

COUNCIL OF LEGAL EDUCATION



**EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES.**

ATP 105: PROFESSIONAL ETHICS & PRACTICE

THURSDAY 18TH JULY, 2019.

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

The Judiciary of Kenya has recently signed a Memorandum of Understanding (MOU) with the Council of Elders of Kenya, a body bringing together elders from all the ethnic communities in Kenya. Under the said MOU, the Judiciary and the Council of Elders have pledged to explore ways of bringing to life the constitutional provisions regarding the use of alternative justice system as a means for recognizing the reality that over 90% of Kenyans access justice through these informal forums. As a preliminary to the implementation of the MOU, the Judiciary has requested for your services as a lead expert in Professional Ethics and Practice to prepare a handbook containing the essence of professional ethics and practice in the formal legal arena as well as a code of practice that could be customized for use by elders in their alternative forums.

- (a) Explain to the Council of Elders the importance of professional ethics and practice to the legal profession and why it is necessary that aspects of the same should be applicable in the alternative justice system. (4 marks)
- (b) Prepare the code of conduct for use by the elders in the alternative justice system with relevant parts borrowed from the elements comprising professional ethics and practice as exists in Kenya's legal profession today. Ensure that your code of conduct is well explained with reasons for the choice of each element. (16 marks)

QUESTION TWO

Gladstone, an Advocate practicing in the firm of Dellington Associates is approached by Ludwel to advise her whether she can proceed to dispose of her fifty titles and to provide her with the legal requirements to conclude the transactions. Gladstone instructs her junior associate to prepare a comprehensive opinion which results in Gladstone getting a brief.

Gladstone conducts a search at the Ministry of Lands office and is issued with a search certificate indicating that the properties belong to Ludwel. Ludwel secures purchasers and takes them to Gladstone to prepare and release the conveyance documents upon payment of the purchase price in terms of the Agreements for sale. Ludwel is later arrested when five purchasers lodge a complaint with the police that they have been defrauded as the title documents availed to them were not genuine.

Ludwel, being in police custody, requests her husband to contact you to visit her in Remand Prison to give advice on the effect of the correspondence and communication between her and her conveyance lawyer, Gladstone.

What cause of action is available to Ludwel in the circumstances? Justify your answer with statutory provisions and at least two authorities which distinguish the set principles. (10 marks)

QUESTION THREE

In their June 2018 office meeting, the partners, associates and staff of Thaddeus & Merrill Company Advocates decided that as part of giving back to society, they would have a monthly legal aid clinic dubbed "bringing law closer to the client".

As at January 2019, the office meeting bringing together the same persons as the June 2018 meeting reviews the progress and impact of the legal aid clinics that have so far been conducted in various parts of the country. In fact, the meeting notes the sharp increment in business for the law firm and resolves to invest more towards the programme. The law firm decides to engage the services of graphic designers, media specialists, web designers among others in order to publicize the law firm's legal aid activities in all available media. A decision is also made during the meeting to target communities in Kenya for the

legal aid clinics especially where there is a distinct possibility of public interest litigation arising against big multinational companies. In addition, where communities or individuals sign up with Thaddeus & Merrill Company Advocates, they would receive a 10% discount on legal fees. The latter information on the discount was also agreed to be placed in all print and electronic advertisements regarding the legal aid clinic. Three months after the office meeting in January 2019, the strategy is paying off as the law firm of Thaddeus & Merrill Company Advocates has been inundated with new business especially on public interest litigation matters.

You are a conscientious member of the Law Society of Kenya and well-grounded in the matters of Professional Ethics and Practice. Prepare a brief for the Law Society of Kenya raising five (5) issues that have an implication on the substance of Professional Ethics and Practice. (10 marks)

QUESTION FOUR

The law firm of Cherie and Associates that has four partners, four associates and three pupils decided to have a working lunch at one of the prestigious hotels in the city. Unfortunately, during lunch hour at the hotel's restaurant on a different floor, and despite all assurances by the hotel management of the safety of their equipment and phones, upon the return of the members of Cherie & Associates, all their equipment including laptops, phones and leather bags containing crucial documentation had been stolen. The information left dangerously exposed as a result of the theft includes the following:

- i) A list of all the firms' clients including their telephone numbers and home addresses;
- ii) Signed statements made by the clients facing criminal charges and obtained by the lawyers during the process of evidence collection. The statements attest to the culpability of the clients and exist in scanned format;
- iii) Sensitive details about the firms' corporate clients which information would place the clients in a vulnerable position against their competitors;
- iv) The wills of several clients some of whom are at an advanced age and others critically ill;
- v) The legal strategy of the leading political party that the law firm is defending with regard to the wins of several of its parliamentary candidates.

As the senior-most partner, you are required to identify the crisis that might arise and to develop three (3) strategies on how to deal with the crisis that is likely to occur when the media, which has already gotten wind of this occurrence, breaks the news in the dailies tomorrow. (10 marks)

QUESTION FIVE

As a newly qualified advocate, you have been employed by the Advocates Complaints Commission. Your immediate supervisor informs you that the Law Society of Kenya's Continuing Legal Education Committee has requested the Advocates Complaints Commission to present a paper at its next meeting with regard to five most troublesome elements the Commission receives as complaints against advocates and law firms. The Law Society of Kenya in addition wishes that the Advocates Complaints Commission proposes solutions to each of these problems.

Prepare a draft paper on what in your view are the most troublesome issues that the public is likely to complain about with regard to advocates and law firms. (10 marks)

QUESTION SIX

“Providing legal services at a fee and offering tomatoes for sale at a price are all activities aimed at making money and earning a living”.

- (a) Discuss whether offering of legal services by advocates is comparable to selling tomatoes? (4 marks)
- (b) Explain the unique role of advocates in society? (4 marks)
- (c) Discuss whether a robot machine or computer may render legal services in Kenya. (2 marks)

END