

ATP 105 VIRTUAL CLASS TOPIC 1: ABOUT THE ATP 105 COURSE

KSL ATP 105 2015 VIRTUAL CLASS PROFESSIONAL ETHICS AND RESPONSIBILITY

LECTURER

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LEARNING RESOURCES

1. Watch the video. Practical wisdom by Barry Swartz
2. Read the as many chapters as you can in the compendium Ethics in practice-Lawyers Roles 'Responsibilities and Regulation Ed Deborah Rhode
3. Attempt the ATP Nov 14 examination
4. Evaluate the analysis of the ATP Nov 14 exam
5. Evaluate the results for the remarks for the ATP 2014 exams
6. Evaluate the marks for the 2015 ATP oral examinations
7. Evaluate the anonymous results of the 49 conveniently sampled students in the November 2014 exam
8. Read the power point presentation on ATP 2016 methodology
9. Read as much as you can about the situation in ethics in the legal profession in Kenya
10. Read the article 'Nigeria Teaching Ethics and Values in the Legal Profession: The Nigerian Perspective by Dean C.A. Agbebaku & Livewell Osahon Omoregie. Ambrose Alli University Faculty of Law,

What does your viewing and reading tell you about;

- a) The situation in ethics in the legal profession in Kenya?
- b) The teaching of ethics at the ATP ?
- c) What practical interventions do you suggest in the teaching of ethics as an attempt to improve the situation in ethics in the legal profession in Kenya?

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TOPIC 1 ABOUT THE ATP 105 COURSE

This topic seeks to introduce the ATP 105 course, set the appropriate climate and agenda for discussion and, hopefully, level expectations. Participants will be given a bird's eye view of the ATP 105. The course content, course aims goals and objectives will be explained. The teaching methodology will be explained, discussed and agreed on. The terms of engagement will be presented, discussed agreed on. General matters of concern will be addressed and solutions explored.

Objectives

At the end of the introductory discussion, the participants should be able to;

1. Explain what the ATP 105 course is all about
2. List and explain the intended learning outcomes and competencies sought to be imparted
3. List and explain the specific course objectives
4. Evaluate the structure and content of the ATP105 course
5. Suggest improvements to the course content and delivery method
6. Use the e-learning platform that is used to deliver the course content

Intended outcomes of this topic

This topic, seeks to help you improve your learning style and strategy in the ATP 105 course with a view to making it more efficient and more effective.

Introduction to Topic 1

This topic seeks to set the agenda for the next 12 months of your course on ATP 105, professional ethics and responsibility. It handles logistical issues like timetabling, course outline, and access to learning materials, scheduling of exams and learning strategies.

The ATP 105 course is described in sufficient detail to enable you know what it is all about. The scope of the course and topics covered are delineated. The intended course outcomes, course objectives and competencies sought to be imparted are specified.

It is important that you familiarize yourself with these aspects of the course. Familiarity with these aspects of the course will enable you organize your learning and focus your studies. There is very little time to study so much. Studies must therefore be focused, efficient and effective. There is no time for reading for the sake of reading. That may have its uses elsewhere, but your more immediate task is to equip yourself with the desired knowledge attitude and skills to enable

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you pass the ATP 105 exam and enter the labour market equipped with the competencies the market for legal services is looking for. The ATP 105 examination is designed to test the specified intended learning outcomes and accomplishment of the specified learning objectives. We are communicating in advance what you will be tested on. Mastering the intended learning outcomes, course objectives and competencies sought to be mastered will make it easier for you to pass the examination because it is these aspects of the course that communicate the expectation of the examiner. You will notice that the topic objectives as framed as actual tasks that the course participant is expected to perform by the conclusion of the topic. It is the ability to perform those specific tasks that translates into the intended course outcomes and the acquisition of the skills that are sought to be imparted. If you focus on the specific topic objectives given at the beginning of any topic, you can test your mastery of that topic simply by attempting to perform the specific tasks listed as the topic objectives. If you have difficulty performing any of the listed tasks, it means that you haven't mastered the topic and you should now focus on the objectives that you are having difficulty with. This will make your reading a lot more efficient as you will avoid expending time and energy on the topics objectives you have already mastered and focusing on the ones you are having difficulty with. It also helps in making your class participation efficient and effective as you can ask questions arising only from the areas you have difficulty with. Because of the class size at the ATP 105 course, it must be admitted that there aren't many opportunities for individual interaction with your course facilitators and the more focused the line of inquiry, the more productive the engagement will be. You make the interaction more focused efficient and effective by being very clear in what further assistance you need with regard to any specific topic. You should therefore spend as much time as possible understanding the overall course description, course objectives and intended course outcomes as well as the specific topic objectives. These aspects of the course are like a compass. You will definitely lose direction if you do not make good use of the compass!

What is professional ethics and responsibility?

Let's start by defining the term 'profession' and identifying its characteristics.

