

## COUNCIL OF LEGAL EDUCATION



## EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

### **ATP 105: PROFESSIONAL ETHICS & PRACTICE**

**THURSDAY 8<sup>TH</sup> DECEMBER, 2016**

**DURATION: 3 HOURS**

#### **Instructions to Candidates**

- (a) This paper contains **Four 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 development of law as a profession has coincided most conspicuously with the increase in its regulation. Alas, the advocate has constantly kept one step ahead of regulations." (Anon)*

Discuss the above statement in light of the development of Kenya's regulatory framework for the legal profession and the advocate. **(20 marks)**

## QUESTION TWO

Lakika has been employed at a non-legal company as a legal officer. In the course of employment Lakika registered a law firm and intended to resign and engage in private practice.

Lakika and his former employer negotiate an arrangement whereby Lakika continues to act as their legal officer. In addition, Lakika is at liberty to take instructions from other clients and employ advocates to work at the firm which is situated within the same office of the non-legal company.

Discuss the extent of responsibility of Lakika in relation to legislative provisions:

- (a) As an employee of a non-legal company and the extent of engagement and remuneration. **(3 marks)**
- (b) Entitlement of Lakika with regard to provision of legal services and fees paid to the employer. **(3 marks)**
- (c) Clearly distinguish the responsibility of Lakika if allowed to accept instructions from other clients when in employment and when sharing accommodation with a non-legal entity. **(4 marks)**

## QUESTION THREE

Ludia is quite upset with her advocate Rumona. In Ludia's view, Rumona has cost her a lot in losing her case at the High Court both for the substantial sums of money involved and the costs of the suit. She has approached you as a student at the Kenya School of Law for some advice on the way forward. She states the following:

*"Firstly, the Pastor who referred me to Rumona never informed me that her offices were located on such a noisy street. When I walked into the office I met a young girl behind the reception counter who seemed rather disinterested in me and continued painting her nails. On informing her that I had an appointment with Rumona for 2 p.m., she told me that I would have to wait for about an hour as Rumona is usually late to the office after lunch. Given that I really needed the services of an advocate I decided to wait. I was told to wait while seated on a bench at the neighbouring medical clinic because there were no extra seats at Rumona's office.*

*After waiting for one and half hours, I was ushered into Rumona's office. The room had a rather old and torn carpet that smelled quite dusty and in need of a thorough wash. The 'office' was rather dimly lit and distastefully furnished. I was shown a rickety chair that kept*

wobbling whenever I shifted weight on it. But much worse is that Rumona did not even greet me, let alone try to make me feel comfortable. She sat behind a pile of files untidily strewn all over her desk. But because I was referred to her by Pastor I persevered. The worst was to come when in the course of my narration of the issues concerning my case she put one earphone into her ears, popped a chewing gum in her mouth and bobbed her head from side to side. She also received a phone call lasting twenty minutes where she proceeded to admonish the other party about messing with her man. At one point she called her Secretary and literally shouted at her at the top of her voice for failing to follow an instruction. As the Secretary was leaving the office Rumona threw the file at her hitting her back with it. At this point I was very concerned about my well-being but even much more because throughout my narration not once did Rumona write down anything I said.

*Nothing prepared me for what transpired in court. The opposing counsel raised the issue of Rumona not having a valid practicing certificate throughout the year and ten sessions in court. Rumona barely said a thing in court much to my dismay.”*

As a student who has gone through the course on Professional Ethics, identify the issues and advise Ludia of her options. (10 marks)

#### **QUESTION FOUR**

Malumbano an Advocate has been invited by the Principal Judge of the High Court on behalf of the Judiciary to attend the Judges Colloquium scheduled to be held at Whitesands Hotel Mombasa in November 2016 as a guest lecturer. Malumbano is required to present a paper titled “*Legal effects of the provisions of the Constitution in light of amendments to land laws in Kenya and fundamental rights of foreigners.*”

Kuyekitele, a client of Malumbano has filed a case in the Land and Environment Court which is still pending and where similar issues are being canvassed. The case is partly heard with further hearing scheduled for 17<sup>th</sup> December 2016 before Justice Chaimzuri.

Malumbano has been informed in the invite that the moderator of his session with whom he has to work closely, is Justice Chaimzuri. The workshop has been approved by the Continuing Professional Development Committee so that all advocates attending as guest lecturers will be awarded two (2) CPD points. This is the final opportunity for Mulambano to comply with the Advocates (Continuing Professional Development) Rules, 2014.

- (a) Should Malumbano accept the invitation and why? Discuss the ethical issues that are to be considered. (5 marks)
- (b) How should the Judge mandated to moderate the session interact with Malumbano? (5 marks)

#### **QUESTION FIVE**

Glandichi an Advocate of 20 years standing had a thriving legal practice. On 12<sup>th</sup> January 2016 he was involved in a road accident and unfortunately passed away.

The family notified the Law Society of Kenya who upon perusal of his record established that the late Glandichi Advocate being a sole proprietor had appointed the firm of Lamita & Lamita Advocates to be responsible for winding up of his business in the event of his demise.

- (a) Discuss the responsibilities bestowed on Lamita & Lamita Advocates in context of the decision in *The Administrators of Maxwell Ombogo -vs- Standard Chartered Bank and the Law Society of Kenya CA NO. 162 of 1999 NBI* (5 marks)
- (b) Discuss the responsibilities of Lamita & Lamita Advocates in the event that Glandichi Advocate was in a partnership. (5 marks)

#### QUESTION SIX

Tendakazi attended Makatilite's branch office in Kilifi and requested the Advocate to prepare an affidavit for change of name in support of an application to lodge a Deed Poll with the Registrar of persons, to change the name of Tendakazi's wife, Majimatamu.

Makatilite who was at the time at his head office in Ganze, instructed his clerk to prepare the affidavit and forward it to the client's wife who was said to be in Machakos for execution and return.

Upon return, the clerk having confirmed that the affidavit was signed, stamped it with Makatilite's Commissioner for Oaths stamp and presented the documents for gazettment.

Majimatamu peruses the Kenya Gazette and notes that her name has been changed to read Majimatamu Tendakazi from Majimatamu Malenge. She approaches you for advice.

What actions would you take and why? Justify your answer with relevant legislative provisions and any other applicable Codes citing breaches if any by the advocate. (10 marks)

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