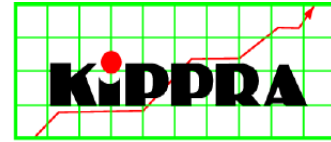




KENYA SCHOOL OF LAW



**The KENYA INSTITUTE for PUBLIC
POLICY RESEARCH and ANALYSIS**

Factors Influencing Students' Performance in the Kenyan Bar Examination and Proposed Interventions

Final Report

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Executive Summary

Legal education training programme in Kenya is a pathway to the legal profession. The programme is delivered through the Bachelor of Laws (LL.B) at undergraduate level and advocates training programme. The Bachelor of Laws course is delivered through accredited universities, and the Kenya School of Law (KSL) conducts a postgraduate training for law graduates which is known as the Advocates Training Programme (ATP). The ATP trains and prepares law graduates for the written Bar Examinations which are set, administered and marked by the Council of Legal Education (CLE). Upon successful completion of the ATP which includes pupillage, candidates are prepared for subsequent entry to the Roll of Advocates. However, in the recent past, there has been an increase in number of students who do not pass all the 9 units at first sitting. This study aimed at establishing the factors influencing Bar examinations performance and propose feasible interventions.

The study established that there is a strong correlation between students' performance in the Bar examinations and performance at high school and in the Bachelor of Laws programme. An analysis of student high school grades against their performance in the Bar examinations indicates that students with higher high school grades consistently performed better in Bar examinations compared to students with lower high school grades. In 2017, 92.3 per cent of candidates who undertook the Advocates Training Programme (ATP) and who had high school grades of A passed the Bar examinations in the first sitting. In the same year, 44.4 per cent of candidates who undertook the ATP and who had high school grades of C passed the Bar examinations. Bar examination performance increased with performance in the Bachelor of Laws.

Most former students agreed or strongly agreed that training (75%), overall examination function (48.7%), orals (67.6%), project work (69.4%) and the written Bar examination (59.5%) should be conducted by the Kenya School of Law. On the other hand, most former students agree or strongly agree that regulation and supervision of ATP should be conducted by the Council of Legal Education. This points to **overall consensus that training and examination should be carried out by one institution, specifically the Kenya School of Law, complemented by strong regulation of the ATP by the Council of Legal Education.** Only 2.7 per cent of former students agree that other legal education providers should offer the training and examination function of the ATP, respectively. There was no consensus among former students on whether other legal education providers should undertake the training and examination functions of the ATP. There was wider agreement that KSL should be given the task of administering the written Bar examinations since they are in a good position to know to what extent the syllabus has been covered and are familiar with the curriculum and content covered. This would ensure a nexus between what is taught and what is examined.

Commercial transactions course is a heavy unit and should be divided into shorter units since learners need more time to understand the content. This course was one of the units that contributes to low pass rate in Bar examinations.

Most former students (79.5%) strongly agrees that the broad scope of questions for oral examinations was a main factor influencing student performance. There were no guidelines for the oral examinations and the scope of questions asked was wide, which was disadvantageous to the students. The oral examinations were not standardized and, at times, the questions test issues that were outside the scope of law, outside the scope of the content taught in the ATP, or outside the scope of core legal courses.

Similarly, former students were of the view that undergoing pupillage before sitting Bar examinations can contribute to high pass rates since students can utilize some of the practical skills from pupillage in the exam.

Most students indicated that the duration of contact for delivery of ATP was insufficient. Overall, 51.3 per cent of the former Kenya School of Law students were of the view that the short duration of the course influenced student performance at KSL, while the rest (47.7%) were of the view that the duration of contact was sufficient to guarantee success in the programme.

Quality of teaching through problem solving approach was identified as the most effective approach in ATP delivery. Most of the former students (95%) agreed problem questions for discussion are an effective way of covering the Advocates Training Programme. Most students (74.3%) agree that the quality of teaching contributes to a high pass rate in the ATP. Despite this, some of the students (44.7%) indicated that there were gaps in the quality of teaching at KSL.

Learning environment, notably improvement in library facilities, was identified as critical in improving Bar examination performance. A number of former students (24%) indicated that KSL has inadequate library facilities while 65.8 per cent thought the facilities were average. Only 21.1 per cent of the former students were content with the provision of reading materials by KSL.

Lecturer requirement and selection process was identified as critical but some lecturers needed to improve on course delivery. Most (76.3%) of former students considered lecturers to have been an effective in covering the programme. This is despite most students (81.6%) being of the view that some lecturers were not conversant with the teaching material.

Most former students (74.4%) who had undergone the Kenya School of Law Advocates Training Programme strongly felt that inconsistencies between the examinations and the course curriculum played a significant and detrimental impact on student pass rates.

Further, 86.8 per cent of former students strongly agree that inconsistency between the examinations and content taught was a main factor influencing performance by students in Bar examinations. Weak link between KSL and CLE was a contributing factor whereby there is disconnect between the curriculum, what was taught and what was examined.

Recommendations

The university admission criteria should be reviewed. The entry requirements for admission to the LL. B should be raised. There is also need to place more emphasis on English grades. Additional admission criteria should be introduced including introduction of a standard exam prior to admission to university testing English, language and comprehension skills.

The admission requirements should be clear and predictable. The threshold for admission requirements should not only be defined in terms of grades but in terms of clarity and predictability. Clear admission criteria would guide prospective students and applicants in knowing what to work towards and managing expectations.

Students need to have adequate time with the course material. Students should have opportunities to receive more diverse or longer professional experience while at university by expanding their work opportunities beyond judicial attachment and facilitating opportunities for acquiring experience in legal practice. In this regard, the judicial attachment at university level ought to be complemented by work experience in a law firm or organizations undertaking legal practice. Through such apprenticing, students are then likely to receive adequate practical exposure to facilitate their preparation for pupillage during the Advocates' Training Programme.

There is need for greater innovation in the provision of legal training. This could include reconfiguring the sequence of units in the Advocates Training Programme to ensure that trainees commence rather than end with pupillage after attending the training classes and before sitting for their examinations. More opportunities for acquiring practical experience need to be available for trainee advocates. It would also be important to undertake a graduate tracer study of all LL.B and ATP graduates to establish where the graduate students, both those who pass and those who fail, are engaged in after the ATP programme.

Quality of legal education at university should be improved. While in university, students should undertake an attachment in a law firm or organization with a legal practice department, besides the judicial attachment. Exchange programmes could be introduced within universities to expose students to various jurisdictions and learning environments.

The Government should properly fund the ATP. Funding from the Government is critical in ensuring resource availability and ensure construction of the necessary infrastructure. The resources need to complement and

accommodate the number of students being enrolled into the programme. This will support future expansive endeavours of KSL.

Decentralization of Kenya School of Law services. Subject to availability of resources and funding, KSL should decentralize its services to accommodate the high number of entrants to the ATP. However, there will be need to ensure that decentralized centres have adequate human resources and facilities. While most respondents agreed that it was undesirable to establish private training centres immediately due to the already weak quality assurance of the LL.B programme, respondents were of the view that decentralization of KSL complemented by an aggressive regulator in CLE would ease congestion in KSL and ultimately improve delivery of ATP.

Kenya School of Law to adopt small classes and reduce student-lecturer ratio. It is recommended that smaller classes of 15-20 students is ideal in imparting practical teaching aspects and providing a one-on-one mentorship. Connected to this is the need to increase the number of lecturers.

Enhance practical aspects of teaching in the ATP by focusing on legal clinics, role plays and problem questions. A practical approach to teaching should be adopted. The case for Trial advocacy, which has consistently recorded remarkably high performance over the years even in comparison to other units, should be emulated in adopting the practical mode of teaching.

The lecturers ought to be individuals who have expertise in the relevant subjects they teach and who can prepare course content and teaching material adequately and spend enough time with the students. Lecturers should teach in their area of practice, expertise or specialization. Practical experience in a given area of law is critical as legal practice is dynamic and fast-changing. Lecturers ought to be assigned courses in which they have expertise and in which they feel at ease with the content. Lecturers should be conversant with the subject matter of the unit they are expected to deliver. A training needs assessment should be carried out for lecturers while student evaluations of lecturers should be acted upon. In addition, lecturers at KSL should be trained on teaching methods and delivery of content, which can be achieved through regular short courses on pedagogy. KSL also ought to increase the number of lecturers they have engaged.

Attendant to this is the need to engage experts in particular areas of specialization and practical training. This can be achieved through increased use of guest lecturers who are industry experts in particular fields. Industry experts can be incentivized to participate through awarding of LSK/CPD points. Specifically, legislative drafting experts from the Kenya Law Reform Commission or the State Law Office who practice legislative drafting on a day to day basis can be engaged to provide practical sessions on legislative drafting. Public prosecutors from the Office of the Director of Public Prosecutions can similarly be engaged on matters concerning criminal litigation. Other industry experts on conveyancing, criminal litigation, civil litigation and commercial transactions can be engaged as guest lecturers prior to students sitting the final written Bar

examinations to elucidate and clarify certain concepts based on their practice and experience. Additionally, KSL should engage professionals to train its students on presentation and public speaking skills.

There is need to develop clear guidelines for oral examinations. The scope of coverage and the parameters for the oral examinations need to be defined and students informed of the same prior to their examination. Further, oral examinations ought to be restricted to topics in law within the ATP.

Notwithstanding the findings that most former students strongly agree that training and examination should be carried out by one institution, specifically the Kenya School of Law, in the event that the examination function remains with the Council of Legal Education, they should adequately consult and work closely with the Kenya School of Law. In the current institutional arrangement whereby training and examination functions are carried out by two separate institutions (KSL and CLE, respectively), there is need for the body setting the exam to work closely with the body training and implementing the curriculum. There is need for greater coherence, harmony and coordination between KSL and CLE. This should be complemented by improving the resources at KSL.

CLE should ensure as a matter of priority that standards are maintained among legal education providers. In this regard, there is need for standards to be enforced from one centralized institution. CLE should consult with universities on mode of setting examinations, the standards of examinations and questions being set and the implementation of the curriculum. CLE should be empowered to heavily collaborate with the universities to ensure that the standards are being maintained throughout the period of the Bachelor of Laws programme. There is need for intensified monitoring of universities including how they teach, what they teach, how they are implementing the curriculum and how they are setting examinations at university. CLE cannot leave this to the universities to self-regulate. This would improve the quality of training being imparted. In addition to the above, the Commission for University Education (CUE) should strictly enforce the requirements for lecturers. Of paramount importance is setting excellent standards for legal education in Kenya and raising the standards for legal education in Kenya.

CLE should be strengthened as a regulator for legal education. The regulation of undergraduate legal education should be hived from CUE so that CLE has a clear and exclusive mandate to regulate legal education. CLE ought to enhance its monitoring and evaluation. CLE should not be the regulator and examiner. Quality control systems for the ATP should be put in place including a clear regulatory framework. In addition, CLE should enhance monitoring and evaluation of the ATP program, to include regular inspections.

CLE should introduce mid-term (mid-year) examinations to ensure adequate preparation of students rather than relying on a single exam at the end of the training programme. This would have the benefit of

enabling lecturers to identify students facing academic or personal challenges to their progress while the programme is still underway.

CLE should establish a regulatory framework for the ATP prescribing the curriculum, structure, duration, content, teaching methods, class size, student-lecturer ratio, modes of assessment and recruitment criteria for lecturers, which it should strictly monitor. This will enable the ATP and the methodology for its delivery to be conceptualized at a policy and regulatory level. CLE ought to ensure regular check on quality and ensure course curriculum is followed and implemented, evaluation and assessment of lecturers is done, and teaching content regularly updated. There is also need to revise the curriculum review timelines from 5 years to 2 years.

Abbreviations and Acronyms

ABA	American Bar Association
ACE	Accelerated Christian Education
A Level	Advanced Level
ASP	Academic Support Programmes
ATP	Advocates Training Programme
BPTC	Bar Professional Training Course
CLE	Council of Legal Education
CLP	Certificate in Legal Practice
CPD	Continuous Professional Development
CUE	Commission for University Education
EAF	Economics, Accounting and Finance
GCB	General Council of the Bar of South Africa
GCE	General Certificate of Education
GPA	Grade Point Average
HELB	Higher Education Loans Board
IB	International Baccalaureate
IELTS	International English Language Testing System
IGCSE	International General Certificate of Secondary Education
IPLS	Institute of Professional Legal Studies
JAB	Joint Admissions Board
JD	Juris Doctor
JKUAT	Jomo Kenyatta University for Agriculture and Technology
KASNEB	Kenya Accountants and Secretaries National Examinations Board
KCSE	Kenya Certificate of Secondary Education
KNEC	Kenya National Examinations Council
KSL	Kenya School of Law
KUCCPS	Kenya Universities and Colleges Central Placement Services
LL. B	Bachelor of Laws
LL.M	Master of Laws
LPC	Legal Practice Course
LSAC	Law School Admission Council
LSAT	Law School Admission Test
LSK	Law Society of Kenya
MBE	Multistate Bar Examination
NBEB	National Bar Examination Board
NCBE	National Conference of Bar Examiners
NGO	Non-Governmental Organization
PCLL	Postgraduate Certificate in Laws
PLT	Practical Legal Training
PLC	Practical Legal Course
PLTS	Practical Legal Training Schools
PT	Performance Test
STEM	Science, Technology, Engineering and Math
THE	Times Higher Education
UBE	Uniform Bar Examination
UK	United Kingdom
USA	United States of America

1 Background and Study Context

1.1 Introduction

1. The legal education system in Kenya is one of the pathways to the legal profession. In the general context, it entails undertaking a four-year Bachelor of Laws (LL. B) degree followed by the Advocates Training Programme (ATP). The accredited universities have been mandated to provide theoretical and foundational principles for law and currently the Kenya School of Law (KSL)¹ has been mandated to provide clinical legal training to students enrolled in the ATP.