"A profession is a self-selected, self-disciplined group of individuals who hold themselves out to the public as possessing a special skill derived from education and training and who are prepared to exercise that skill primarily in the interests of others¹

Characteristic traits of a profession

A professional is more than just a person with a product of service to sell! It requires extensive training of an intellectual character. Its services are vital to society's wellbeing. Its practitioners usually have a high degree of autonomy in deciding how to carry out their job. Practitioners must

¹ . Alan A. Klass, Canad. M. A. J. Sept. 16,1961, vol. 85 at p 698

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undergo a process of certification or licensing. Licensing gives practitioners an exclusive legal right to provide those service. Professionals are usually organized in “societies”

What is ethics?

Let us now attempt to define ‘ethics’

‘Ethics’ is a branch of philosophy dealing with values pertaining to human conduct. It is concerned with the rightness and wrongness of actions and the goodness or badness of the motives and ends of such actions

What then, is professional ethics and responsibility?

I picked this from ‘wiki pedia’².

Professional ethics encompass the personal, organizational and corporate standards of behavior expected of professionals. Professional responsibility is the area of legal practice that encompasses the duties of attorneys to act in a professional manner, obey the law, avoid conflicts of interest, and put the interests of clients ahead of their own interests.

Professional ethics is a field of applied ethics³. It is code of values and norms that guide practical decisions made by professionals. It can also be seen as a fully idealized set of values whose purpose is to explicate the best possible world in which a profession should be working. It is a declaration or a manifestation of good intentions that are supposed to characterize a given profession

Course description

The ATP 105 is a course on professional ethics and responsibility. Participants will be taken through an overview of the subject of philosophy with a view to equipping them with theories and concepts in philosophy which can be used to analyze normative ethical propositions. Specific normative ethical propositions will be discussed, analyzed and evaluated in detail. Participants are expected to rationalize ethical propositions and to critically interrogate and challenge the status quo.

Statues and case law, both local and foreign will be discussed analyzed and evaluated. The regulatory framework will be explored, weaknesses exposed and reforms suggested. A mastery of statutes, case law and ethical codes is therefore necessary.

By a judicious use of case studies, the case method and a very practical problem solving approach, normative ethical issues will be presented for discussion, analysis and resolution. The normative propositions will be discussed using a comparative approach and evaluated using anecdotal and empirical evidence.

Participants will perform actual practical tasks like identification of ethical issues in scenarios adapted from real cases and controversies. They will be required to investigate the violation,

² From Wikipedia (16th Feb 2014)

³ We will discuss the concepts of meta ethics, normative ethics and applied ethics in Topic 2

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recommend a cause of action, frame charges, draft defenses and write rulings. Using moot courts participants will prosecute, give evidence, defend and preside over disciplinary cases adapted from real life situations

Intended learning outcomes

Legal professionals will forever encounter situations of ethical dilemmas and the capacity to resolve the same correctly needs to be developed. This course seeks to produce the legal professional who will behave ethically in all situations. Participants must develop the capacity to identify ethical issues, correctly diagnose the problem and prescribe the correct responses. Generally speaking, at the end of this course, participants are expected to be in a position to demonstrate the relevance of the study of professional ethics, to show mastery of normative ethical propositions, the provisions of the statutes impacting on advocates and jurisprudence on normative ethical issues. They should have developed the capacity to fill the gaps in local jurisprudence with comparable foreign jurisprudence from comparable jurisdictions. Very crucially it is expected that they will be able to use philosophical theories and concepts to analyze explain and evaluate normative ethical propositions. It is expected that those who complete this course will be able to;

1. Render correct advice on ethical issues
2. Investigate a complaint under the Complaints Commission
3. Determine a complaint under the Complaints Commission
4. Prosecute a cause before the Disciplinary Tribunal
5. Defend a cause before the Disciplinary Tribunal
6. Preside over a cause before the Disciplinary Tribunal
7. Write a ruling in a disciplinary cause in the Disciplinary Tribunal

Course Objectives

Participants are expected to have developed competencies that will enable them;

1. Recognize ethical issues wherever and whenever they arise
2. Resolve ethical dilemmas
3. Conduct a comparative analysis between our jurisdiction and comparable jurisdictions
4. Evaluate our regulatory framework and propose reforms where necessary
5. Prescribe changes to existing codes of conduct and ethics
6. Develop a personal moral philosophy

Course Outline/Topic organization

This course is organized into 24 topics. The arrangement is not necessarily cast in stone but an effort has been made to achieve sequence flow and integration and to present the topics in such a

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way that the subsequent topics build on the previous ones and the previous ones anticipate the subsequent ones.

