were invited. Professors PolePole of the School of Law and Malimingi of the School of Business. They were tasked to speak on the theme: Law is Business

Professor PolePole presented an illuminating and very persuasive paper. He argued that law is strictly a profession to be used in serving the cause of humanity. Making money was a minor and secondary concern. Supporting himself with legal authorities, he made a case to the effect that law is not and cannot be a commercial venture. Legal fees are only given as a token of appreciation.

Professor Malimingi expressed astonishment at the presentation. He opined that to practice law effectively, it has to be viewed and treated strictly as a business venture. Bills have to be paid and all commercial obligations have to be met. He concluded that those who go about the practice of law as a calling would be woken up by the commercial realities of life.

You are now lucky to be employed in the leading and prestigious Law Firm of Pandambegu and Bondamali Advocates. You are tasked to handle all aspects of the case arising from the dispute between the directors of the multi-billion shilling Twenty Rivers Mall. Your clients have told you that money is not the problem. You remember the talk by Professor PolePole and Malimingi. You want to charge hefty fees but remember your Professional Ethics and Practice lectures.

- (a) To what extent is the practice of law a business? (5 marks)
- (b) What is your role in the disputes? (5 marks)
- (c) How will you arrive at the amount you propose to charge that forms a reasonable compensation? (10 marks)

QUESTION TWO

The Drama Club at the Kenya School of Law which comprises talented and vivacious students wishes to come up with a play for the school to perform in the Annual Inter-Law Schools Drama Festival of East Africa. The theme of the play as given by the organizers of the Drama Festival is: "The Advocate - Everywhere in Chains".

Before approval is given to fund the trip, as the chairperson of the club you are requested to write a brief on the legal and regulatory framework of the legal profession in Kenya. Draft the brief. (10 marks)

QUESTION THREE

Lady Justice Majimazuri was hearing a case in which two advocates, Mulakazi and Malumbano are representing respective parties. Upon the conclusion of the trial, she scheduled a date for the delivery of the judgement. Two days prior to the scheduled judgement date, Malumbano Advocate wrote to Justice Majimazuri accusing her of being biased in light of questions she posed to both parties seeking clarification based on evidence adduced by both parties. In his communication, Malumbano Advocate categorically stated that he would be filing a motion before the Judicial Service Commission complaining on the conduct of Justice Majimazuri and petition for her removal as a judge.

Malumbano Advocate did not follow through on his threats and has once again appeared before Justice Majimazuri in another case and intends to proceed. The case has been rescheduled for hearing on another date before the same judge.

The judge has approached you for legal advice.

- (a) What are the ethical issues that you have to consider in light of the threats by Malumbano in the previous case? (5 marks)
- (b) Should judge Majimazuri handle the new case and if so, how would you advise her to proceed? Justify your response while considering the provisions of Judicial Code of Conduct. (5 marks)

QUESTION FOUR

The Law Society of Kenya has returned from a benchmarking tour of other Law Societies in the African Region. The Society has learnt that in some countries, the Society carries out annual inspections of the law firms as a basis for issuing practicing certificates to their advocates. The LSK is mindful of outsourcing this function to a consultancy firm and has approached you as an expert in professional ethics and practice to prepare a checklist of things that you shall establish to ensure compliance by law firms in Kenya.

Draw a checklist of six (6) issues and items that the consultant should establish for compliance by law firms in Kenya. (10 marks)

QUESTION FIVE

You are retained by the family of one Ochieng Lipua charged under the Kenya Anti-Terrorism Legislation. He is charged with murder. He is accused of being a mastermind and participant in the recent attack at a local University.

Ochieng Lipua has confided in you that he indeed participated in the planning and execution of the attack. He informs you that there was a certain girl who had seen him clearly but escaped. She could easily identify him.

He further confirms that his compatriots have traced the girl and arrangements have been made to eliminate her in a shootout.

You are now in a dilemma. Torn between yourself the courageous advocate and the patriotic Kenyan.

- (a) Do you owe any legal and moral obligation to Ochieng Lipua? (4 marks)
- (b) Do you have any legal obligation to the people of Kenya? (4 marks)
- (c) Should the killing of the unidentified girl take place in the manner and style described by your client, what will you do? (2 marks)

QUESTION SIX

“My dress is my choice”. “Respect is earned”.

Discuss these statements in the light of the legal practice environment in Kenya. (10 marks)

END

