

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES.

ATP 105: PROFESSIONAL ETHICS & PRACTICE

THURSDAY 26TH JULY, 2018.

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **FOUR (4) 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

Your attention has been drawn to the following advertisement that was placed in one of the daily newspapers circulating in Kenya soon after the General Election of 8th August 2017 by a law firm well known to you:

“Electoral law experts. Election petitions are drafted and filed within hours. Speedy conclusion of cases and victory guaranteed. Flat and affordable fees charged. Call on us immediately.”

- (a) From your knowledge of Professional Ethics and Practice, is the advert proper? **(6 marks)**
- (b) Are there minimum standards an advertisement by a law firm should meet? **(4 marks)**
- (c) What should you take into account when charging legal fees for services rendered? **(10 marks)**

QUESTION TWO

In your familiarization tour of the Judicial system in Kenya, you attended a sitting of the Advocates Disciplinary Tribunal at Professional Centre, Nairobi. In one case, the Advocates Complaints Commission preferred the following charges against Advocate Kula Yote:

- i. Failing to account for Kshs.10,000,000 due to the client.
- ii. Failing to render adequate professional services.

Advocate Kula Yote objects to taking a plea on the grounds that there is a pending criminal prosecution against him for theft of that money. There is also a pending civil case by his client for recovery of that amount. These facts are true. He contends that the charge is therefore incompetent on the ground of double jeopardy.

- (a) Do you agree with Advocate Kula Yote's basis for objection? **(2 marks)**
- (b) Discuss at least four elements that distinguish professional disciplinary proceedings from criminal or civil proceedings. **(8 marks)**

QUESTION THREE

You recall that on your first night at the University Law School, with your right hand on the holy book, you took an oath in the following words:

“I swear that I will be steadfast and bear true allegiance to my work. I will uphold fidelity to the rule of law. That within 365 days of my admission as an advocate of the High Court of Kenya, I will set up my own legal practice specializing in family, commercial and land laws within the city of Nairobi.”

It is now 300 days since you were admitted and you want to be true to your oath.

- (a) Set out at least six mandatory things you must have at the inception of your law firm. **(6 marks)**
- (b) Set out at least four optional but essential things you need to have at the inception of the law firm. **(4 marks)**

QUESTION FOUR

In preparation for this year's annual legal entrepreneurship conference, the organizers have sent a motion in advance to delegates that will be debated on the floor. The motion reads:

'Law is a business, and law is not a business'

Your application as a resource person to the organizing committee has been accepted and you have been requested to write a position paper on the motion that will provide the judges with all the necessary background and reasoning to enable them to adjudicate the competition to the highest standards.

Proceed to prepare the position paper as concisely as possible noting to give the judges as much information and explanations as may required. **(10 marks)**

QUESTION FIVE

The Commonwealth Lawyers Association has contacted the Law Society of Kenya Secretariat with the request to allow students from some of its member countries to spend two weeks at the law firms of top performing lawyers in five fields of law among them criminal law. Based on a recent statistical survey carried out by the Law Society of Kenya (LSK) it has come to light that Theodore is an astute criminal law practitioner. This data reads as such:

- Out of 2000 cases litigated at the courts, he has lost only 10 in the five-year period in question.
- In the same five-year period above he has undertaken 25 *pro bono* matters each year of which over three-quarters have been successful.
- Theodore has actively supported the Kenya School of Law's endowment fund to the tune of Kshs.10 million.
- Theodore has participated in the LSK and Kenya School of Law's legal aid clinics each year.

In light of the above data about Theodore, the LSK has sent you among other researchers to visit the Chambers of Theodore and brief him on the Commonwealth's request and by extension the LSK's request that he allows for two students to intern at his firm during their two-week visit.

Once you have been given Theodore's address you set off to meet him at his Chambers upon prior arrangement. On arrival at the main building you walk up a rickety staircase to the second floor. You turn the bend onto wing B where Theodore's office is located in room number 24. Upon entry into the reception you are greeted by a friendly receptionist in what appears to be a reception cum kiosk. On one half of the reception is a video/movie shop that has such titles as 'from earth to heaven all in one go' and 'one night only.' Neatly arranged on shelves above the video racks are hair accessories. In addition, there is a sign prominently displayed that reads 'for boiled eggs and warm milk, ask here' with an arrow pointed towards the receptionist's chair.

The receptionist uses an intercom to inform Theodore of your arrival whereupon Theodore emerges from a side door at the reception smiling quite warmly at you with his hand extended for a handshake. He ushers you into his office that is quite dark given that the dark and flowery velvet curtains are half drawn with the windows closed. You silently wonder whether the darkness in the room could account for why Theodore's trouser fly is open, or which fact he is clearly unaware of. Theodore ushers you into a 'pleather' seat that has gaping holes with the inside sponge visible and upon easing yourself onto the seat, you almost fall down because of the clear absence of one screw on the chair.

As you try to explain your mission to Theodore it is quite obvious to you that the windows not open, the moistness in the air is coming from two sources, the carpet and ablution facilities that are directly behind Theodore's seat. Your speech is continuously interrupted by Theodore calling his receptionist loudly or by his speaking on his mobile phone, or by his frequent shuffling of channels on his television set that is directly opposite Theodore on the wall above. As you wind up your conversation, you are once again interrupted by the receptionist passing through the office and into the door next to it with merchandise that appears to be handbags and side mirrors of vehicles.

Ultimately Theodore expresses his sincere happiness at having been considered worthy of hosting the two interns and is more than happy to do his best as a diligent member of the LSK to host the interns.

As you exist Theodore's office you notice the long line of clients waiting to see him and only as step out the reception door do you notice that they are sitting on neatly stacked crates of beer.

Proceed to write your report to the LSK about your visit to Theodore's office and your advice as to the suitability of Theodore to host the interns who are coming through sponsorship of an organization in the Commonwealth whose motto is "knowledge first and knowledge only".

(10 marks)

QUESTION SIX

Malitous gave a written professional undertaking to Gimbo, who accepted, for the sum of Kshs.50,000/- being consideration of the purchase price. Gimbo proceeded to lodge and register the transfer documents for the town house. Upon successfully completing the registration, in four of Malitous's client, Gumbo demanded for release of the purchase price in line with the undertaking. Malitous has failed to oblige indicating that his client is yet to put him in funds.

- (a) In line with principles relating to professional undertakings what advice can Gimbo give to his client on the developments? **(6 marks)**
- (b) Discuss any cause of action available to Gimbo? **(4 marks)**

END