



**KENYA SCHOOL OF LAW**

**COUNCIL OF LEGAL EDUCATION**

**PROFESSIONAL ETHICS AND PRACTICE.**

COURSE INSTRUCTORS: **LUCY KAMBUNI & C B OUMA**

**DAY/TIME:**

**Class A B and C (C.B. OUMA)**

**CLASS A: THURSDAY 11.00a.m. – 1.00 p.m.**

**CLASS B: TUESDAY 9.00am. – 11.00 a.m.**

**CLASS C: TUESDAY 11.00 a.m. - 1.00 p.m.**

**Class D and E (LUCY KAMBUNI)**

**CLASS D: FRIDAY 4.00 p.m. – 6.00p.m.**

**CLASS E: THURSDAY 4.00 pm. – 6.00p.m.**

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**Statement of Course Description, Objectives and Assessment.**

**Description**

The Course seeks to inform, inculcate and develop in the students a good knowledge and understanding of the high standards demanded by the profession.

**Objectives**

It is anticipated that at the end of the course students will have been provided with an understanding and will therefore be well acquainted with the history of and of the laws

and regulations, codes and other sources of regulation that pertain to professional ethics and practice within the legal profession and their practical import on the practice of the law. The course will provide the students with the ethical, policy and legal basis for the presence of laws, regulations and codes on professional ethics, the development and enforcement of laws relating to professional ethics and practice in Kenya both in pursuant to statutory and other legal provisions through the mechanisms of the disciplinary tribunal and the inherent powers of the court.

The course will cover a range of topics. These include the introductory part on the definition of ethics and the attendant philosophical understanding and controversies. Students shall therefore be expected at the end of the course to be well grounded in the core sources and application of professional ethics and practice laws, regulations and codes.

### **Classes**

There will be one class per week for each class on the times indicated unless otherwise advised by prior notice. Lectures will be held in the main lecture rooms as will be advised.

### **Teaching Method**

The training shall be by participatory approach. Questions and discussions by and among the students through the instructor will be the norm rather than the exception. Case studies and presentations will be used to enhance participation.

### **Class attendance.**

Class attendance is very important in understanding and completing the course successfully.

Rolls will be completed throughout the course as a record of attendance. The Council of Legal Education regulations regarding attendance in relation to assessment will be strictly adhered to. Any scheduled non-attendance must be communicated to the instructor 24 hours before the lecture date and accompanying reasons and evidence in writing delivered within 24 hours of the non-attendance.

### **Course commitment**

Students are expected to attend lectures and to spend several hours per week outside class completing readings and assignments.

Students are required to fully participate in Firm discussions once Assignments have been allocated to the respective Firms.

### **Assessment**

Assignments and Examinations will be **as stated by the Council of Legal Education through relevant notices.**

### **Resources.**

There is no single set textbook for this course.

The course will be aided especially, however by the following texts, statutes and codes. Some texts are available in some libraries such as the School of law library, the Faculty of Law UON library and other private libraries.

1. Macintyre, Alasdair, *A short history of ethics*, (1966). Macmillan, NewYork
2. Gichure.W.Christine, *Basic Concepts in Ethics*. (1997). Focus publications ltd, Nairobi
3. Harvey,W.b. *Introduction to the Legal System in East Africa*(EALB,1975)

4. Y.Ghai and J.P.W.B.McAuslan, *Public Law and Political Change in Kenya*, O.U.P, Nairobi. 1970
5. Rhode, D.L. (Ed.) *Ethics in Practice. Lawyers Roles, Responsibilities, and Regulation.* (2000) Oxford University Press, Inc. New York
6. Rhode, D.L. (Ed.) *Legal Ethics.* The Foundation Press. (1992) New York
7. Morgan. T.D. *Problems and materials on professional responsibility, (2<sup>nd</sup> Edn.)* (1981) The foundation press
8. Zitrin, R.A and, Langford, C.M, (1995) *Legal Ethics in the practice of the Law* Contemporary Legal education series. The Michie Company Law Publishers.
9. Parker, S., and Charles, S, (Eds) (1995) *Legal Ethics and Legal Practice.* Contemporary issues. Clarendon Press
10. Gillers, S., (1995) *Regulation of lawyers: Problems of Law and Ethics.* (4<sup>th</sup> Edn) Little Brown and Company
11. Bailey, S.H., (1991) *Smith and Bailey on the Modern English Legal System* (2<sup>nd</sup> Edn). Sweet and Maxwell, London
12. Horne, F.T., (1988) *Cordery's Law Relating to Solicitors* (8<sup>th</sup> Edn) Butterworths, London and Edinburgh.
13. Pannick, D. (1992) *Advocates* Oxford University Press
14. Compendium of Codes of Legal Practice, Conduct, Ethics and Etiquette in East Africa, EALS/LawAfrica (K) Ltd .2005