2. KSL conducts a postgraduate training for law graduates referred to as the Advocates Training Programme (ATP) which prepares law graduates for the Bar examinations and subsequent entry to the Roll of Advocates. Currently, the Bar examination is administered biannually by the Council of Legal Education (CLE) as established under the Legal Education Act No. 27 of 2012. This is thereafter complemented by 6 months of pupillage to be served under an Advocate of not less than five years standing. The structure of the legal education system has undergone various changes over the years to reflect current demands. Nonetheless, the dichotomy between theoretical academia and training has been maintained over the years. After successful completion of the Advocates Training Programme including pupillage, one is at liberty to apply for admission to the Roll of Advocates and registration for membership with the Law Society of Kenya, which is the professional body, and the Bar Association for advocates in Kenya. Advocates constitute persons who are capable of representing clients, drafting legal documents and offering legal advice.

3. The Advocates Training Programme is one of the main avenues for admission to the Roll of Advocates which enables one to practice as an Advocate. For the proper practice of the advocates' profession, there are essentially two broad requirements, apart from integrity and ethics. These are specialized knowledge of the substantive and procedural law, and technical skills to apply that knowledge in practice which are intended to enable one to offer and discharge professional legal services. In any society, the maintenance of proper standards of excellence in the professions is essential and the legal profession is no exception. It is in the interests of the litigating public that the required standards are met and maintained. The Bar examination system is tasked with ensuring and maintaining those standards in an endeavor to ensure that persons

¹ The Kenya School of Law (KSL) is a corporate body established by the Kenya School of Law Act No. 26 of 2012. The Kenya School of Law Act, 2012 provides that KSL is a public legal education provider responsible for the provision of professional legal training as an agent of the Government.

entering the profession and offering legal services to members of the public are suitably equipped with the necessary knowledge and skills.

4. To be considered as having “passed the Bar examinations” in Kenya, a student is required to have passed all 9 units, each requiring a grade of 50 and above. This is what is interpreted by some as having passed or failed. Where a student has failed, they may opt for a remark at a cost of Ksh 15,000 or resit at a cost of Ksh 10,000 per paper, which is paid to the Council of Legal Education. The resit does not take into account the oral or project work components of the Advocates Training Programme. The ATP sets competence standards which students must achieve to demonstrate their ability to qualify as an Advocate.

5. However, in the recent past, there has been an increase in number of students who do not pass all the 9 units of the ATP at the first sitting (refer to Table 1a). There are several cases filed by students in the courts challenging decisions by the Council of Legal Education (CLE) and KSL, including sitting for an examination before admission for diploma in law. Many of these petitions are triggered by failure to pass the examinations while others relate to admission to KSL. Similarly, in recent years, there has been an increase in the number of universities licensed and accredited to offer law. As at 18th June 2019, CLE reported that 15 institutions had been licensed and accredited to offer the Bachelor of Laws (LL.B) programme (as listed in Table 1). A number of these institutions have in the past had their licenses revoked and their applications rejected, thus preventing them from undertaking any new admissions and requiring them to phase out current students. There is concern that while the number of graduates has increased, there has been deterioration in the quality, professional capacity, and competence of these graduates as they transition into practitioners, calling into question the quality of legal services they provide to the public, and the legal profession as a whole. Advocates, in addition to being professionals, are also officers of the court and play a vital role in administration of justice.

6. It is for this reason that this study is crucial in the wake of the evolving demands of the legal profession, the changing legal market needs and the high expectations placed on lawyers; and that legal education system must ensure that lawyers are adequately prepared to meet such demands, that the reputation of the legal profession is maintained, and the sanctity of the overall legal profession preserved. It is also in the wider public interest to ensure that persons offering legal services, legal advice, handling client matters, and legal transactions are competent and well-trained to do so. It is equally imperative to ensure confidence in the profession. While it is important to ensure accessibility of the legal education system, standards must be maintained. On the other hand,

cognizance must be made of the investment made by students in terms of time, resources and funding while pursuing law.

7. Successful completion of the Advocates Training Programme is a prerequisite to admission to the Roll of Advocates and to qualify to practice as an Advocate. Failing to complete the ATP has serious and far reaching consequences as it denies lawyers the opportunity to practice as an Advocate and to pursue a substantive career in the legal profession.

8. Low pass rates in the Bar examinations may have a huge implication on a student which may deny them the opportunity to engage effectively in their chosen profession. Failing to pass the Bar examinations, in some cases, prevents students from qualifying to practice as an advocate.

9. It may also foster a negative reputation towards universities which are reported to produce graduates who do not perform well in Bar examinations. As CLE ranks students' performance in the Bar examination vis-à-vis the university in which they received their law degree, it also risks building a negative reputation for the universities perceived to produce graduates who perform poorly, and jeopardizes the accreditation status of such universities. In light of the above, the failure rate in the Bar examinations has prompted the need to evaluate and determine the main causes influencing students' performance in the Bar examinations. This study identifies areas of improvement and remedial actions to ensure that the objectives are realized. Further, the study is among the recent analysis on law professional development issues, in addition to the Akiwumi Report, Muigai Report and the Report of the Taskforce on Legal Sector Reforms chaired by Senior Counsel Fred Ojiambo which focused on assessing indicators such as the impact of the restructuring of KSL and CLE, admission requirements, and quality of training and curriculum at undergraduate level.

10. The overall objective of the study was to determine factors influencing students' performance in the Bar examinations and propose interventions. The specific objectives were to:

- i) Determine factors influencing the performance in the Kenyan Bar examinations;
- ii) Highlight lessons learned from case studies on the conduct and structure of Bar examinations in various jurisdictions;
- iii) Identify areas of improvement in the Bar examination performance to improve the overall Bar exam pass rate; and
- iv) Propose remedial actions to improve performance in the Bar examination and reduce the high failure rate to an acceptable level.

11. The study questions were:

- i) What factors are contributing to students' performance in the Kenyan Bar examinations?
- ii) What lessons can be learnt from various jurisdictions on the legal education system and the conduct, structure and pass rate of the Bar examinations in selected countries?
- iii) What are the key areas of improvement required to improve the pass rate of the Bar examinations?
- iv) What remedial actions can be put in place to improve performance in the Bar Examination?

1.2 Interpretation of Terms of Reference

12. To determine factors contributing to students' performance in the Kenyan Bar examinations, the research team used both primary and secondary data sources to determine the factors influencing student performance in the Bar examinations.

13. To highlight lessons learned from case studies on the conduct and structure of Bar examinations in various jurisdictions, the research team analysed and compared the conduct, content and structure of Bar examinations in other jurisdictions.

14. To identify areas of improvement in the Bar examination performance to improve the overall Bar exam pass rate, the study used qualitative approaches to collect information on factors influencing student performance in the Bar examination and identify areas of intervention. Learners, teachers and examiners were interviewed.

15. To propose remedial actions to improve performance in the Bar examination, the study proposes measures that can be implemented to improve performance in the Bar examinations, while ensuring that standards are strictly maintained.

1.3 Methodological Approach

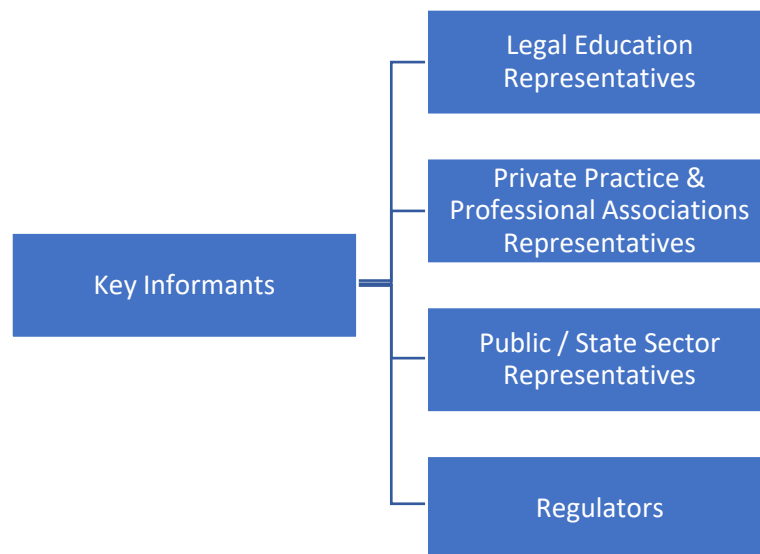
16. The methodology used in carrying out the research included: reviewing relevant documents, collecting data for identified key indicators, conducting surveys and semi-structured key informant interviews with various stakeholders, and documenting case studies from identified countries.

17. In terms of the methodology for procuring and coding the data on student performance, the working hypothesis was that information in students' law school applications and academic records can help in determining the factors influencing student performance in the Kenyan bar examination. The research team collected applicant data from 2009 to 2019 including applications received by the Kenya School of Law and student transcripts. Because reviewing and entering this data required reviewing individual applications, the research team reviewed each application as follows: opening each applicant's folder; reviewing the information; discussing any ambiguous or unclear data so the researchers could decide how to code such data; and entering the data into a spreadsheet. The admissions data entry was on-site at the Kenya School of Law. Student record files contain copies of student's LL.B. degree certificate or proof of eligibility for conferment; copies of academic transcripts; copies of secondary school certificate(s) and transcripts; copy of national identity card or passport; and proof of equation for secondary school qualifications not offered by Kenya National Education Council.

18. Surveys were administered both to current and former KSL students. Significant reforms that had been implemented during the study period included increase in number of universities offering law and increase in number of graduates, changes in entry requirements, delinking of KSL from CLE (2012), operationalization and effecting of the delinking (between 2012 and 2015), and separation of training and assessment mode of examination (2015). All these reforms were considered during the study.

19. Random sampling approach was used in capturing data from the current students while availability and snowball sampling approaches were used in identifying former students who participated during the study. About 200 former and current students were interviewed during the survey and 9 KSL lecturers. Various stakeholders in the legal sector were also interviewed as key informants. The key informant interviews (KIIs) comprised of representatives in legal education, regulators, private practice, public sector organisation.

Figure 1: Distribution of key informants across the legal services sector



a) Mapping the performance rate over time

20. First, the study team attempted to map out the ATP performance rate over time for the period between 2009 and 2019 to characterize the dynamics over time. In this regard, the study involved collection of data on the following indicators:

- (i) The performance rate per subject (for each sitting);
- (ii) Performance rate over the review period; and
- (iii) Comparison of the performance rate with other comparable countries.

21. To determine the cause(s) and factors influencing student performance in the Bar examinations the study team gathered secondary information for the following factors assumed to influence performance rate.

- (i) *Characteristics of students* including: age, gender, foreign vs local degree, degree classification of students at undergraduate level, awarding university; additional degree(s); overall high school grades (including KCSE, IGCSE, GCE, IB and A level grades); and language grades at high school for English and Kiswahili.
- (ii) *Requirements for entry and sitting examinations to KSL*, including entry requirements for local and foreign students such as the degree awarded at undergraduate level for both local and foreign students admitted; degree classification of students at undergraduate level for both local and foreign students admitted; re-sitting examinations requirements; students who have undertaken the pre-Bar examinations; students who have undergone

the pre-Kenya School of Law core courses compliance programme; overall high school grades (including KCSE, IGCSE, GCE, IB and A level grades); and language grades at high school for English and Kiswahili.

- (iii) *The administration of exam*: how is the exam set, how is it linked to the curriculum, mode of examination; mode of marking; marking schemes preparations for each unit; the exam timetables for each sitting; structure of assessment; contributions of each assessed component to the final grade including project work, oral examinations and written examinations; performance in each component assessed; performance in each subject; overall pass mark.
- (iv) *KSL facilitation*: number of students admitted to the Kenya School of Law; number of local and foreign students admitted to the Kenya School of Law; university awarding the degree prior to admission to the Kenya School of Law for both local and foreign students admitted; number of staff administering the course units; nature and number of units taught and examined; course curriculum, outlines and course content for each unit; structure of the course; mode of teaching; number of students per lecturer; employment status of lecturers; experience and qualifications of lecturers; tuition fees.
- (v) *Preparation of students at university levels*: the curricula, course structures, facilities, library facilities and moot courts, number of students, correlation between mandatory courses at undergraduate level and courses offered under the ATP.
- (vi) *Relationship between KSL and CLE*: preparation and development of curriculum and syllabus; conduct and structure of the Bar examination; monitoring of implementation of curriculum; responsibility over assessment of the four components of the ATP; enforcement of standards; composition, qualifications and employment of examiners and their interaction with KSL; legal and regulatory framework.
- (vii) *Relationship between CLE and the Commission for University Education (CUE)*: preparation and development of curriculum and syllabus; monitoring of implementation of curriculum; accreditation of universities; enforcement of standards; legal and regulatory framework.

22. Primary data was also gathered from key informants in the legal sector, including the following:

- (i) Lecturers and staff at the Kenya School of Law;
- (ii) Staff members of the Council of Legal Education;
- (iii) Current students at the Kenya School of Law;
- (iv) Former students of the Kenya School of Law;
- (v) Private and public legal education providers;

- (vi) Professional regulatory bodies;
- (vii) Private practitioners; and
- (viii) Public sector institutions in legal services sector.

