

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 105: PROFESSIONAL ETHICS & PRACTICE

MONDAY 23RD JULY, 2012

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer Question **ONE** and any other **THREE** Questions
- (b) All questions carry **15 marks** each
- (c) Marks may be lost for illegibility

PLEASE TURN OVER

1. It is a bright Saturday afternoon. James, your new business acquaintance invites you for a game of golf. You are particularly thrilled because you are certain that you will make some very useful business contacts on the course. Your colleague, Mr. Maitha advocate has been regaling you with tales of how he landed a blue chip company as a client following a chance meeting with its Chief Executive Officer on the golf course. You are a novice in the game of golf and are hesitant to display your ignorance. Your perceptive caddy very soon puts you at ease and quickly guides you through the preliminaries of the game. You begin to feel more confident and a hearty conversation with the caddy ensues. The caddy will, for an agreed commission, introduce you to some potential clients. The caddy, also, makes an unexpected disclosure to you. He wishes to file for divorce and James may be the co-respondent. He seeks your advice on how he should proceed with the matter and requests you to represent him. You inform him that in view of your acquaintance with James, you prefer not to act for the caddy but that you are able to give the caddy some advice informally. You then begin to advise the caddy on how he should proceed. The caddy makes more disclosures. James, apparently, could be the biological father of the caddy's two (2) year-old 'son', and the caddy has hired a private investigator to closely monitor James. You promise the caddy that you will in due course recommend another colleague to act on the caddy's behalf. Over a cup of coffee in the evening, James asks you what the animated conversation with the caddy was about. You inform James that you are very worried for him because the caddy is out to ruin his name and good standing in business circles. You then drop a broad hint about your conversation with the caddy. Upon your return to your office you also share your experience with your partner Luka. Luka informs you that he is aware of the matter and that indeed the caddy's wife has been a client of your firm for a long time. In fact the caddy's wife had already approached Luka and intimated that there could be a matrimonial legal brief in the offing and that Luka should handle the same. You also discuss the matter at length with your friend Juma advocate (who agrees to take the brief) and you also give Juma the caddy's cell phone number.

Discuss the ethical issues (if any) that arise. (15 marks)

2. Abdi, your client of many years, instructs you to draw a will for him. Abdi prepares a schedule of assets and liabilities and a list of all the beneficiaries to his estate. Abdi has always had unfailing faith in your abilities to represent him professionally. He has, for example, never queried you on the accounts of some of his important properties with respect to which you have been collecting rent. Being rather overwhelmed with work you instruct your associate to prepare the will and have Abdi sign it. You confirm with your associate that indeed Abdi did sign the will. Unfortunately, one year later, Abdi dies, and his will is challenged by the beneficiaries in various respects. Some two beneficiaries witnessed the will whilst some other beneficiaries aver that they were omitted in the will. Curiously, also, the will is reportedly undated. Upon consulting with your associate, however, you date a counterpart of the will that is in your possession. Advocate Kariuki, with whom you have had some long running contest over representation of a quadriplegic client introduced to you by a commission agent gladly offers to represent some of the beneficiaries and sends a long list of demands to you with a threat of legal action.

What ethical issues (if any) should you anticipate and how will you respond to them? (10 marks)

What is the possible cause of action and by whom? (5 marks)

3. Your client of many years has greatly disappointed you. He owes you agreed fees of Kshs.10million. You are now apprehensive that your landlord may well levy distress for unpaid rent. You have, also, managed to pay only one third of the salaries due to your staff. The matter of your payment of the Law Society of Kenya subscription has also been pending for several months and the June deadline you had set for yourself is sadly past. Your client has now reneged on the matter of fees and he denies that he agreed to pay you the said sum. Some of the litigation that you are handling on your client's behalf includes a claim for the fraudulent transfer of his high-rise commercial building in the Nairobi Central Business District. Following an acrimonious fall out with your client, he instructs another advocate to proceed with the matter that is scheduled for hearing in September and a notice of change of advocates is immediately filed. The new advocate writes to you requiring you to deliver up the entire file and she also threatens you with court action should you fail to do so. The Advocate, in addition, requires you to immediately deliver up your former client's National Identity card and family photographs which are in your possession. In addition, the new advocate requires you to immediately pay up some Kshs.500,000/- that was sent to you by your former client in February with instructions that you should deposit the same into an interest earning account in the joint names of the advocates for the parties pursuant to a court order. You did not execute those instructions.

What ethical issues (if any) arise? (5 marks)

What is your response to the demands by the new advocate and what action (if any) should you take? (5 marks)

In the event that legal action is taken as threatened what orders is the court likely to grant?

(5 marks)

4.

- a) The Kenya School of Law (KSL) has a vibrant programme on Continuing Professional Development (CPD) for lawyers and other actors in the legal sector. The Law Society of Kenya (LSK) insists that the school applies for accreditation of this programme before it can award CLE points to those who undertake the courses being offered by the KSL. You are a member of staff of the KSL CPD Department and the Director/CEO, KSL, has sought your opinion on whether or not the school's programmes needs accreditation by the LSK. Advice the Director on the basis of your understanding of the statutory mandate of the LSK and KSL. (6 marks)
- b) Dr. Ken Barrister is a practicing barrister in the United Kingdom. He is also a member of the prestigious New York Bar and the Paris Bar. He has practised in all the three bars since 1992. He is an internationally renowned lawyer with exceptional trial advocacy skills. He attended the University of Nairobi for his LL.B and graduated with a first class honors in 1989. He was awarded a scholarship to Oxford University for his LL.M and later PhD. He was recently appointed a professor of law at the University of Nairobi and has decided to come back home and serve his country with his exceptional teaching and lawyering skills. He wishes to practice law and has been advised that he must take the ATP programme at the KSL before he can be admitted to the Kenyan Bar. He has sought your opinion on the possibility of being exempted from the ATP programme.

Advise him, based on the law, on admission to the Kenyan Bar, as it is and the law as you think it ought to be. (9 marks)

5.

- a) Dan has just been appointed a Director of Public Prosecutions. Prior to his appointment, he was a practicing advocate with a flourishing criminal practice. He represented hundreds of clients facing capital robbery charges at the Nairobi Law Courts. As the new DPP, the task of prosecuting these clients is now on his office. All the cases were prosecuted by a number of state counsels who are now Dan's subordinates and answer directly to him. Dan's clients have gone to the constitutional court seeking orders to bar the DPP's office from prosecuting them on the grounds that Dan is in possession of confidential information which can be used against them in the prosecutions either directly or indirectly. Dan has asked you to write a short opinion on the constitutional reference lodged by his former clients. Advice Dan.
- b) The complainants in the aforementioned cases also doubt the sincerity of Dan in overseeing the prosecution of the cases in his capacity as the new Director of Public Prosecutions. They seek orders to be allowed to prosecute the cases privately. Given the constitutional mandate of the DPP's office, advice the DPP's office on the merits or otherwise of the action by the complainants.

(15 marks)

6.

Eric is a professor of law at the Kenya School of Law. He was admitted to the Bar in 1991 and practised as an advocate until the year 2008 when he joined the Kenya School of Law as a full time professor. He has not renewed his practicing certificate since 2009. He has received instructions from one of his former clients to undertake the following tasks:

1. Undertake a corporate restructuring of a public quoted company at the Nairobi Stock Exchange.
2. Draft a constitution for a national sports organization.
3. Supervise a paralegal legal aid clinic that specializes in securing child rights through alternative dispute resolution processes.

Advice Eric on whether or not he needs a practicing certificate to undertake the foregoing tasks.

(15 marks)