## **THE CONSTITUTION OF KENYA, 2010**

### **MAIN STATUTES**

1. Law Society of Kenya Act. Chapter 18 Laws of Kenya
2. The Draft Law Society Bill, 2012
3. Advocates Act. Chapter 16 Laws of Kenya
4. Council of Legal Education Act. Chapter 16A Laws of Kenya
5. The Judicial Service Act, 2011
6. The Vetting of Judges and Magistrates Act, 2011
7. The Supreme Court Act, 2011
8. Public Officer Ethics Act, 2003

9. The Ethics and Anti-Corruption Commission Act

**MAIN CODES**

***The Law Society of Kenya Digest of Professional Conduct and Etiquette (As at 1<sup>st</sup> January 2000) (Available from the Law Society of Kenya)***

***The Judicial Service Code of Conduct and Ethics, 2003***

**MAIN ARTICLES**

***IPP, D.A, Lawyer's Duty to the Court (1998) 114 L.Q.R...63 (January) Sweet and Maxwell and Contributors***

***Cranston, Ross, Legal Ethics and Professional Responsibility Clarendon Press, Oxford***

***The David Westerfield Trial (See Discussion in Asimow and Weisberg's article 'When the Lawyer Knows the Client is Guilty') available at <http://ssrn.com/abstract=948291>.***

**OTHERS**

*Task Force on The Development Of A Policy And Legal Framework For Legal Education In Kenya (situation paper) April 2005*

*Report of the Task Force on The Development Of A Policy And Legal Framework For Legal Education In Kenya August 2006*

*Final Report of the Task Force on Judicial Reforms (July, 2010)*

*Kronman, Anthony T: The Law as a Profession*

*Mark Stobbs (2002) Review of the Effectiveness of the Disciplinary Committee of the Law Society of Kenya and The Complaints Commission*

*Report of the Advisory Panel of Eminent Commonwealth Judicial Experts Nairobi, Kenya May 17, 2002*

*The Bangalore Principles of Judicial Conduct, 2002;(available )at [www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf)*

*Report on the Honourable Mr Justice Amraphael Mbogholi Msagha by the Tribunal to Investigate the Conduct of Puisne Judges; (available at the library)*

*Report on the Honourable Mr Justice Joseph Vitalis Odero Juma by the Tribunal to Investigate the Conduct of Puisne Judges(available at the library)*

The instructor may source other material for students on particular topics subject to reasonable availability. It is anticipated that students shall, subject to copyright laws, make arrangements to obtain copies of the necessary reading materials.

Guest speakers may be included during the course on particular issues. Students will be expected to be particularly keen in these lectures and to engage the speakers in their selected topics.

#### **Useful local and overseas websites**

**[www.lsk.or.ke](http://www.lsk.or.ke)**

**[www.aba.org](http://www.aba.org)**

**[www.iba.org](http://www.iba.org)**

**[www.hmso.gov.uk](http://www.hmso.gov.uk)**

**[www.lawsociety.org.uk](http://www.lawsociety.org.uk)**

**[www.barcouncil.org.uk](http://www.barcouncil.org.uk)**

### **TERM ONE**

<b>Week One to Three</b>
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Introduction to course

Philosophy and Ethics

History of Ethics: The sophists, Aristotle, Socrates, Modern Moral Philosophy

Law as a profession

The Role of the Lawyer in society

History of the Legal Profession

The History of the Legal Profession in Kenya.