23. The research team analysed and compared the conduct, content, structure and entry requirements for the Bar examinations in the United Kingdom, South Africa, Tanzania, USA, New Zealand, among others. The structure of the legal education system in South Africa has undergone radical changes over the years, having faced a similar challenge of poor performance in the Bar examinations and remedial actions taken to improve the pass rate. The institutional structure for Bar examinations in South Africa is also somewhat similar to the structure in Kenya. The Bar examinations in USA are markedly different from the Kenyan system and the differences might provide useful lessons. The UK, Tanzania, New Zealand, Singapore, Malaysia and Hong Kong adopt a two-tier structure legal education system which is similar to Kenya with latent differences. The approach was beneficial in identifying remedial actions.

2 Evolution of Legal Education in Kenya and Institutional Frameworks

2.1 Development of Legal Education in Kenya

24. Legal education in Kenya pre-dates independence.² The first feature of the legal profession entrenching roots in Kenya was vide in the 1897 Order in Council that was enacted to create a law society whose formation was largely necessitated by the need for a small group of legal professionals.³ This feature, though closely knitted to the English one, created a fused profession whereby barristers and solicitors did not play distinct roles.⁴

25. The foundational development of legal education in Kenya is greatly traced and attributed to the Denning Committee established in 1962, which has significantly shaped and influenced the structure of legal education and system in Kenya. The Denning Committee was constituted to assess the status of legal education for Africa, and to recommend a suitable model for training of local and foreign-qualified lawyers (Ojwang and Slater, 1989). Previously, the Advocates Ordinance 1949 provided broadly that any person who had professional legal qualification in any country in the Commonwealth and had resided in Kenya for at least 12 months since obtaining such qualification could apply to the Chief Justice to be admitted as an advocate⁵ and this provision as such did not require these applicants to study or have studied Kenyan law or the practice and procedure of Kenyan courts. This was deemed undesirable. It was necessary for foreign-qualified lawyers to adapt to the practice of law in Kenya.

26. The Denning Committee recommended that no person should be allowed to practice law in Africa unless, in addition to obtaining a professional legal qualification or a degree in law, such person had undergone one year's practical training (Hannigan, 1962). In addition, the Denning Committee proposed that a system of articulated clerkship should be instituted to enable students to learn law by being apprenticed to a practicing advocate for a specified period, during which he would have to pass an intermediate examination, and at the end of which a final examination (Hannigan, 1962). Among the key considerations of the report was that African countries should not admit lawyers qualified in the United Kingdom merely based on their prior British qualifications, recommending that further training was required in local law and procedures over and above their British qualification (Sitati, 2017).

² "The Legal Education in Kenya: A Historical Analysis | Okere G Okoth - Academia.Edu."

³ Ibid.

⁴ Task Force on the Development of a Policy and Legal Framework for Legal Education in Kenya, 2005. P. 2.

⁵ (Hannigan, 1962),

27. These recommendations were incorporated in the Advocates Ordinance of 1961 which repealed the Advocates Ordinance of 1949 and revised the requirements and qualification for admission to practice as an advocate. Thus, the Advocates Ordinance 1961 provided three avenues for persons and postulated qualifications for admission to practice as an Advocate under these avenues. The first category enabled a person to be qualified for admission if "*he is a barrister-at-law of England or Northern Ireland (or of Ireland called before the 1st October 1921), or a member of the Faculty of Advocates in Scotland, or a solicitor of the Supreme Court of Judicature of England or Northern Ireland (or of Ireland admitted before the 1st October 1921), or a Writer to the Signet or a solicitor in Scotland or he is a legal practitioner (by whatever name called) and thereby has a right of audience before any court of unlimited original civil or criminal jurisdiction in any self-governing country in the commonwealth, being a country in which in the opinion of the Council of Legal Education, an advocate would be entitled by reason of his admission as an advocate in Kenya to substantially the same privilege as it conferred by this section...*".

28. The second category consisted of persons who hold a prescribed degree in law, granted after examination from a prescribed university. Persons under both categories were required to, after satisfying these requirements, serve a period as a pupil of a practicing advocate and pass certain examinations.

29. The third category consisted of persons who had successfully served as articled clerks whereby the articled clerk would work in an advocate's office for a period of five years, while at the same time attending lectures and studying under the supervision of a school of law (Hannigan, 1962). These were the preliminary steps informing the need to set up a school of law, which would have the dual function of training articled clerks and providing practical training for candidates who had already obtained a basic legal qualification under the first and second category.

30. The recommendations of the Denning Committee were largely incorporated and led to the creation of Kenya's current two-tiered legal education system consisting of a degree in law and thereafter professional legal training in a training law school combined with pupillage. This is similar to the English two-tier legal education system which requires legal education to be provided at academic level and thereafter practical and technical training. This has informed the development of the Advocates Training Programme.

2.2 Functions of Legal Education System in Kenya

31. Legal education systems are formed for varied purposes, including training legal academics, training legal practitioners, or shaping policy makers. In Kenya, the overall objective is to train Advocates to be legal practitioners. In a 1921 study of legal education, the Carnegie Foundation for the Advancement of Teaching identified three components necessary to prepare students for the practice of law: general education, theoretical knowledge of the law, and practical skills training (Kuehn, 2008). While at undergraduate level, a specially tailored curriculum for academics might not exist this is normally left to postgraduate studies. Normally, that training is a task for doctoral studies - even though undergraduate studies at some prestigious universities make it easier for students to pursue academic careers. A postgraduate Master of Laws normally serves as an introduction to the legal academy (but sometimes this is also used to organize specialized practical courses, e.g., an LLM in International Financial Law or International Commercial Law).

32. In Kenya, the legal education system and law schools is primarily intended to facilitate the training of legal practitioners. This is mainly because a number of law graduates intend to undertake legal practice. Traditionally, the objective of most Kenyan law schools in general is ultimately training of "legal technicians" who can offer legal services. The legal education system culminates in admission to the Roll of Advocates which entitles one to practice as an Advocate and apply for registration as a member of the Law Society of Kenya which is the professional Bar association for qualified advocates. Currently, the Law Society of Kenya has a membership in excess of 15,000 members.⁶ From the name of the Advocates Training Programme, it is apparent that the end goal of the training programme at the tail end of the legal education system is to train and produce "Advocates". Understanding the objectives of the legal education system and the lawyers the system is predominantly seeking to produce is critical in ensuring the structure of the system is designed to achieve these objectives. This, in turn, determines the model structure adopted for the system, the content of the curriculum, the methods of teaching, the mode of assessment, evaluation and examination.⁷

2.3 Institutional Framework for Legal Education and Training in Kenya

33. The Institutional Framework for legal education and training has been informed by the recommendations of various taskforces in particular the Denning Committee, the Akiwumi Taskforce and the Muigai Taskforce.

⁶ <https://www.lsk.or.ke/>

⁷ (Hannigan, 1962).

2.3.1 The Council of Legal Education

34. Since its establishment, the Council of Legal Education (CLE) has undergone a number of structural and functional changes to enable it to discharge its mandate and functions effectively and to realign and restructure its mandate and functions vis-à-vis those of the Kenya School of Law (KSL). The Advocates Ordinance 1961 (No. 34 of 1961) was enacted in 1961 and replaced the Advocates Ordinance (No. 55 of 1949) to implement the recommendations and proposals submitted by the Denning Committee which was tasked to review the legal education system in Kenya.

35. The Advocates Ordinance 1961 established the Council of Legal Education whose composition consisted of the Chief Justice (or a judge to be appointed by the Chief Justice) as chairman; a judge, to be appointed by the Chief Justice; the Attorney-General or Solicitor-General; four advocates to be nominated by the Law Society; and one person associated with the teaching of law in East Africa, to be appointed by the Attorney-General (Hannigan, 1962). The Advocates Ordinance prescribed broadly that the functions of the CLE were to exercise general supervision and control over legal education in Kenya and to advise government in relation to all aspects thereunder (Hannigan, 1962). However, CLE lacked in regulation of private institutions.

36. Due to the evolving needs in legal education, demands of legal service delivery and the overlapping functions of both the CLE and KSL, there was need to review the status and mandate of CLE. Thus, the Akiwumi Taskforce was constituted in 1995 and chaired by Hon. Justice A. Akiwumi with its mandate being to review the legal status and management of CLE and KSL. The Akiwumi Report attempted to streamline the status and mandate of the Council of Legal Education. The recommendations of the Report culminated in the enactment of the Council of Legal Education Act, 1995 Cap 16A.

37. Under this Act, the CLE was reestablished as a body corporate with perpetual succession and capable of suing and being sued; taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; borrowing or lending money; and doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.⁸ The composition of CLE was also reviewed, and its members increased. Its membership consisted of: the Chairman who was the Chief Justice or a judge appointed by the Chief Justice; one judge of the Court of Appeal to be appointed by the Chief Justice; one judge

⁸ s.3, Council of Legal Education Act, 1995 (Cap 16A) (*Repealed*).

of the High Court to be appointed by the Chief Justice; the Attorney-General or his representative; five advocates nominated by the Council of the Society; the head of the faculty of law of any recognized university in Kenya; the head of any training institution established by the Council under section 6; a Senior Counsel appointed by the Attorney-General; one person associated with the teaching of law in Kenya appointed by the Attorney-General; the Permanent Secretary of the Ministry for the time being responsible for higher education or his representative.⁹

38. Further, while the CLE's general objects were to exercise general supervision and control over legal education in Kenya and to advise the Government in relation to all aspects thereof¹⁰, its functions were expanded to include the establishment, management and control of training institutions for organizing and conducting courses of instruction for the acquisition of legal knowledge, professional skills and experience by persons seeking admission to the Roll of Advocates in Kenya, in such subjects as the Council may prescribe; organizing and conducting courses in legislative drafting; organizing and conducting courses for magistrates and for persons provisionally selected for appointment as such; organizing and conducting courses for officers of the Government with a view to promoting a better understanding of the law; organizing and conducting such courses for para-legals as the Council may prescribe; organizing and conducting continuing legal education courses; holding seminars and conferences on legal matters and problems; organizing and conducting such other courses as the Council may from time to time prescribe. The CLE also had power to conduct examinations for the grant of such academic awards and award certificates, fellowships, scholarships, bursaries.

39. However, although KSL and CLE had separate management structures, the relationship between KSL and CLE became inextricably intertwined with overlapping mandates, thus undermining and weakening the supervisory role and authority for which the CLE was established. For example, the two institutions shared facilities and support services (Sitati, 2017). The role of CLE was functionally reduced to supervising the Advocates Training Programme offered by KSL. Further, the legal status of KSL was uncertain. KSL remained under the management and supervision of CLE and KSL did not have a defined legal personality separating it from CLE (Okere, 2013). The structure of the Advocates Training Programme and mode of assessment was also criticized for insufficient mechanisms to ensure objectivity in the assessment of Bar examinations. Lecturers from KSL conducted the training and similarly set and

⁹ S. 3(1), Council of Legal Education Act, 1995 (Cap 16A) (*Repealed*).

¹⁰ S. 6, Council of Legal Education Act, 1995 (Cap 16A) (*Repealed*).

assessed the Bar examinations. It was felt that the standards of the Bar examinations set by KSL did not meet the expectations of CLE (Okere, 2013). However, this may have been due to lack of adequate regulation of the ATP by CLE.

40. Thus, the Muigai Taskforce was constituted to make recommendations for reform of the system of legal education in Kenya. The Muigai taskforce was thus initiated to institutions carrying out regulatory/supervisory functions from those carrying out training functions; and to separate policy formulation and oversight from policy consumption at training level. Secondly, the admission criteria, including pre-Bar examinations, to train in institutions of legal education required realignment. Thirdly, there was need for criteria for recognition and accreditation of foreign universities for general and specific purposes. It was not clear how foreign universities could be accredited for entrance into the Advocates Training programme.

41. In 2012, the recommendations of the Muigai Taskforce were implemented. Among the key recommendations were the clear separation of KSL from CLE. This was operationalized through the enactment of Legal Education Act No. 27 of 2012 and the Kenya School of Law Act No. 26 of 2012, leading to repealing of the Council of Legal Education Act, 1995 and de-linking of CLE from KSL. CLE was reconstituted to exercise the functions and powers relating to setting standards for legal education providers.

42. Thus, CLE was reconstituted and restructured under the Legal Education Act No. 27 of 2012 whereby its functions under the repealed Council of Legal Education Act, 1995 were revised and expanded. Its functions under the Legal Education Act, 2012 are to regulate legal education and training in Kenya offered by legal education providers; license and supervise legal education providers; advise the Government on matters relating to legal education and training; recognize and approve qualifications obtained outside Kenya for purposes of admission to the Roll; and administer such professional examinations as may be prescribed under section 13 of the Advocates Act. The CLE, with respect to legal education providers, is responsible for setting and enforcing standards relating to accreditation of legal education providers for the purposes of licensing; curricula and mode of instruction; mode and quality of examinations; harmonization of legal education programmes; and monitoring and evaluation of legal education providers and programmes.

43. In carrying out the functions above, the CLE makes regulations in respect of requirements for the admission of persons seeking to enrol in legal education programmes; establishes criteria for the recognition and equation of academic

qualifications in legal education; formulates a system for recognizing prior learning and experience in law to facilitate progression in legal education from lower levels of learning to higher levels; establishes a system of equivalencies of legal educational qualifications and credit transfers; advises and makes recommendations to the Government and any other relevant authority on matters relating to legal education and training that require the consideration of the Government; collects, analyses and publishes information relating to legal education and training; advises the Government on the standardization, recognition and equation of legal education qualifications awarded by foreign institutions; and carries out regular visits and inspections of legal education providers. Thus far, CLE has published the Legal Education (Accreditation and Quality Assurance) Regulations, 2016.

