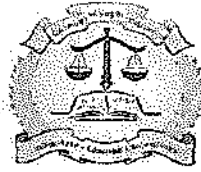


**COUNCIL OF LEGAL EDUCATION**



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

**ATP 105: PROFESSIONAL ETHICS & PRACTICE**

**THURSDAY 07 APRIL 2022**

**DURATION: 3 HOURS**

**Instructions to Candidates:**

- (a) This paper contains **FIVE (5)** printed pages including the cover page, with a total of **Six (6)** questions.
- (b) Candidates **MUST** answer **FIVE (5)** 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

You are a newly admitted advocate working in prestigious law firm, Pesa Mingi & Co. Bazeng, a highly renowned musician has your employer on a long-standing retainer. Bazeng and his longtime girlfriend Peng Ting have been making the news for all the wrong reasons. Bazeng was caught on camera assaulting Peng Ting. She filed charges against him and warrant was issued for his arrest. Bazeng has ignored the warrant severally and is reportedly going around saying he is untouchable. Peng Ting's advocates have made an application for contempt of court against Bazeng. You have been assigned to handle Bazeng's matter.

During your first meeting with Bazeng, he instructs you to take all necessary steps to ensure that the warrant is lifted and that the matter never proceeds. He wants the case delayed as long as possible because "this is Kenya". He also instructs you to use the firm's social media accounts (Facebook and Twitter) to propagate the hash tag '*#untouchable Bazeng is immune to Judicial Process.*' This, Bazeng believes will increase his popularity in social and improve the e-sales of his latest album.

Things take an interesting turn because Bazeng validly terminates his retainer with Pesa Mingi & Co. He approaches your employer, pleading with the firm to charge him lower than the scale provided under the Remuneration Order. The firm agrees and enters into a fresh agreement with Bazeng. Bazeng has some knowledge of the law having dropped out of law school to pursue his music career. He was keen to pursue any other business or occupation. "Anything but law!", he said. Although representing Bazeng will probably be the highlight of your career, your mind is not at ease.

Discuss the following

- a) Are you obliged to follow Bazeng's instructions with regards to the use of your employer's social media accounts? Explain (4 marks)
- b) With respect to Bazeng's instructions that the case must never proceed, what are the ethical and legal considerations you will have to make before acting any further? (4 marks)
- c) What is the ethical and legal effect of the fresh agreement signed by Bazeng and your employer? (6 marks)
- d) Does the conduct of Bazeng in this matter amount to contempt of court? Explain (2 marks)

- e) Explain to Bazeng any four characteristics of the legal profession which would otherwise forbid you from handling this matter like any other "charlatan in town". (4 Marks)

## QUESTION TWO

Chief Justice (Emeritus) David K. Maraga Once Said:

*"The greatness of any nation lies in its fidelity to the constitution and adherence to the rule of law and above all, respect to God."*

Assuming that you have chosen to practice law as a litigation counsel when you complete the Advocate Training Programme and that the key tenets of the role of law include legal certainty; avoidance of arbitrariness and; procedural and legal transparency;

- a) What contributions, if any, will you be obliged to make to the administration of Justice as an officer of the court in the course of the trial processes? (6 marks)
- b) How will you contribute towards increasing access to justice? (4 marks)

## QUESTION THREE

Advocate Mvumilivu having left his previous employers, Faster & Faster LLP, has now set-up his own law firm. After advertising within the parameters provided in law, Mvumilivu finally lands his first client. Mvumilivu soon discovers that his client is challenging a sale agreement, which he (Mvumilivu) drew for a client while still at Faster & Faster LLP. The client still maintains a retainer with Faster & Faster LLP. After numerous correspondences with Faster & Faster LLP, it becomes clear that they will call your client as a witness in court in this matter. His client is unaware of this and expects that his case will be concluded expeditiously. Advocate Mvumilivu is still in very good terms with his previous employers at Faster & Faster LLP.

From your deep love and robust knowledge of professional ethics;

- a) Advise what ethical issues Advocate Mvumilivu is facing in his client's case and how best he should deal with the same. (4 marks)
- b) Under what ethical and legal justification(s) is Mvumilivu permitted to advertise his new practice? (3marks)

- c) Under what circumstance(s) would advertising by Mvumilivu be deemed unethical?  
(3 marks)

#### QUESTION FOUR

The guru of conveyancing practice in Kenya, Mambo Bado has been the family lawyer to the prominent Mali Mingi family for the last three decades. The patriarch of Mali Mingi trusts Mambo Bado like his own blood brother. The Mali Mingi family is rumoured to be among the top ten richest families in Eastern Africa, with an estimated net worth of Kshs.100 billion. Mambo bado has also accumulated a tidy fortune out of this relationship with the Mali Mingi family.

The Covid-19 pandemic hit the family very hard. Their hotel chains in Mombasa and Dar-es-salaam closed down, accumulating overheads and bank interest running into over Kshs.2 billion. This triggered a crisis prompting Mr. Mali Mingi to put on sale his flagship tower in Dar-es-salaam. The building was worth between Kshs. 2 billion to Kshs.2.7 billion. Mambo Bado was given the full mandate to dispose-off the building and settle urgent bills to save the Mali Mingi business empire from collapse. He did so with dispatch.

It has now emerged that Mambo Bado sold the building for Kshs. 2.45 billion although he had reported to Mr. Mali Mingi that the building fetched Ksh 2.35 billion. Mambo Bado now claims that the difference was his commission for arranging for the sale. Mambo Bado has informed his client that he has also retained a further Kshs.350 million, claiming that is his legal fees, disbursements and facilitation fees paid out to various people and agencies to expedite the sale. Mambo Bado is a very cagey and does not want to give any written explanations or supporting documentation related to this transaction.

Mr.Mali Mingi is furious and highly disappointed with his hitherto trusted advocate. He wants vengeance for the apparent betrayal. He has sought your advice and explanation on the following specific concerns:

- a) Did Mambo Bado owe him any professional obligation (s) in this particular transaction? Under what circumstances did such obligation (s) arise, if at all? (6 Marks)

- b) Should Mali Mingi refer his grievance to the Advocates Disciplinary Tribunal, what possible outcome(s) reasonably expected would satisfy his quest for vengeance against Mambo Bado (4 marks)

#### QUESTION FIVE

You have been assigned legal research duties at the High Court in Watamu, under Resident judge Lamini. Judge Laminin is approached in his chamber by Kitomoto, who has been his friend for over 25 years, seeking advice on a legal predicament. Kitomoto has been charged with a capital offence and presently is out on bond awaiting trial. Kitomoto wishes to know the how best he can present his defence to avoid conviction. The judge informs you of Kitomoto's peculiar request and wishes to know whether there are any ethical issues that may arise should he assist his friend. Discuss the ethical issues that may arise, while making references to relevant legislative provisions and case law, if any (10 marks)

#### QUESTION SIX

You have been working as a public relations assistant in your friend's law firm as you await sitting the ATP Examination. The firm has recently employed two newly admitted advocates. You have been monitoring their activity on both Instagram and Twitter. You further extended your surveillance to their Facebook accounts and happen to be on a WhatsApp group which both belong to. You have never commented to any post they have made despite the alarming content therein.

Recalling your discussions in ATP 105 and relying on relevant guidelines on this matter, advise the two newly advocates on ethical issues which they must take into account whenever they use social media while in practice. (10 marks)