<b>Week Four to Six</b>
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The Advocates Act, Chapter 16 Laws of Kenya

The Council of Legal Education Act, Chapter 16A laws of Kenya

The Law Society of Kenya Act., Chapter 18 Laws of Kenya

Objects of the Law Society of Kenya

*Aaron Ringera and 2 Others vs. Paul Muite and Others (Unreported)*

*Ken Kiplagat vs LSK& Ors (Unreported)*

*Cannisius Kiruqara vs. Evans Monari and Others. (Unreported)*

*KPLC v Chris Mahinda t/a Nyeri Trade Centre HCCA 148/2004 (unreported)*

*Obura v Koome HCCA 146 of 2000*

*Mohammed Ashraf Sadique & Another v Mathew Oseko t/a Oseko & Company Advocates [2009] eKLR*

The training of lawyers and Advocates in Kenya: An appraisal

*In the matter of an Application by Rita Biwott HCCA 238 of 1994 (unreported)*

Rights, Obligations and Privileges of an advocate

In house Counsel; rights and obligations

Communications between advocate and client or third party

*Minter v Priest* 91930) AC 558

*Togstad v. Vesely, Otto, Miller & Keefe*, 291 N.W. 2d 686 (Minn. 1980)

*Jones v Great Central Railway Co* (1910) AC 4

*Lincoln v Daniels* (1962) 1 QB 237

*Norwich Union Life Insurance Society v Tony Waller Ltd* (1984) 1 All ER 597 CA

*Simaan General Contracting Co v Pilkington Glass Ltd* (1987) 1 All ER 345

The advocate and correspondence

The advocate and professional undertakings

Confidentiality

Communications between advocate and the court

*Munster v Lamb* (1883) 11 QBD 588

Communications between advocate and the public

Rights of an advocate: To enter court, wear robes in court, exemptions from public service, administration of oaths

Etiquette

Right of audience

The Advocate/ Client relationship

The advocate as a zealous representative of the client

The Advocate and conflict of interest

*Kamlesh D Pattni & Others v George Oraro & Others HCCA 286 of 2001 (unreported)*

*National Bank Ltd v Peter Korat & Anor HCCC 77 of 1997 (unreported)*

The advocate as an officer of the Court

The advocate as a citizen

*Arthur JS Hall & Co (a firm) v Simons* (2000 ) 3 ALL ER 673

*Rondel v Worsley* (1969) 1 AC 191

*Myers Elman* (1940) AC 282

### **Week Seven to Ten**

Disabilities of an advocate

Fiduciary relationship of client and advocate

*Norton v Lord Ashburton* (1914) ac 932

Separate advice

Prohibition against acting for more than one client in a transaction

Continuance of advocate client relationship and future transactions

Other disabilities of an advocate

Purchases, loans, gifts, bequests

*Re A Solicitor* (1974) 3 All ER 853

Persons under disability and the advocate

Advocates and subject matter of suit

Secret Commissions

Affidavits, sureties, bail, receivership, trusteeship



## TERM TWO

### **Week Eleven to Thirteen**

Retainer

Modes of retainer

Duration

*Key v Boulter* (1971) 1 All ER 289

*Danish Mercantile Co Ltd v Beaumont* (1951) 1 All ER 925 at 930 per Jenkins LJ

Persons who may retain an advocate

*Prince v Haworth* (1905) 2 KB 768

*Yonge v Toynbee* (1910) 1 KB 215

*Daimler Co Ltd v Continental Tyre and Rubber co (Great Britain)* (1916) 2 AC 307