2.3.2 The Kenya School of Law

44. The training functions of the CLE were fully and solely delegated to the Kenya School of Law as established under the Attorney General's Chambers from 1963 to 1995 as a department for providing legal education on behalf of the government. The Kenya School of Law (KSL) is established under the Kenya School of Law Act, 2012 which provides that KSL is a public legal education provider responsible for the provision of professional legal training as an agent of the Government. Under this Act, the objects of KSL are to train persons to be advocates under the Advocates Act (Cap. 16); ensure continuing professional development for all cadres of the legal profession; provide para-legal training; provide other specialized training in the legal sector; develop curricular, training manuals, conduct examinations and confer academic awards; and undertake projects, research and consultancies. KSL has been the exclusive training centre in Kenya for lawyers who are seeking to be admitted to the Roll of Advocates.

45. The Kenya School of Law, through the Advocates Training Programme it offers, thus provides technique-oriented training to complement the theoretical and intellectual approach towards law teaching imparted during undergraduate level. While undergraduate courses offer theoretical underpinnings of key principles of law, the Kenya School of Law offers training in skills and techniques required to practice law. KSL seeks to impart important technical skills which the conditions of university teaching cannot provide. The justification for the existence of KSL is mainly that law graduates do not have the skills and training necessary to represent or handle transactions on behalf of clients upon graduation from university.

46. One of the biggest gaps at undergraduate level is a lack of basic lawyering skills, including legal writing and drafting of legal documents, communication

(including client-advocate and advocate-advocate communication), client interviewing, counseling, negotiation, and trial skills. Such a contribution would be a necessary complement to the more profound academic training at university, the combined result of which is a lawyer who can proceed to offer professional services. Thus, the Advocates Training Programme seeks to bridge the gap between academic study of law and its practice. This prepares candidates to undertake supervised practice and provide them with skills which, when developed through practice, will equip an advocate to reach the level of professional competence required to represent a client without supervision. Besides this, the Advocates Training Programme has a higher goal of instilling in its trainee lawyers a sense of the professional role and responsibilities required of a lawyer as a practitioner and an officer of the court.

47. The nature of the inter-agency relationship between the CLE and KSL has featured predominantly throughout different legal regimes and has been a key focal point in initiatives for reform of the legal education system in Kenya. It is for this reason that one cannot avoid discussing the development of one institution without discussing the other.

2.3.3 Restructuring of the Kenya School of Law and Council of Legal Education

48. The inter-agency relationship between the CLE and KSL has been restructured over time with attempts by the regulatory framework to streamline the mandates and functions of the two institutions. Initially, KSL was in charge of both the training and examination functions of the ATP whereby KSL lecturers would train the students and also set and mark the examinations. However, the Legal Education Act, 2012 restructured CLE whereby CLE acts a regulator and supervisor of legal education in Kenya and KSL acts as a training institute thereby segregating the two institutions. With regard to the current structure and administration of Bar examinations, the Kenya School of Law offers the training and administers the lectures attendant to the training whereas the Council of Legal Education sets and marks the written bar examinations. KSL administers and assesses the oral examinations and the project work. Regulation 15 of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 provides that CLE shall conduct credible Bar examinations for students attending the ATP. CLE is therefore a regulatory body and an examining body.

49. The CLE operations are not directly linked with the training and education of prospective advocates undertaking the ATP. In separating itself from KSL and assuming the examination function, CLE has attempted to maintain independence, objectivity, credibility and quality assurance in the examinations

process. CLE has been perceived to be too judicious in its interaction with KSL and the ATP by remaining detached from the training component to avoid any appearance of bias by being too familiar with the trainers and tutors. This has occasionally given rise in the past to criticism that the CLE is out of touch with the Advocates Training Programme.

2.3.4 The Law Society of Kenya

50. The Law Society of Kenya is a professional statutory body drawing membership of all advocates in Kenya currently totaling over 15,000.¹¹ The Law Society of Kenya was established by the Law Society of Kenya Act (Chapter 18 of the Laws of Kenya). The Law Society in its present form was established in 1948 pursuant to section 3 of the Law Society Kenya Ordinance 1949 which was later repealed on 30th October 1992 by the Law Society of Kenya Act Cap 18 of the Laws of Kenya.¹² This was later replaced by the current Law Society of Kenya (LSK) Act of 2014 where the structure of the Secretariat was reorganized. The Society has the mandate to advise and assist members of the legal profession, the government and the larger public in all matters relating to the administration of justice in Kenya. According to Section 4 of the LSK Act 2014, the objects for which the Society was established are:

- (i) To assist the Government and the courts in matters relating to legislation, the administration of justice and practice of law in Kenya;
- (ii) To uphold the Constitution of Kenya and advance the rule of law and the administration of justice;
- (iii) To ensure that all persons who practice law in Kenya or provide legal services in Kenya meet the standards competence and professional conduct that are appropriate for legal services they provide;
- (iv) To protect and assist the members of public in Kenya in matters relating to or ancillary or incidental to the laws;
- (v) To set, maintain and continuously improve the standards of learning, professional competence and professional conduct for the provision of legal services in Kenya;
- (vi) To determine, maintain and enhance the standards of professional practice and ethical conduct and learning for the legal profession in Kenya;
- (vii) To facilitate the acquisition of legal knowledge by members of the Society and ancillary service providers, including paralegal through promotion of high standards of legal education and training;

¹¹ <http://lsk.or.ke/about-lsk/strategic-plan/> Accessed on 18th February 2019.

¹² Ibid.

- (viii) To represent, protect and assist members of legal profession in Kenya in matters relating to the conditions of practice and welfare;
- (ix) To formulate policies that promote the restructuring of legal profession in Kenya to embrace the spirit, principles, values and objects of the Constitution of Kenya;
- (x) To facilitate the realization of a transformed legal profession that is cohesive, accountable, effective and independent;
- (xi) To establish mechanisms necessary for the provision of equal opportunities for all legal practitioners in Kenya;
- (xii) To protect and promote the interest of consumers of legal service and the public interest generally by providing a fair, effective, efficient and transparency procedures for the resolution of complaints against legal practitioners;
- (xiii) To develop and facilitate adequate training programmes for legal practitioners; and
- (xiv) To do all such other things as are incidental or to the foregoing functions.

51. The Council of Legal Education and the Law Society of Kenya oversee the post-graduation practical training for graduates of law seeking to enter the legal profession as advocates of the Kenyan Bar. The role of LSK is complementary to that of CLE in ensuring the standards of the legal profession are maintained and that the standards of legal education and training are high to ensure that provision and delivery of legal services by legal practitioners meets the threshold for competence, professionalism and expertise.

2.3.5 The Commission for University Education

52. The Commission for University Education is established under Section 5 of the Universities Act No. 42 of 2012 which stipulates the functions of the Commission as follows:

- (i) Promote the objectives of university education;
- (ii) Advise the Cabinet Secretary on policy relating to university education;
- (iii) Promote, set standards and assure relevance in the quality of university education;
- (iv) Monitor and evaluate the state of university education systems in relation to the national development goals;
- (v) License any student recruitment agencies operating in Kenya and any activities by foreign institutions;

- (vi) Develop policy for criteria and requirements for admission to universities;
- (vii) Recognize and equate degrees, diplomas and certificates conferred or awarded by foreign universities and institutions in accordance with the standards and guidelines set by the Commission from time to time;
- (viii) Undertake or cause to be undertaken, regular inspections, monitoring and evaluation of universities to ensure compliance with set standards and guidelines;
- (ix) Collect, disseminate and maintain data on university education;
- (x) Accredite universities in Kenya;
- (xi) Regulate university education in Kenya;
- (xii) Accredite and inspect university programmes in Kenya; and
- (xiii) Promote quality research and innovation.

53. From the foregoing, it is clear that any institution desirous of offering the Bachelor of Laws degree must satisfy the requirements of the CUE, which is responsible for accrediting Universities in Kenya, and the CLE, which is responsible for accreditation of the LL.B programme in institutions offering or desirous of offering the same. Such institutions are required to contact both the CUE and CLE at the outset. However, the Commission also has discretion to delegate any of its functions to any suitably qualified person or body (2B) (1).

The Commission, in approving and inspecting university academic programmes, analyses and considers the following factors:

- (i) Learning content of a programme;
- (ii) Purpose and objectives of a programme;
- (iii) Structure of a programme;
- (iv) Delivery mode of a programme;
- (v) Availability of academic resources to implement a programme;
- (vi) Mode of assessment of the programme;
- (vii) Learning environment of a university;
- (viii) Learning facilities of a university; and

(ix) Extra-curricular activities offered by a university.

The Commission may also consider any other factor as it may deem fit and may rank each factor assessed to indicate the level of compliance. The Commission is the only body with the power to perform the functions set out in this section.

3 Legal and Regulatory Framework for Legal Education in Kenya

54. Kenya has a number of laws which regulate legal education and training and conduct of the legal profession. These Acts have undergone various revisions and amendments to realign the mandates of KSL and CLE and improve legal education in Kenya.

3.1 The Council of Legal Education Act (Cap 16A), 1995 (repealed)

55. As a consequence of the Akiwumi Report, the Council of Legal Education Act was enacted in 1995 incorporating the Council of Legal Education as a body corporate. This Act provided that the objects of CLE were to exercise general supervision and control over legal education in Kenya and to advise the government in relation to all aspects thereof. Among the functions of the CLE were to establish, manage and control such training institutions, to conduct examinations for the grant of such academic awards and to award certificates, fellowships, scholarships, bursaries and such other awards as may be prescribed. Various authors have commented on CLE's functions noting that it has not adequately fulfilled its core mandate of regulation of legal education in Kenya. Okere (2013) posited that as "*wide and all-encompassing this new mandate may have been, the reality on the ground was as different...Whereas CLE re-established the Kenya School of Law as a professional Bar School, it did not place much emphasis to its function of 'controlling and supervising' legal education in the country*".

56. This Act has been repealed by the Legal Education Act, 2012. It provided for the mandate and functions of the CLE. CLE published the Council of Legal Education (Kenya School of Law) Admission Regulations of 2009 which provided that a person who has passed relevant examination and holds or is eligible for conferment of degree from a recognized University in Kenya is eligible for admission to the Kenya School of Law.

3.2 The Council of Legal Education (Kenya School of Law) Regulations, 2009 (the Legal Notice No. 169 of 2009)

57. These Regulations were enacted pursuant to the repealed Council of Legal Education Act Cap 16A provided that only applicants to the Advocates Training Programme who had obtained a Bachelor of Laws Degree (LL.B) from recognized university and attained a minimum grade of C- (C minus) in English and a minimum of an aggregate grade of C- (C minus) in the Kenya Certificate of Secondary Examination were required to sit the Pre-Bar Examination set by the Council of Legal Education as a pre-condition for admission. The regulations have

since been replaced; however, they still apply to persons who enrolled in the LL.B before the enactment of the current regulations.

3.3 The Universities Act No. 42 of 2012

58. This Act provides for the development of university education; the establishment, accreditation and governance of universities; the establishment of the Commission for University Education, the Universities Funding Board and the Kenya University and Colleges Central Placement Service Board. Persons seeking to establish a university in Kenya must apply in writing to the Commission for University Education for accreditation and the grant of a Charter.

3.4 The Legal Education Act 2012

59. This Act repealed the Council of Legal Education, 1995. It reestablishes the CLE and provides for its composition, mandate and functions. It restructures KSL and CLE by de-linking the two institutions.

60. This Act gives the Council functions of regulating legal education and training in Kenya, licensing legal education providers, supervising legal education providers and advising the government on matters relating to legal education and training.¹³ Under this mandate, the Council is to be responsible for setting and enforcing standards relating to accreditation for the purpose of licensing, curricula and mode of instruction, mode and quality of examinations, harmonization of legal education programmes and monitoring and evaluation of legal education providers and programmes. In carrying out such functions, the Council is further mandated to: make regulations in respect of requirements for the admission of persons seeking to enroll in legal education programmes; establish criteria for the recognition and equation of academic qualifications in legal education; formulate a system for recognizing prior learning and experience in law to facilitate progression in legal education from lower levels of learning to higher levels; and carry out regular visits and inspections of legal education providers and other functions.

61. The Act provides for licensing of legal education providers. Any institution that intends to offer any course or programme of legal education in Kenya for the award of a degree, diploma or certificate as a professional qualification in law must apply to CLE for a license. If CLE determines that an applicant is suitable to offer legal education programmes or training, it issues a license to the applicant specifying the courses or legal education programmes which the legal education provider may offer and any terms and conditions as CLE

¹³ *The Legal Education Act, No. 27, 2012 s 8.*

determines. CLE may also refuse to award a license or may specify terms and conditions which must be met prior to award of a license. CLE has power to suspend or revoke a license where a legal education provider is not complying with the terms and conditions specified in the license awarded to it or is not carrying out its functions in a proper manner.

62. The Legal Education Act, 2012 specifies the duration of instruction for certificate, diploma and core degree courses in law. The Second Schedule of the Legal Education Act provides the core courses for the certificate in law, diploma in law, degree in law, and post-graduate professional diploma which are discussed in detail below.

63. The Act also establishes the Legal Education Appeals Tribunal to hear and determine appeals from persons aggrieved by a decision of CLE to refuse to grant a license; to impose conditions on a license; or to suspend or revoke a license.

