

KENYA SCHOOL OF LAW



EXAMINATION FOR ADMISSION TO
THE ROLL OF ADVOCATES

PROFESSIONAL ETHICS –ATP 105

28TH JULY, 2014

DURATION: 3 HOURS

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) All questions carry fifteen (15) marks each
- (c) Marks may be lost for illegibility

PLEASE TURN OVER

1. Sarah is an advocate of the High Court of 15 years' standing. She has been employed as an associate with the firm of Wakili and Company Advocates. Three years ago she resigned from her job and proceeded to the United Kingdom for further studies. She is now back in the country and is interested in pursuing a part-time teaching career at a local university's faculty of law while practising law. In pursuance of her practising career, Sarah has established a law firm by the name of Sarah Mkubwa & Co. Advocates. She has embarked on her practising career with gusto and already has few clients one of whom is Tom. Tom was recently relieved of his duties as a banker by Mali Nyingi Bank.

Tom's instruction to Sarah include the following:

- (i) File a suit against his former employer Mali Nyingi Bank and seek compensation for wrongful dismissal.
- (ii) Prepare and lodge the relevant documents for the registration of a limited liability company.

In this representation Sarah and Tom enter into a retainer agreement in which they agree *inter alia* that Tom will only pay Sarah legal fees if the suit against his employer succeeds. They also agree that Sarah will not be held accountable for any negligence on her part in the course of her representation of Tom.

Sarah realizes she has not taken out a practising certificate for the year 2014 but decides to proceed to work as per Tom's instructions nonetheless.

Meanwhile Tom has made a business proposal to Sarah for her consideration. He promises to send her several clients if she agrees to give him 10% of the legal fees for those matters.

Sarah on her part assures Tom that she has spoken to her cousin Justice Kwame who has confirmed that he will ensure the case is heard by him and that he will return a favourable judgment to her. This promise was repeated to Tom by the said judge during Sarah's homecoming party after which Tom presented Justice Kwame with an expensive Rolex watch as a gift and which gift Justice Kwame gladly accepted. Justice Kwame then called Sarah aside and whispered to her that he intends to 'assist' her in all her matters by speaking to the judicial officers handling her matters to return favourable decisions.

Meanwhile Sarah has to contend with a former client Jack who filed a complaint alleging that Sarah had misappropriated his money amounting to Kshs.200,000. This complaint was forwarded to the Office of the Director of Public Prosecutions and is being handled by Sarah's classmate at Kenya School of Law by the name Austin. Though Austin has established that the complaint against Sarah has no merit, he has vowed to proceed with the prosecution of the matter to teach Sarah a lesson for turning down his marriage proposal while they were students at the Kenya School of Law.

- a) Carefully consider the narrative above and identify ethical issues that arise. (8 Marks)
- b) What steps should be taken in disciplining Justice Kwame? (7 Marks)

2. Write short notes on:

a) Circumstances where an Advocate may find himself in a position of conflict of Interest. (6 Marks)

b) Advocate's duty of confidentiality to his/her client. (9 Marks)

3. Donald is a Kenyan who holds LLB and LLM degrees from a University in Canada. He was admitted to the Canadian Bar in 2012 and is a member in good standing of the relevant Canadian Bar Association. Upon his recent return to Kenya, he was appointed a lecturer at Moi University's Faculty of Law. He wishes to practise law in Kenya and has been advised to undertake the Advocates Training Programme (ATP) at the Kenya School of Law before he can be admitted to the Kenya Bar. He has sought your advice on whether there is a possibility of his exemption from attending the ATP Programme.

a) Advise Donald on the academic and any other qualifications for, and the process of, admission to the Kenyan Bar. (8 Marks)

b) Donald further seeks to know what qualifications he needs to be able to practise as an Advocate in Kenya. (5 Marks)

c) Advise Donald on the possibility of any exemptions from the ATP Programme. (2 Marks)

4. You have recently been appointed as the Chair of the Advocates Disciplinary Tribunal. The Law Society of Kenya through its Committee on Continuous Legal Education (CLE) has requested that you give a presentation to advocates at the CLE forum concerning advocates discipline.

Write a precise paper elaborating on the common disciplinary offences, the disciplinary fora, and the process of discipline.

(15 Marks)

5. Critically analyze the ethical issues below:

a) Professional negligence. (10 Marks)

b) Maintenance of client's accounts by advocates. (5 Marks)

6. Peter is an advocate practicing with the firm of K & S Advocates. He has been a long serving advocate of James and Sarah who are husband and wife and has in the course of this long relationship been privy to confidential information concerning the couple. James has recently been charged with the offense of assaulting Sarah. Their marriage has broken down as a result of this incident and others. James had approached Peter to represent him in the criminal divorce matter she intends to institute against James.

a) Can Peter represent both James and Sarah in their matters? Give reasons.

(10 Marks)

b) How can Peter remedy the situation?

(5 Marks)