Retainer on particular occasions

Sale of land, Grant of Lease, Mortgages, Appointment of trustees

Termination of retainer

*Watts v Official Solicitor* (1936) 1 All ER 249 CA

*Krakauer v Katz* (1954) 1 All ER 244

Effects of termination

Change of advocate

Discharge by client and advocate

### **Week Fourteen to Sixteen**

Authority of an advocate on retainer

*Re Storer* (1884) 26 Ch D 189

Limits on Authority

*Waugh v HB Clifford & Sons Ltd* (1982) 1 All ER 1095 CA

*Groom v Croker* (1939) 1 KB 194 (1938) 2 All ER 394

Acts generally authorized

Effects on want of authority

*Richmond v Branson & Son* (1914) 1 Ch 968

*Selangor United Rubber Estates Ltd v Cradock* (No 4) (1969) 3 All ER 965 at 975

Indemnity from Client

*Sheffield Corp v Barclay* (1905) AC 392 at 397

Authority on documents after termination of retainer

The advocate and liability insurance

Sections 81 of the Advocates Act

Discipline on the advocate and on the firm

THE ADVOCATES (PROFESSIONAL INDEMNITY) REGULATIONS, 2004

### **Week Seventeen to Twenty**

Retaining/General Lien

*Barrat v Gough-Thomas* (1951) 2 All ER 1048 at 1048 Per Evershed MR

*Re Birmingham, Savage v Stannard* (1959) Ch 523, (1958) 2 All ER 397

Costs secured by lien.

Nature of right conferred by Lien, limitation of Lien

The advocate and society

*Pro bono publico* briefs

Free legal aid clinics

Public defence briefs. Capital offences

## **ORAL EXAMINATIONS**

### **TERM THREE**

### **Week One to Two**

Advertising

Touting

Champerty

*Bates v State Bar of Arizona* 433 US 350

*In the matter of Ababu P.T. Namwamba Misc No DCC 207/2004*

Advocates fees

Undercutting

*Ahmednasir & Abdikadir Advocates v National Bank of Kenya HCCC 532/2004*  
*(unreported)*

<b>Week Three to Six</b>
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Negligence.

*Rankine v Garton Sons & Co Ltd* (1979) 2 All ER 471

*Apollo Insurance Co Ltd v Flavia Rodrigues HCCC 431 of 2002* *(unreported)*

*Hedley Byrne & Co Ltd v Heller & Partners Ltd* (1964) AC 465

*Midland Bank Trust Co Ltd v Hett, Stubbs & Kemp* (1979) 3 All ER 571

Liability of an advocate ( in proceedings, out of Court)

*Yonge* *supra*

*Edwards v Porter* (1923) 2 KB 538

Agency

Trusteeship

Liability to third parties (in contract)

*Tai Hing Cotton Mill Ltd v Liyu Chong Hing Bank Ltd* (1986) 2 All ER 947 PC

- In tort.
- As constructive trustee
- As an officer of the company.

As an officer of the court (default, misconduct or failure to act with reasonable competence and expedition)

*Fletcher & Son v Jubb, Booth and Helliwell* (1920) 1 KB 275 at 280

For costs

For contempt of court

Undertakings

*Re a Solicitor* (1966) 3 All ER 52

*Silver and Drake v Baines* (1971) 1 All ER 473

*United Mining and Finance Corpn. Ltd v Becher* (1910) 2 KB 296

Kenya Reinsurance corporation v V.E.Muguku T/A V.E. Muguku & Co NAI CA NO.48 of 1994

Peter Ng'ang'a Muiruri v credit Bank & Charles Ayako Nyachae T/A Nyachae and Co.Advocates NAI CA NO. 263 of 1998

### **Week Seven to Ten**

The advocates' firm

Partnerships

Multi-disciplinary practice

Article: Main Street Multidisciplinary Practice Firms: Laboratories for the Future. Boalt Working Papers in Public Law (University of California, Berkeley) available at <http://repositories.cdlib.org/boaltwp/39>

Limited liability partnerships

Certification of law practice

The administration of advocates firm

The administrators of Maxwell Ombogo vs. Standard Chartered Bank Ltd and the Law Society of Kenya, CA NO. 162 OF 1999 NBI

Donald Campbell & co Ltd v Pollack (1927) 1 All ER Rep 1 (1927) AC 732

Myers Elman (1940) AC 282

The Advocate in other practice.

The Advocates Complaints Commission

The Advocates Disciplinary Committee

Maharaj Krishan Bhandari v The Advocates Committee Privy Council Appeal No 39 of 1955

### **Week Eleven to Thirteen**

Course wrap-up. Revision.

THE ADVOCATES (CONTINUING LEGAL EDUCATION) REGULATIONS, 2004

A radical appraisal of Professional Legal Ethics and Practice

The Profession and professionalism