3.5 The Kenya School of Law Act, 2012

64. This Act establishes the Kenya School of Law as a public legal education provider responsible for the provision of professional legal training as an agent of the Government whose objects are to train persons to be advocates under the Advocates Act (Cap. 16). The Board of KSL determines the academic programmes and course units; and the academic calendar, including the duration of each course of study.

65. The Second Schedule of the Kenya School of Law Act prescribes the admission requirements for the Advocates Training Programme as follows:

- 1) having passed the relevant examination of any recognized university in Kenya, or of any university, university college or any other institution prescribed by the Council, holds or becomes eligible for the conferment of the Bachelor of Laws (LLB) degree of that university, university college or institution; or
- 2) having passed the relevant examinations of a university, university college or other institutions prescribed by the Council of Legal Education, holds or has become eligible for the conferment of the Bachelor of Laws Degree (LLB) in the grant of that university, university college or other institution—
 - (i) attained a minimum entry requirement for admission to a university in Kenya; and

- (ii) obtained a minimum grade B (plain) in English Language or Kiswahili and a mean grade of C+ in the Kenya Certificate of Secondary Education or its equivalent; and
- (iii) has sat and passed the pre-Bar examination set by the school.

66. This Act does not prescribe the language requirements for applicants who have been conferred with a LL.B in a university in Kenya. However, it is assumed that Kenyan universities have standardized their entry requirements with those prescribed by the Legal Education Act. The Kenya School of Law published the Kenya School of Law (Training Programme) Regulations, 2015. However, certain regulations related to pre-Bar examinations were found to be inconsistent with the Kenya School of Law Act.

3.6 Statute Law (Miscellaneous Amendments) Act, 2014

67. This Act amends the Kenya School of Law Act, 2012 and the Legal Education Act, 2012 to realign the functions of CLE and KSL. However, certain sections of this Act which required all applicants to the Advocates Training Programme to apply for, sit and pass the pre-Bar examinations were found to be unlawful in the case of *Kevin Mwiti & Others vs KSL and Others (Constitutional Petitions 377, 395 and JR 295 of 2015 (Consolidated))*.

3.7 The Kenya School of Law (Training Programmes) Regulations, 2015

68. The Kenya School of Law (Training Programmes) Regulations, 2015 were enacted by the Board of Directors of the Kenya School of Law pursuant to the Kenya School of Law Act. These Regulations revoked the Council of Legal Education (Kenya School of Law) Regulations, 2009. In comparison, these Regulations under Regulation 6 provide that any person who wishes to be admitted to the Advocates' Training Programme is required to apply to the School to sit for the pre-Bar examination. Only candidates who sat for and passed the pre-Bar Examinations were eligible to be admitted to the Advocates Training Programme. However, pursuant to a Court judgment in the case of *Adrian Kamotho Njenga v Kenya School of Law [2017] eKLR*, the court found KSL's Regulation 6 of the Advocates Training Programme (ATP) which was promulgated via Legal Notice 175 in 2015 to be in contravention of Section 16 of the Kenya School of Law Act and 24 (2) of the Statutory Instruments Act, hence its invalidity. It was also found to be inconsistent with the Statute Law (Miscellaneous Amendments) Act, 2014 in that this Act did not require applicants who had obtained an LL. B from a recognized Kenyan university and had met the KCSE and language requirements to sit for the pre-Bar examinations. Thus,

there were inconsistencies and confusion regarding the persons who are required to sit for the pre-Bar examinations as they pertain to lawyers who have obtained their LL. B from a recognized Kenyan university and have met the KSCE requirements; lawyers who have obtained their LL.B from a recognized Kenyan university and have not met the requisite KSCE requirements; and lawyers who have obtained their LL.B from a recognized foreign university.

69. There have been numerous amendments to the law regarding the admission requirements for the Advocates Training Programme, leading to inconsistencies and uncertainty over the requirements for entry into the programme.¹⁴

3.8 The Legal Education (Accreditation and Quality Assurance) Regulations, 2016

70. These regulations govern legal education providers and provide requirements for admission requirements, core courses, qualifications of academic staff, required infrastructure, class size, the ratio of students to lecturer; the physical facilities of the legal education provider including library resources, ICT facilities, lecture halls, moot courts, tutorial and discussion rooms and other available resources including library stock and library size.

71. When CLE receives an application for accreditation, it must inspect the place where the legal education shall be offered by the applicant after it has reviewed in detail the application to confirm whether or not the applicant has complied with the provisions of the Act and the Regulations, including the quality standards prescribed. Where the Council determines that an applicant should be accredited, the Council issues a license to the applicant valid for a period of five (5) years.

72. CLE is required to undertake an audit of the quality of legal education offered by a legal education provider after two years from the date of the accreditation. The Council may also investigate on its own motion or at the request of any person whether or not a legal education provider is complying with the requirements of the Legal Education Act or the Regulations. However, the period for audit after accreditation may be too long.

¹⁴ See the cases of *Republic vs Kenya School of Law and Council of Legal Education ex parte Daniel Mwaura Marai [2017] eKLR*; *Republic v Council of Legal Education & another Ex parte Sabiha Kassamia & another [2018] eKLR*; *Peter Githaiga Munyeki v Kenya School of Law [2017] eKLR*; and *Adrian Kamotho Njenga v Kenya School of Law [2017] eKLR*; and *Republic v Kenya School of Law [2019] eKLR ex parte Victor Mbeve Masinga*.

3.9 The Advocates Act, Cap 16

73. A lawyer is a person who has a qualifying law degree. An advocate, however, as defined by Section 2 of the Advocates' Act, is any person whose name is duly entered upon the roll of advocates or upon the roll of advocates having the rank of senior counsel. The Advocates Act prescribes professional and academic qualifications to practice as an Advocate, admission of foreign advocates practicing or acting or advising in any suit or matter in Kenya, provisions regulating conduct by unqualified persons, offences by advocates, remuneration of advocates and discipline of advocates.

74. Section 13 of the Advocates Act provides for the required professional and academic qualifications. A person is duly qualified if:

- (a) having passed the relevant examinations of any recognized university in Kenya he holds, or has become eligible for the conferment of, a degree in law of that university; or
- (b) having passed the relevant examinations of such university, university college or other institution as the Council of Legal Education may from time to time approve, he holds, or has become eligible for conferment of, a degree in law in the grant of that university, university college or institution which the Council may in each particular case approve;

and thereafter both—

- (i) he has attended as a pupil and received from an advocate instruction in the proper business, practice and employment of an advocate, and has attended such course or tuition as may be prescribed for a period which in the aggregate including such instruction, does not exceed eighteen months; and
- (ii) he has passed such examinations as the Council of Legal Education may prescribe; or
- (c) he possesses any other qualifications which are acceptable to and recognized by the Council of Legal Education;
- (d) he is an Advocate for the time being of the High Court of Uganda, the High Court of Rwanda, the High Court of Burundi or the High Court of Tanzania;
- (e) he is for the time being admitted as an advocate of the superior court of a country within the Commonwealth and—

- (i) has practised as such in that country for a period of not less than five years; and
- (ii) is a member in good standing of the relevant professional body in that country.

3.10 The Law Society of Kenya Act, 2014

75. This Act establishes the Law Society of Kenya and prescribes the requirements and qualifications for membership in the Society, enforcement of professional ethics and standards in the Kenyan legal profession and disciplinary procedures for members of the Society.

76. The above legal frameworks point to inconsistencies across the various legislation particularly those across the Council of Legal Education and the Kenya School of Law. The inconsistencies have manifested particularly regarding the entry requirements for the Advocates Training Programme.

3.11 Requirements for Legal Education and Legal Training in Kenya

77. There are various courses in law which the law envisages. These include a certificate in law, diploma in law, a Bachelor of Laws (LL.B), a post-graduate professional diploma in law and post-graduate master of laws and the PhD in law.

3.11.1 Course Structure and Entry Requirements

78. Part IV of the Legal Education Act, 2012 provides requirements for legal education at certificate, diploma and degree level. For purposes of the award of a certificate or diploma in law, a person shall undergo, in the case of:

- (a) a certificate course, at least one year of instruction;
- (b) a diploma course, at least two years of instruction; and
- (c) a professional postgraduate course at least one year of instruction,

and sit and pass all the examinations in the core courses as set out in the Second Schedule of the Legal Education Act.

79. The Third Schedule of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 (the "Legal Education Regulations, 2016") outlines the admission requirements, class size and enrolment data for the certificate programme, diploma programme, undergraduate degree programme, post-graduate diploma in law, masters in law programme and doctorate programme. The law provides for entry to the LL.B through progression from lower levels of

learning through completion of a certificate in law and subsequently completion of a diploma in law. However, while the system of progression is provided for and recognized in the Legal Education Act and the Legal Education Regulations 2016, it is not provided for in the Kenya School of Law Act.

3.11.1.1 Certificate in Law

80. Section 22 of the Legal Education Act, 2012 provides for the Certificate programme duration to be one year of instruction but does not provide for the minimum admission requirements into the programme. The Legal Education Regulations, 2016 sets out the minimum requirements for admission to a certificate programme as follows:

- i) a mean grade of C- (Minus) in the Kenya Certificate of Secondary Education examination or its equivalent with at least a C (Plain) in English or Kiswahili;
- ii) at least a Division III in the Kenya National Certificate of Education examination plus proof of work experience in the field of law of not less than five years; or
- iii) a certificate of experiential learning issued by the Council of Legal Education.

81. The Legal Education Act, 2012 and Legal Education Regulations, 2016 provide that the core courses for certificate in law are elements of contracts, law of torts, elements of commercial law, elements of property law, general principles of constitutional law and legal systems, family law and succession, elements of the law of business associations, civil procedure, criminal procedure, fundamentals of bookkeeping and accounting; and fundamentals of office practice and management. Nonetheless, the Legal Education Regulations, 2016 provide that a Certificate in Law shall require a minimum of 480 contact hours.

3.11.1.2 Diploma in Law

82. Under the Legal Education Act, 2012 the diploma programme is a two-year programme and the minimum entry requirements as set out in the Legal Education Regulations 2016 are:

1. Mean grade of C (C plain) in the Kenya Certificate of Secondary Education (KCSE) or its equivalent with at least a C+ (plus) in English or Kiswahili;
2. At least one principal pass at the Kenya Advanced Certificate of Education (KACE) examinations; or
3. A pass in a Certificate of Law course offered at an accredited legal education provider; or

4. A certificate of experiential learning issued by the Council of legal Education.

83. The Second Schedule of the Legal Education Act, 2012 and the Third Schedule of the Legal Education Regulations, 2016 further provide for eleven mandatory courses that must be undertaken in a diploma in law. These are the General Principles of Constitutional Law and Legal Systems, Elements of Contract, Law of Torts, Criminal Law, Elements of Commercial Law, Elements of Property Law, Family Law and Succession, Elements of Business Association, Civil Procedure, Criminal Procedure, Company Law, Fundamentals of Book-keeping and Accounting and Fundamentals of Office Practice and Management.

84. A student who successfully completes and passes the diploma programme with a credit pass is eligible for admission into a degree programme. The Legal Education regulations require that the Diploma in Law Programme shall carry a minimum of 640 contact hours.

3.11.1.3 Undergraduate Degree Level (Bachelor of Laws)

85. The Bachelor of Laws (LL.B) programme is a four-year full time undergraduate programme that provides the theoretical and foundational aspects of law, legal theory and legal principles.

86. Upon graduation, successful students are awarded with a Bachelor of Laws. The Bachelor of Laws degree is an academic qualification conferred for studies in law. It prepares a person for a legal career but it does not confer a license or certificate to practice law in Kenya. Thus, there is a distinction between a lawyer and advocate. In such a programme of study, a person seeks to obtain a deeper understanding of the nature of law, legal reasoning, legal systems, legal research and methods and legal principles. The Bachelor of Laws is the first degree required to enable law students to undertake the Advocates Training Programme in Kenya. This is consistent with the recommendations of the Denning Committee which recommended that for an individual to practice law in Kenya, they must, in the first instance, have a degree in law.

87. The Legal Education Act, 2012 prescribes the minimum entry requirements for an undergraduate degree in law as:

- i) a degree from a recognized university;
- ii) at least two principal passes at an advanced level (Kenya Advanced Certificate of Education) or an equivalent qualification (this includes the Baccalaureate 'IB' qualification, the east African Advanced certificate of Education or the General Certificate of education);

- iii) a mean grade of C+ in Kenya Certificate of Secondary Education (KCSE);
- iv) or a diploma of an institution recognized by the Commission for Higher Education and the applicant shall have obtained at least a credit pass.

88. The Legal Education Regulations, 2016 further supplement the provisions of the Legal Education Act, 2012 by stipulating that an applicant is required to have minimum grade of B (plain) for English or Kiswahili while the diploma requirement is specific to Diploma in Law from an accredited institution. The KACE qualification is set at three principal passes. These requirements are thereafter cascaded and adopted as the entry requirements at KSL, which are informed by the entry requirements at university level. It is important to note that these requirements have changed over time.

89. The degree must be undertaken for not less than four academic years on a full-time basis and six academic years on a part time basis. In addition, the Legal Education (Accreditation and Quality Assurance) Regulations require that the LL.B programme carry a minimum of 1,680 contact hours.