- Topic 1 about the ATP 105 course
- Topic 2 Introduction to philosophy and ethics
- Topic 3 The Legal profession
- Topic 4: Legal Education
- Topic 5: The advocate client relationship
- Topic 6: Rights and Duties of the Advocate
- Topic 7 Prohibited Acts/Disabilities of the Advocate
- Topic 8: Specific duties: Confidentiality
- Topic 9: Specific duties: Conflict of interest
- Topic 10: Specific Duties: Professional Negligence
- Topic 11: Remuneration of Advocates
- Topic 12: Retainer
- Topic 13: The Advocates Lien
- Topic 14: Marketing
- Topic 15: Professional undertakings
- Topic 16: Ethics for in-house counsel
- Topic 17: Ethics for state counsel and prosecution counsel
- Topic 18: Ethics for Judicial officers
- Topic 19 Dress code
- Topic 20 Netiquette
- Topic 21 Court etiquette and decorum
- Topic 22: Discipline
- Topic 23: Legal Practice Management
- Topic 24: Emerging issues

List of frequently uses statutes

- Constitution of Kenya 2010 specifically article 10 157 158 chapter 4, 6 10 and 13
- Public Officer Ethics Act, 2003
- Anti-Corruption and Economic Crimes Act
- Leadership and Integrity Act
- The Advocates Act and any subsidiary legislation made thereunder
- The Draft Advocates Bill, 2014
- The LSK Act 2014
- The LSK Act Cap 18 LoK (Repealed)
- Council of Legal Education Act (Repealed)

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LN 400 of 2007 169 170 and 171 of 2009 KSL Regulations 2011
The Kenya School of Law Act 2012 and subsidiary legislation made thereunder
The Legal Education Act 2012 and any subsidiary legislation made thereunder
The LSK Digest of Conduct and Ethics 2000 and
The 2014 LSK draft code of conduct and ethics
LSK Dress Code 2013
LSK (Marketing and Advertising) Rules 2014 LN 42 OF 2014
The Judicial Services Act, 2011
The Vetting of Judges and Magistrates Act, 2011
The Supreme Court Act, 2011
Code of conduct for judges and magistrates
Office of the Director of Public Prosecutions Act
Office of the Attorney General Act
National Prosecution Code of Conduct and Ethics
National Prosecution Policy
UN Basic principles of the independence of the judiciary
UN Basic Principles on the Role of Lawyers
Bangalore Principles of Judicial Conduct
Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence,
Commonwealth (Latimer House) Principles on the Accountability of and the Relationship
between the Three Branches of Government
ABA Model Rules of Conduct
IBA code of Conduct and Ethics

Core Texts

1. None

Texts and Journals for Further Reading

- As per course Outline and handouts

Delivery mode

This course will be delivered exclusively using the eLearning platform presently being piloted by the course facilitator. It is intended to supplement your normal face to face classroom interactions with your designated lecturers in the ATP course. The facilitator proposes to use this platform to help develop teaching module for the ATP 105 programme. Access to the learning material is open to all ATP 105 students but interaction is limited to selected volunteers who are willing to devote time and effort to participate in the demanding eLearning activities such as

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regular assignments, online group discussions and case analysis. The long term objective is to open all aspects of the class to all. The library staff will provide an orientation to all ATP students on how to access the materials. The facilitator will guide the volunteers on how to participate on the other aspects of the course

Assessment (Presently, jointly by KSL and CLE)

Term 1 Project (KSL) 20%

Term 2 Orals 20% July to August (KSL)

Term 3 Written exam 60 % (CLE)

Attendance: Mandatory 75%

Required capabilities

To successfully complete this course and achieve your target of passing the examination on first attempt, develop and refine the following capabilities;

1. Ability to think critically and outside the box
2. Ability to challenge the status quo
3. Precision writing and analytical argumentation
4. Computer literacy and ability to use the internet as the main source of information

Concerns

There have been concerns about the performance of students in the ATP exams. The .ATP 105 is not exempted from those concerns. We are sure you are familiar with those concerns. We would like to concede that the concerns are not without merit. But we would also like to assure you that some of the concerns are a tad exaggerated and are not driven by objectivity. To illustrate that, we show you an analysis of the 2014 November examination results. You will at once notice that though overall performance is strikingly low (18.9) % the performance cross individual subjects is impressive with pass rates ranging from 59.3 to 89.1 percent. The pass rate in the ATP 105 in the November 2014 exams was 63% 63. That means that at individual subject level the mean pass rate is actually as high as 72.4 %. It means that the average lecturer at the ATP is satisfied that 71% of those who take their exams meet the expected standards of performance. Given that the students who come to the ATP are generally some of the best students in liberal arts at university level, any one of them, including those who scored very highly from primary school to university level can fall in the 27.6 %. By standards of examinations, this is hardly an indication of a systematic attempt to manipulate the pass rate. And if you look at the pass rates on the applications for remarks, it tends to reinforce the position that there are no systemic problems in the marking process itself. The key is to translate performance per subject into overall performance. You have a very important role to play here as the individual lecturers can only see you through individual units. Make it your responsibility to be among the 60% percent that pass in every subject and the programme will deliver a 60% pass rate.

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For now, my advice is that you don't pay too much attention to the overall pass rate and work towards being part of the 63% percent that will most probably make it in the ATP 105. (I anticipate a higher pass rate in the November 2015 exams.) That is a target well within your range. I sincerely hope that you approach the ATP with a positive attitude and that you will not be detracted by unverified allegations about the programme. Your lecturers are essentially your professional colleagues. They too went through this programme. When you confide in them, you will realize how determined they are to see you through and how frustrated they feel when the results are not as good as they expect. I also suggest that you take a similar approach to the eight other ATP courses

Best wishes as you go through this course

CHARLES B G OUMA
COURSE FACILLITATOR
ATP 105 VIRTUAL CLASS 2016