90. The Second Schedule of the Legal Education Act, 2012 and the Third Schedule of the Legal Education Regulations 2016 provide that the core courses at Degree Level are Legal Research, Law of Torts, Law of Contract, Legal Systems and Methods, Criminal Law, Family Law and Succession, Law of Evidence, Commercial Law (including Sale of Goods, Hire Purchase and Agency), Law of Business Associations (to include Insolvency), Administrative Law, Constitutional Law, Jurisprudence, Equity and the Law of Trusts, Property Law, Public International Law, and Labour Law. The core subjects are intended to provide theoretical fundamental legal principles and procedures for law in Kenya. However, not all these subjects are examined in the Bar examinations and similarly not all subjects covered in the Advocates Training Programme are covered at undergraduate level; for example legal practice management, professional ethics and trial advocacy.

3.11.1.4 Advocates Training Programme

91. The Advocates Training Programme (ATP) is conducted over 18 months comprising of 12 months' instruction and a minimum of six months of pupillage. The ATP is a postgraduate (professional) diploma qualification and upon successful passing of the Bar examinations and completion of a minimum of 6 months of pupillage, candidates are eligible for admission to the Roll of Advocates. Students are divided into various classes with options of both morning or afternoon classes. This is intended to enable students to work and

study part-time. Each class is divided into groups of about 10 to 15 people known and referred to as "firms". Each firm has a leader and a deputy leader.

92. As per the Legal Education Act, 2012 the prescribed core courses to be undertaken are:

- i) Criminal litigation;
- ii) Civil litigation;
- iii) Probate and administration;
- iv) Legal writing and drafting;
- v) Trial advocacy (including the clinical programme);
- vi) Professional ethics and practice;
- vii) Legal practice management;
- viii) Conveyancing; and
- ix) Commercial transactions.

93. Although it is not compulsory for the courses taught under the ATP to have been covered in undergraduate level or part of the university curriculum, some of the subjects are introduced for the first time under the ATP; for example, legal practice management which includes accounting; components of commercial transactions such as intellectual property, commercial agreements, chattels; trial advocacy; and professional ethics and practice. The ATP comprises four types of assessment as follows:

1. Project work (1st Term)
2. Oral examination (2nd Term)
3. Written examination (3rd Term)
4. Supervised pupillage (4th Term)

94. To pass the ATP, a candidate must score at least 50 per cent on the aggregate of the project work, oral examination and written examination. KSL administers and marks the project work and oral examinations while CLE administers and marks the written examinations. In addition, one must satisfactorily undertake the supervised pupillage programme which is supervised by KSL. For each course, there is project work assigned to the firms which contributes to the overall assessment and grade. There are also oral examinations carried out in the second semester which also contribute to the overall grade. The final Bar examinations are written examinations and take place at the end of the year between November and December, after which students proceed to undertake and commence their pupillage programme. Throughout the year, there are no continuous assessment tests administered; teaching takes place throughout the year after which students sit for the Bar examinations at the end of the year.

95. Generally, students are expected to undertake their pupillage from January to June after undergoing training at KSL and sitting for the written Bar examinations set by CLE. The pupillage period is for a minimum period of six (6) months from an approved pupillage center. However, the specified period may be extended and commencement dates may vary depending on internal policies of individual pupillage centres. For example, some pupillage centres prescribe a pupillage period of 1 year with focus on legal practice, instruction from pupil masters and on-the-job training after the ATP. Previously, the law prescribed a minimum period of 1-year training. On the other hand, some pupillage centres are accredited to offer only three (3) months pupillage after which students are required to undertake another three (3) months in a law firm. To be considered as having “passed the Bar Examinations” a student is required to have passed all 9 units, each requiring a grade of 50 and above. Where a student has failed, they may opt for a remark at a cost of Ksh 15,000 or resit at a cost of Ksh 10,000 per paper. The resit does not take into account the oral or project work components of the Advocates Training Programme.

96. In 2014, by way of the Statute Law (Miscellaneous Amendments) Act, 2014, the CLE introduced mandatory requirements for pre-admission examinations (known as pre-Bar examinations) which did not exist in the previous regime and which were met with significant conflict and dispute due to their retrospective application. However, Transition Guidelines were published to cater for students who were already admitted to the LL.B programme prior to the enactment of the Legal Education Act, 2012 and the Kenya School of Law Act, 2012. The Transition Guidelines were principally aimed at preventing retrospective application of both the new Acts by providing a transitional period for students admitted to the LL.B programme prior to the enactment of both Acts. Currently, the entry requirements for the ATP have been distinguished into two categories; for applicants admitted into the LL.B after 8th December 2014 and those admitted into the LL. B before 8th December 2014 as follows:

- 1) Persons admitted into the LL.B after 8th December 2014 must satisfy the following requirements:

Graduates of Kenyan Universities must have:

- i) Attained a minimum of grade B (plain) in English Language or Kiswahili and a mean grade of C+ in the Kenya Certificate of Secondary Examination or its equivalent;
- ii) Have passed in the mandatory 16 core subjects as stipulated in the Second Schedule of the Legal Education Act, 2012 (which are currently Legal

Research, Law of Torts, Law of Contract, Legal Systems and Methods, Criminal Law, Family Law and Succession, Law of Evidence, Commercial Law (including Sale of Goods, Hire Purchase and Agency), Law of Business Associations (to include Insolvency), Administrative Law, Constitutional Law, Jurisprudence, Equity and the Law of Trusts, Property Law, Public International Law, Labour Law); and

- iii) Hold or are eligible for conferment of an LL. B degree from a recognized Kenyan university.

Graduates of foreign universities must have:

- i) Attained a minimum of grade B (plain) in English Language or Kiswahili and a mean grade of C+ in the Kenya Certificate of Secondary Examination or its equivalent;
 - ii) Have passed in the mandatory 16 core subjects as stipulated in the Second Schedule to the Legal Education Act, 2012; and
 - iii) Hold or are eligible for conferment of a recognized LL.B degree from a foreign university; and
 - iv) Must sit and pass the pre-Bar examination as provided under the Second Schedule to the Kenya School of Law Act, part 1 (b) (iii).
- 2) For applicants admitted into the LL. B before 8th December 2014 they must meet the following requirements:
- i) having passed the relevant examination of any recognized university in Kenya, holds or has become eligible for the conferment of the Bachelor of Laws Degree (LL. B) of that university;
 - ii) having passed the relevant examinations of a university, university college or other institutions prescribed by the Council of Legal Education, holds or has become eligible for the conferment of the Bachelor of Laws Degree (LL.B) in the grant of that university, university college or other institution, and prior to enrolling at that university, university college or other institution—
 - (a) attained minimum entry requirements for admission to a university in Kenya; and
 - (b) obtained minimum grade B (plain) in English Language and a mean grade of C+ in the Kenya Certificate of Secondary Examination or its equivalent;
 - (c) a Bachelor of Laws Degree (LL.B) from a recognized university and attained a minimum grade of C+ in English and a minimum aggregate grade of C (plain) in the Kenya Certificate of Secondary Examination,

holds a higher qualification e.g. "A" levels, "IB", relevant "Diploma", other "undergraduate degree" or has attained a higher degree in Law after the undergraduate studies in the Bachelor of Laws programme; or

- (d) a Bachelor of Laws Degree (LL.B) from a recognized university and attained a minimum grade of C- (minus) in English and a minimum of an aggregate grade of C- in the Kenya Certificate of Secondary Examination sits and passes the pre-Bar examination set by the Kenya School of Law as a pre-condition for admission.

97. The entry requirements have changed over time due to inconsistencies in the texts of the law, varied interpretations of the laws prescribing the entry requirements, retrospective application of entry requirements and inconsistent application of entry requirements. The changes have been informed by the CLE and also by various Court decisions such as *Kevin Mwiti & Others vs KSL and Others (Constitutional Petitions 377, 395 and JR 295 of 2015 (Consolidated))*, *Adrian Kamotho Njenga vs KSL [2017] eKLR*. There are variances in the requirements; for example, after 2014, there is an option of having attained a minimum of grade B (plain) in English Language or Kiswahili which creates lower entry thresholds. The cases of *Republic v Kenya School of Law [2019] eKLR ex parte Victor Mbeve Musinga, Jonnah Tusasirwe & 10 others v Council of Legal Education & 3 others [2017] eKLR*, *Joan Wambui Kimani v Kenya School of Law & 2 others [2019] eKLR*, *Republic v Council of Legal Education & 2 others Ex parte Michelle Njeri Thiongo Nduati [2019] eKLR* have demonstrated the extent of these inconsistencies.

3.11.1.5 *Conversion, recognition and approval of foreign qualifications*

98. Section 13 of the Advocates Act provides for various avenues of qualification for admission to the Bar, which include undertaking the Advocates Training Programme. The law only permits holders of a Bachelor of Laws degree to undertake the ATP programme in KSL. Graduates of foreign universities are similarly required to hold, inter alia, a Bachelor of Laws degree from such foreign university and they are also required to sit and pass the pre-Bar examination. Often, however, students may study law in a foreign jurisdiction, which may or may not lead to conferment of a Bachelor of Laws degree as there are variations of law degrees in some jurisdictions, for example a Bachelor of Arts in Law or a combined law degree. Nonetheless, for one to qualify for entry in KSL they must have been conferred with a Bachelor of Laws degree. This creates conflict in recognition of some foreign law degrees where holders of such degrees may be locked out of KSL. Such persons may, however, work as general lawyers in an organization in an advisory capacity but cannot practice as an Advocate or undertake the duties carried out by Advocates.

99. However, the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 provide that a Kenyan who has undergone training at a foreign legal education provider and who has attained professional qualifications that would enable him or her to practice law in that place where he or she underwent training and has practiced law in that place for at least five years may apply to the Council for recognition of his or her professional qualifications. This ultimately requires graduates of foreign universities who have a law degree in such foreign university to, at the first instance, be qualified in a foreign jurisdiction and thereafter have practiced for five years for recognition of their professional qualifications.

100. There is a challenge in consistency of the system of conversion, recognition and approval of foreign qualifications and the system of equivalencies in Kenya particularly regarding admission to KSL where one seeks to undertake the ATP in order to be admitted to the Roll of Advocates as their route to qualification. In this regard, the admission criteria and process for lawyers who obtained their undergraduate law degree in a foreign jurisdiction is yet to be streamlined and updated to reflect emerging developments in the industry and market of legal practice in Kenya. This is demonstrated through various cases such as *Republic v Council of Legal Education & 2 others Ex parte Mitchelle Njeri Thiongo Nduati [2019] eKLR* where the CLE declined to recognize the ex parte applicant's Bachelor of Arts in Law degree as Regulation 6 of the Third Schedule to the Legal Education (Quality Assurance and Accreditation) Regulations provide that the minimum requirements for admission to the ATP shall be a Bachelor of Laws (LL.B) Degree from a recognized university. Similarly, in the case of *Eunice Cecilia Mwikali Maema v Council of Legal Education & 2 others [2013] eKLR*, the appellant graduated with a Bachelor of Laws in Law and Business in Coventry University in England. However, she was denied direct admission as her degree did not comprise some of the prescribed core units for admission to the ATP. She was therefore required to attend remedial classes by taking the missing core subjects at a local university accredited to offer the core courses not taken by the candidate in their LL.B course.

101. In the case of *Jannah Tumasirwe & 10 others v Council of Legal Education & 3 others [2017] eKLR*, the Council of Legal Education directed the Kenya School of Law not to admit any foreign candidates from East African Community member States to the Advocates Training Programme for qualifying as candidates for automatic admission to the Roll of Advocates in Kenya under sections 12 and 13 of the Advocates Act unless such persons have been admitted as advocates in their respective countries of origin due to incorrect interpretation of the Advocates Act vis-à-vis the admission requirements for the ATP. There

was also incorrect interpretation by CLE of the various routes to admission to the Bar; admission to KSL Advocates Training Programme is open to everyone who meets the criteria for admission to the ATP irrespective of nationality. However, this is distinguished from direct admission to the Bar by persons who are already qualified to practice in foreign jurisdictions.

3.12 Undergraduate Universities Offering Law Programmes

102. The first public university offering legal education in Kenya was the University of Nairobi and later Moi University. Universities offering legal education, public and private, have since increased and CLE has taken up its mandate of issuing accreditation to only those which have met its criteria.

3.12.1 Licensing and Accreditation Status

103. As at 18th June 2019, the following institutions had been licensed by CLE as legal education providers:

Table 1: Licensing status of legal education providers as at 18th June 2019

	Legal Education Programme	Programme	Status of Licensing	
1.	Kisii University School of Law	Bachelor of Laws	Licensed	
		Diploma in Law	Licensed	
2.	University of Embu	Bachelor of Laws	Licensed	
3.	Daystar University School of Law (Valley Road Campus)	Bachelor of Laws	Licensed	
4.	Mount Kenya University School of Law (Parklands Campus)	Bachelor of Laws	Licensed	
		Diploma in Law	Licensed	
5.	University of Nairobi	Kisumu Campus	Bachelor of Laws	Licensed
		Mombasa Campus	Bachelor of Laws	Licensed
		Parklands Campus	Bachelor of Laws	Application for renewal received on 8 th April 2019
6.	Kenyatta University School of Law (Parklands Campus)	Bachelor of Laws	Licensed	
7.	Riara University School of Law	Bachelor of Laws	Licensed	
8.	Strathmore University School of Law	Bachelor of Laws	Licensed	
		Master of Laws	Application under review	
9.	Catholic University of East Africa School of Law	Bachelor of Laws	Licensed	

10.	Jomo Kenyatta University of Agriculture and Technology (JKUAT) School of Law (Karen Campus)	Bachelor of Laws	Licensed
11.	Egerton University School of Law	Bachelor of Laws	Licensed
12.	Kabarak University School of Law	Bachelor of Laws	Licensed
10.	Africa Nazarene University School of Law	Bachelor of Laws	Application for renewal received on 14 th April 2019
13.	Moi University	Bachelor of Laws	Not licensed (Application for <i>de novo</i> licensing under review)
14.	Chuka University	Bachelor of Laws	Not licensed (Application under review)
15.	Umma University	Bachelor of Law and Sharia	Not licensed (Application under review)
17.	Kenya School of Law	Diploma in Law (Paralegal Programme)	Application under review
18.	Kenya Institute of Management	Diploma in Law and Management	Not licensed (Application under review)

Source: Council of Legal Education

104. From the above, there are currently several institutions offering or which seek to offer law. There has been a proliferation of institutions offering law in the past decade. However, this has made it difficult to ensure consistent and periodic inspection, and supervision and regulation over the quality of teaching and assessment in these schools. Some universities do not comply with the statutory requirements related to quality assurance. Further, there are a number of institutions which have not been licensed.

3.12.2 Entry Requirements

105. While the Legal Education Act and the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 prescribe the minimum irreducible requirements for legal education providers, some providers have gone over and above the requirements stipulated in the law. This section will provide an overview and comparison of the entry requirements for various legal education providers.

3.12.2.1 Strathmore Law School

106. Strathmore Law School has the highest entry requirements from the list of legal education providers offering Bachelor of Laws programme. Their requirements are also above those stipulated in the Legal Education Act, 2012 and the Legal Education Regulations, 2016 with additional requirements to be met. The required entrance qualifications and grades are:

- i) KCSE minimum mean aggregate of B plain
- ii) GCE A – Level minimum grades ABB with A in English Language or English Literature
- iii) IB minimum 34 overall points with grade 5 and above in English.

Besides this, Strathmore Law School also administers an entrance exam and, thereafter, an oral interview to applicants for its LL.B programme.

3.12.2.2 Kenyatta University School of Law

107. Kenyatta University similarly has high entry requirements for the Bachelor of Laws programme providing that candidates must satisfy the minimum university entry requirements. In addition, the following are the minimum requirements for entry into the Bachelor of Laws programme:

- i) A mean grade of B in the Kenya Certificate of Secondary Education (KCSE) including a minimum of a B in English.
- ii) Any other type of qualification including the former A-level Kenyan system, regional, or international qualifications must be equivalent to the minimum requirement outlined above. The equivalency of such grades can be obtained from the Kenya National Examinations Council.
- iii) Mean grade of C- at KCSE and progressed from certificate to Diploma at Kenyatta University or any other recognized/accredited institutions.

3.12.2.3 Riara University School of Law

108. The Riara University Law School offers a Bachelor of Laws programme and a Pre-Kenya School of Law Compliance Programme. The entry requirements for the Bachelor of Laws are above those stipulated in the Legal Education Act, 2012 and the Legal Education (Accreditation and Quality Assurance) Regulations, 2016. Applicants to the programme must meet the following criteria:

- i) Mean grade of B- and above in KCSE or its equivalent with a B plain in English;
- ii) KACE with a minimum of two principal passes and one subsidiary pass;

- iii) Be holders of a degree from a recognized university;
- iv) Be an all-rounded person with exceptional leadership skills and abilities;
- v) Participate in an oral interview to establish their suitability for the Riara Law School programme.

109. The Riara Law School also administers an oral interview and requires applicants to submit an essay on a topic of their choice, to assess their English skills. These are additional standards which candidates must meet prior to admission to the Riara Law School LL.B.

110. The objective of the Pre-Kenya School of Law Compliance Programme is to enable applicants to the Kenya School of Law attain compliance with Section 23 of the Legal Education Act, 2012 which, read together with the Second Schedule of the same statute, stipulates the core courses required for the Bachelor of Laws (LLB) degree. The programme has four modules some of which are mandatory. The programme offers instruction and assessment on the core courses required for a Bachelor of Laws degree in Kenya. This is intended to regularize foreign qualifications which may not have covered all the core courses required by the Legal Education Act, 2012 and attendant regulations.

111. To gain admission to this programme, applicants must be holders of an LL.B degree from a recognized university; and have a conditional offer from the Kenya School of Law indicating the courses they need to take to become eligible for admission to the School. A letter from the Council of Legal Education/Kenya School of Law specifying the courses required for admission satisfies this requirement.

3.12.2.4 Egerton University

112. Egerton University also offers the Bachelor of Laws (LL.B) programme and prescribes entry requirements which go over and above the minimum statutory requirements as such:

- i) A minimum mean Grade of B- at KCSE and a B Plain in English; or
- ii) Three (3) principal passes in the Kenya Advanced Certificate of Education (KACE) or its equivalent obtained at the same sitting, with an equivalent of a B Plain in English; or
- iii) Three (3) principal passes in the Kenya Advanced Certificate of Education (KACE) or its equivalent obtained at different sittings, provided that the principals are of Grade C or higher; with an equivalent of a B Plain in English Language; or
- iv) An undergraduate degree in any appropriate field other than law and a minimum of C+ (plus) in the Kenya Certificate of Secondary Examination

or its equivalent with a minimum of grade B (plain) in English Language;
or

- v) A diploma in law of a legal education institution accredited by the Council of Legal Education, with at least a Credit pass or higher.

3.12.2.5 Other Universities

113. Other Universities offering the Bachelor of Laws programme include University of Nairobi, Catholic University of East Africa, Mount Kenya University, Moi University, Kisii University, Kabarak University, African Nazarene, Umma, Daystar, Chuka and University of Embu. They have all set their entry requirements as those provided in the Legal Education Act, 2012. Eligible candidates in these universities must have at least grade B (Plain) in English or Swahili; Holder of degree(s) from a recognized university; Holder of Advanced Level Certificate with at least two principal passes or equivalent; Holder of KCSE Certificate with minimum university entry points of at least C+; Holder of at least a credit pass in a Diploma from a recognized institution in addition to KCSE Certificate with a Mean Grade of at least C.

Table 2: Performance of graduates from various universities in November 2018 Bar examinations

University	Public/Private/Foreign	Registered	Qualified
Kisii University	Public	60	20
Kenyatta University	Public	98	32
Strathmore University	Private	86	28
University of Nairobi	Public	498	112
Jomo Kenyatta University of Agriculture and Technology	Public	57	11
Moi University	Public	297	54
Africa Nazarene University	Private	20	3
Mount Kenya University	Private	130	16
Catholic University of East Africa	Private	178	18
Riara University	Private	21	2
Kabarak University	Private	71	5
Universities in UK	Foreign	18	4
Universities in Uganda	Foreign	32	2
Universities in India	Foreign	9	0
Universities in South Africa	Foreign	1	0
Universities in Namibia	Foreign	1	0

Source: Council of Legal Education

3.12.3 Quality Standards of Legal Education Providers

114. The CLE developed quality standards pursuant to the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 to be met by a legal education provider which include planning process and governance structure; admission requirements, class size and enrolment data; curriculum and modes of delivery; examinations and examination administration; academic staff qualifications and workload; research and publications; infrastructure and resources; library and library resources; student services and support; foreign qualifications and credit transfers; and open learning and distance learning¹⁵.

115. Although the regulations require legal education providers to comply with the quality standards and inspection guidelines set out in the regulations they do not specify or outline the inspection guidelines referred to.

¹⁵ Part IV, Regulation 10, Legal Education (Accreditation and Quality Assurance) Regulations, 2016.

3.12.4 Law School Programme (Course) Administration and Performance in Bar Examinations

116. Prior to the Muigai Taskforce in 2005, the training functions of the CLE were fully and solely delegated to the Kenya School of Law as established under the Attorney General's Chambers in 1961 as a department for providing legal education on behalf of the government. The status of the School remained uncertain and was neither a public entity nor government department, being that it was legally under the management of the CLE. CLE thereby delegated the training function to KSL. There has since been conflict between CLE and KSL regarding overlaps in their functions, including responsibility for regulating and training and setting and marking of examinations.

117. Ojwang and Slater (1989) remarked that the content and approach of the teaching and course in the Kenya School of Law and University were vastly different. Most of the lecturers at KSL are adjunct and work part time and consist of retired magistrates and judges and practicing advocates (Ojwang & Slater, 1989). The lecturers are permitted to seek and maintain other forms of employment, including private practice and as such their time is limited and often divided between lecturing at the Kenya School of Law, lecturing at universities, practicing in private law firms, undertaking private consultancies and other forms of employment. Although the rationale for engaging practicing advocates as lecturers is to ensure that their contributions are practical, current and technically precise regarding legal practice, procedures and developments, the result is that their time is constrained. Further, in the period of 9 months, students are taken through all their lessons and are then subjected to examinations without any continuous assessment tests throughout the term. There is also risk that lecturers may not strictly follow the course structure, relying instead on their own personal experiences of practice which may differ from the course curriculum, what is assessed and from expectations of assessors.

118. The Report of the Taskforce on Legal Sector Reforms Chaired by Senior Counsel Fred Ojiambo attributed the poor performance in the Bar examinations to decline in quality and standards of training and apprenticeship. The report concluded that there is a relationship between increased enrolment and fail rate and that as the number of students enrolled in the LL.B programme increases, the failure rate similarly increases.

3.13 Related Studies on Factors Influencing Student Performance in Bar Examinations

119. This section explores the implications of programme administration on the outcomes of candidates at law school training programmes. The section outlines key administrative aspects in respect of the design and delivery of law school training. In this regard, reference is made to Law School administrative practices as observed among select institutions in the United States and United Kingdom, for benchmarking purposes. Subsequently, the section provides an elaboration of specified aspects of programme administration and draws attention to potential best practices in programme administration to facilitate the effective evaluation of the administration of the Advocates Training Programme at the Kenya School of Law.

120. This section also reviews literature on factors that influence student performance in Bar examinations. While it draws reference to the American and British system, it notes salient differences in the structures of their legal education systems. Notably, the American Juris Doctor (JD) is studied as a graduate and professional degree. The English model is two-tiered, similar to Kenya. However, the structure of the training programme differs from the Kenyan perspective. On the other hand, the American model was selected based on its overall comparatively better performance in the Bar examinations. Nonetheless, it provides insight into key administrative components and practices which influence student performance in Bar examinations.

Administrative aspects of Law School training

121. In seeking to assess the impact of programme administration approaches on Bar pass rates, the study acknowledged a broad conception of programme administration practices. These include, among other things, the regulation of: the number and caliber of students admitted to the Advocates Training Programme at the Kenya School of Law; the number of faculty involved in the delivery of course units; the proportion of full-time and part-time teaching faculty at the Law School; the numbers of units taught and examined; the proportion of students vis-à-vis lecturers; the experience and qualifications of the teaching faculty; the tuition fee rate and fee rates for the remark and re-sitting of examinations. Other administrative concerns include the Law School governance structures; general admission requirements; class sizes and enrolment data; course objectives; curriculum design and delivery; student-lecturer contact hours; duration of student contact with material and tasks; form and scheduling of examinations; examination grading models; learning infrastructure and

resources; student-faculty feedback mechanisms; and the availability of electronic course management systems and essential student support services.

Industry and Law School administrative philosophies

122. In assessing the determinants of success or failure at Law School, the objectives of the industry ought not to be overlooked. Feinman and Feldman (1985) underscore the motivation for Bar examinations as a process of culling, selection and exclusion. Inherent in the philosophy of Law Schools is exclusivity on the basis of intellectual mastery. The process of selectivity commences during the admissions phase and is perpetuated throughout the educational process, with Law Schools pragmatically anticipating and being satisfied that the challenge of legal education often translates into situations in which 'a few students excel, some fail, and most muddle through [Law School]' and in which 'student performance is widely distributed, and mediocrity is accepted as inevitable.' As a result, Bar examinations seek to ensure a minimal not masterful level of competence (Feinman and Feldman:1985:529, 532).

Programme objectives

123. From the literature, a critical consideration regarding the administration of Law Schools concerns the objectives of the professional legal education. In his article on 21st century clinical legal education, Amsterdam (1984) underscored the need for Law Schools to have as their paramount concern the transmission of '*ways of thinking*', more than the transmission of a *corpus juris*. He posits that beyond: (i) case reading and interpretation; (ii) doctrinal analysis and application; and (iii) logical conceptualization and criticism, which are often viewed as the conventional pillars of legal training, the objects of programme administration at Law Schools ought to place equal emphasis on the development of career-critical skills for legal practice, including: ends-means thinking; hypothesis formulation and testing; decision-making under conditions of uncertainty; and contingency planning. This intended and superseding focus on imparting 'a specifically legal manner of thinking' in preference over transmitting the 'content of the law' is noted again by Speigel (1987:583). The result is a fundamental paradox concerning the design of Law Schools examinations and whether they adequately reflect a contemporary skills-based emphasis or a traditional knowledge-based focus.

Examination grading processes and models

124. Regarding the administration of examination grading, Feinman and Feldman (1985) highlight three critical components of the grading process. First among these is that grading involves *criticism* (an appraisal of the strengths and

weaknesses of a student's work based on a predefined standard of the measurable learning expectations); second, *evaluation* (an assessment of the student's work against a professional standard of competence); and *ranking* (an indication of the student's level of competence in the given course domain).

125. Further, in a study of effective grading models, Brustin and Chavkin (1997) showed the diverse impact of different grading models on student achievement in Law Schools and, more specifically, that grading models may affect student motivation or attention. Their research involved an analysis of three common grading models, namely the use of numerical full grading; pass/fail grading; and a combination of both. Their findings suggested that the lattermost alternative showed a preference for the use of the combined grading system. This sought to cater to the use of full (continuous) numerical grading, which for the majority of student subject yielded a significant positive impact on individual motivation and preparation in clinical courses. At the same time, the combined grading system catered to the fewer students at risk of poor performance at examinations owing to heightened stress and grade consciousness brought about by full grading, and which would be alleviated by an optional pass/fail grading system.

126. In order to qualify to petition for admission as an Advocate in Kenya, a student is required to have passed all 9 units in the ATP. This is what is interpreted by some as having passed or failed.

Duration of contact with material and teaching methods

127. Concerning the administration of legal training, Admiraal, Wubbels and Pilot (1999) note positive albeit weak correlations between student grades, on the one hand, and the teaching methods applied and time spent by students interacting with the legal material (time-on-task). For subjects such as Constitutional Law and Commercial Law, stronger correlations were identified between the adoption of a problem-method learning approach, student time-on-task, student motivation and student grades.

Course curriculum design and delivery

128. While seeking to eschew an exhaustive discussion of curriculum design and delivery, there is increasing consensus around the need for Law Schools to impart lessons on learning theory with the goal of boosting self-regulated learning and meta-cognition among Law School students (Niedwiecki, 2006). Closely associated with the above emphasis is the identification of six essential pedagogical approaches which Law Schools have sought to design into their contemporary curricula. These include deploying teaching techniques such as

role modelling, provision of instruction, provision of feedback, use of Socratic questioning, management of contingencies and the application of cognitive structuring. Further, it has also been emphasized that the learning of black letter is better delivered primarily among small groups of students, aided through the discussion of 1 or 2 legal problems in a week (Feinman and Feldman, 1985). Alongside the above, the acquisition of professional legal training stands to be further enhanced by efforts by teaching faculty to 'define the method, content, and standard of performance for our students with particularity' and by so doing issue students with comprehensive outlines of lecture materials, and examples of the standards of performance expected which course lecturers would need to support students in conceptually evaluating and quantifying (Feinman and Feldman, 1985:539).

General admissions requirements with implications on student outcomes

129. Law School admission requirements are another critical component in the administration of legal education. These requirements dictate the caliber of students permitted to participate in professional legal education. Towards regulating the quality and quantity of candidates who undertake professional legal education, Law School requires all students to meet standardized levels of performance in their prior educational and/or professional engagements. There is emphasis on qualifications for one's fitness for studying and practicing law.

130. In a report by the American Bar Association (2019), they noted that while there is a tendency to assume that law schools with low Bar pass rates are "bad law schools" in the sense of having incompetent teachers, or having an insufficiently rigorous curriculum, or having inadequate academic support and Bar preparation programmes, this is not necessarily the case. Rather, the primary factor is the school's admissions policies, not necessarily the quality of legal education offered by the school, noting that LSAT scores are predictive of a student's performance in the Bar examinations.

131. In a study of select American Law Schools, Marks and Moss (2016) identified several key requirements with predictive capacity on the performance of candidates undertaking professional legal education. According to their findings, US Law Schools place inordinate emphasis on differences between candidates in Law School Admissions Tests scores which are not as powerful at predicting success at Law School as is often perceived by Law School admissions teams. In contrast, their US-based study emphasized the following factors as having had the greatest predictive power both for success at Law School and subsequent Bar passage.

- (i) **Duration of prior working experience:** the strongest predictor of success was associated with candidates who joined Law School with between 4 and 9 years of work experience; while having 1-3 years or over 10 years of professional experience was weakly correlated with success;
- (ii) **Type of work experience:** as the strongest predictor, teaching experience was positively associated with Law School success, while professional experience from the military or science and technology industry showed a negative correlation to Law School-related performance;
- (iii) **Prior study:** Seemingly counter-intuitively, prior academic training in Science, Technology, Engineering and Math (STEM) and those trained in Economics, Accounting and Finance (EAF) majors demonstrated a stronger positive correlation with Law-School related performance. While students from these backgrounds experience a longer initial "learning curve", although this lag appears to be short-lived and the prior training appears to be advantageous as the programme of training progresses.
- (iv) **Improving grades:** For candidates joining Law School immediately following the completion of a prior university degree, observable increases in university grades were a positive predictor of performance at Law School.
- (v) **Stereotype threat:** While limited by a small sample size of racial minority candidates, the US-based study also noted a strong albeit negative relationship between racial identity and Law School success. This mirrors extensive literature on gender-driven disparities in Law School performance between US males and females. Both effects are likely to be attributable to the detrimental psychological effects of stereotype threats on performance and converse impact of stereotype boosts on Law School and general academic performance (Steele, *nd*). While similar conditions may not be immediately relevant to professional legal education in Kenya, the psychological effects of social capital, socio-economic status, gender and ethnic heritage may be avenues for future study regarding their respective influences on the performance of students on Law School Bar examinations.

The relationship between curriculum design and delivery and Bar examination pass rate

132. Discussion on what law students should learn and how the lessons are delivered is an important factor in determining the pass rate of students in Bar examinations.

133. A significant number of schools are adopting inclusion of Academic Support Programs (ASP) into law school curriculum with the aim to support students who are admitted into law schools with lower scores, and to those after their first semester are at risk academically to fail to succeed at law school, in preparation for their success in law school and passage of Bar examinations. This is demonstrated by Garfield and Levi (2004) in his control experimental analysis of effectiveness of academic support programmes and establishes that ASP offer a benefit to students who regularly participate in them by increasing their chances to succeed in the law school academically and pass in the Bar examinations. The programme design included workshop series, individual skills sessions and tutoring and small study group led by teaching assistants. Similarly, Jellum and Reeves (2005) observe that Bar support programmes can significantly improve Bar pass rates. In their analysis of Bar support programmes at the University of Richmond School of Law in US, they established that an improvement of 8.5 per cent of pass rate was achieved with the introduction of the project for the students in both the top and bottom half of the class.

134. Curriculum design has been demonstrated to have some impact on performance of law graduates in the Bar exam, though to some limited extent. Day (2004) points out that there has been an increase in demand by some law school faculties to force lower ranked students to take more of the elective Bar examination courses to improve their ability to pass the Bar examination. The logic behind this is that failure by these students to pass the Bar examinations is due to their avoidance to take difficult elective courses whose subject matter is tested in the Bar examinations (Saint Louise University, 2007). Despite this, Rush and Matsuo (2007) demonstrate that there is no significant relationship between students who passed and failed the Bar exam in relation to the number of Barrelated courses taken and success on the Bar.

135. A study by the New York Law School to establish the effectiveness of a new curriculum (the Comprehensive Curriculum Programme) on the pass rate of Bar examinations established that Bar pass rates had improved drastically since implementation of the Comprehensive Programme. The content of the programme includes early intervention, rigorous training in analysis and

reasoning skills, a guided curriculum, reinforcement of legal analysis and an extra semester of the study (Zeigler, Ingham and Chang, 2010).

136. A study by Reed *et al* (2011) that sought to examine the relationship between curriculum structures, grading scales and student well-being in preclinical medical students found that how students are evaluated has a greater impact than other aspects of curriculum structure on their well-being. Therefore, this implies that curriculum reforms taken to improve well-being of the students should focus on assessment strategy rather than scheduling of learning activities.

137. The curriculum structure looked at total contact days, contact hours, percentage of contact hours allocated to larger or smaller groups, percentage of contact hours allocated to learning experiences, percentage of contact hours spent taking summative examinations (written, practical examinations, quizzes) and the number of tests taken by the student in an academic year.

The use of standardised tests prior to admission to Law School

138. The use of standardized test scores as criterion for student admission in predicting student performance in graduate schools has also been studied at length (Geiser and Santelices, 2007). Law School Admission Test (LSAT) are widely administered by the Law School Admission Council (LSAC) in most USA law schools. LSAT is designed to measure a limited number of skills necessary for student success in law school but does not measure the success in Bar examinations (Beinstein, 2017). A report by Law School Transparency indicated that students with LSAT scores below 150 were at a higher risk to fail Bar examinations while students with LSAT scores below 145 were at extreme risk of failing Bar examinations (Law School Transparency, 2017). Similarly, Alphan et al (2011), Georgakopoulous (2013), Wightman (1998) and Deborah Merritt (2015) found that LSAT has a significant relation with pass rate in Bar examinations.

139. On the other hand, Rush and Matsuo (2007) are of the contrary view that LSAT scores have less predictive power than individual law school Grade Point Average (GPA) outcomes in determining passage of Bar examinations. A national longitudinal Bar passage study by Law School Admission Council (1998) demonstrated that law school grades and LSAT scores had a strong predictor of success in Bar examinations. The study observed 24,814 students who had sat for bar examinations in selected US law schools. Similarly, Wightman (1998) and Thomas (2003) in their respective studies note that both LSAT and law school GPA are a better predictor of success in bar examinations.

Quality assurance

140. The quality of teaching and examination of the learners is also considered to be one of the key factors for success and failure in bar examinations. A number of institutions in Kenya are tasked with the responsibilities of ensuring that the quality of legal studies in Kenya; for example the Council of Legal Education (CLE) has published the Legal Education (Accreditation and Quality Assurance) Regulations, 2016. There are also the Legal Education and Kenya School of Law Acts, and Ministry of Higher Education Science and Technology, the Commission for University Education both with different mandates and legal backing with the aim to check on the quality of legal education.

141. Assessment of the teaching methods, curriculum and quality of lecturers through student evaluations in relation to guidelines provided by regulatory agencies can provide some insights on improvement of the quality of legal education. This may include coverage of course syllabus in time and availability of the required courses for the profession.

142. The above section of the report underscores key administrative considerations that yield a marked influence on the outcomes of Law School candidates and their capacity to pass professional legal Bar examinations. Among these factors are the philosophical orientation of the law school; the objectives of the programme; examination grading processes and models; duration of student contact with course material and tasks; and curriculum design and delivery.

143. Further, we observe that admission requirements may bear equally predictive potential concerning student success, including requirements related to the duration and nature of prior student work experience; domains of prior study and overall grade trajectory on prior academic programmes; and risk of discrimination on account of demographic considerations. Finally, also apparent in the study were considerations related to admissions selectivity; use of standardized tests prior to admission to law school; student-to-faculty ratios; average class or section sizes; and the age or maturity of students when sitting Bar examinations and by implication when matriculating into professional law schools.

144. Even in attempting to situate the role of administrative practices as tools for ensuring that trainee lawyers are prepared for entry into the legal profession in Kenya, it is however imperative to maintain a critical distinction between professional legal education attained formally and that acquired informally on the job. The former frequently serves as a predictor of one's potential for success

in the legal profession, yet it is the latter which functions as the *sine qua non* for actual success in lawyering. In support of this are findings by Amsterdam in his prognosis of the requirements for 21st century legal education, during which he cautions against conceptions that law schools provide the ultimate or most important legal education among lawyers. Instead, he emphasizes that as most law school students will spend the next thirty or fifty years in practice, it is these thirty or fifty years in practice that 'will provide by far the major part of the student's legal education' (Amsterdam, 1984:616).

145. Literature on curriculum design and delivery have pointed out the significant relation that exists between LSAT and GPA. This has a positive influence on the success of students in bar examinations, and the importance of specifically designed bar passage programmes that support students in passage of bar examinations. The next section focuses on analysis of results on factors influencing bar examinations performance in Kenya.

Ensuring and Maintaining Standards by Enhancing Reporting Obligations and Disclosures by Law Schools

146. This section will draw on standards adopted by the American Bar Association (ABA) based on the strict regulation it maintains in regulating law schools. The ABA Standards prescribe requirements relating to admissions such as law schools are required to subject applicants to an admission test to assist the school and the applicant in assessing the applicant's capability of satisfactorily completing the school's programme of legal education (Standard 503); and law schools are required to establish and maintain conditions for a professional environment adequate to attract and retain a competent faculty (Standard 405).

147. In 2016, the ABA's Council of the Section of Legal Education and Admissions introduced a new standard requiring law schools to demonstrate that at least seventy-five per cent (75%) of its law graduates pass the Bar within two years of graduation in order to retain their accreditation status (ABA, 2016)¹⁶. This is in recognition that how well a law school's graduates perform in the Bar examination is a critical accreditation tool to assess the school's programme of legal education. This requirement mandates law schools in USA to report Bar-pass data on all graduates.

148. The aspect of reporting, publishing and publication of data reports and statistics by law schools is another tenet of regulation which is emphasised by

¹⁶https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/October2016CouncilMaterials/2016_october_council_summary_of_actions.authcheckdam.pdf.

the ABA. This includes requirements for maintaining and publishing data on enrolment, gender, race, nationality, employment status and Bar pass rates in the Bar examinations. Thus, the ABA prescribes Required Disclosures under Standard 509 which mandate law schools to publicly disclose annually on their websites (in a prescribed format) information on admissions data; tuition and fees, living costs, and financial aid; conditional scholarships; enrollment data, including academic, transfer, and other attrition; numbers of full-time and part-time faculty, professional librarians, and administrators; class sizes for first-year and upper-class courses; number of seminar, clinical and co-curricular offerings; employment outcomes; and data on Bar pass rates of its graduates. Thereafter, it should be the prerogative of the regulator to maintain a comprehensive, up-to-date database containing this information.

149. The Required Disclosures relate to matters of consumer protection in furthering access to information by members of the public. This enhances transparency and accountability in the legal education sector. It is also a monitoring and evaluation tool whereby law schools are obliged to disclose their administrative practices to the regulator and the public. It improves reporting obligations and ensures standardization in reporting mechanisms across all law schools. Ultimately, this is intended to ensure law schools are admitting qualified students and preparing them for successful legal careers.

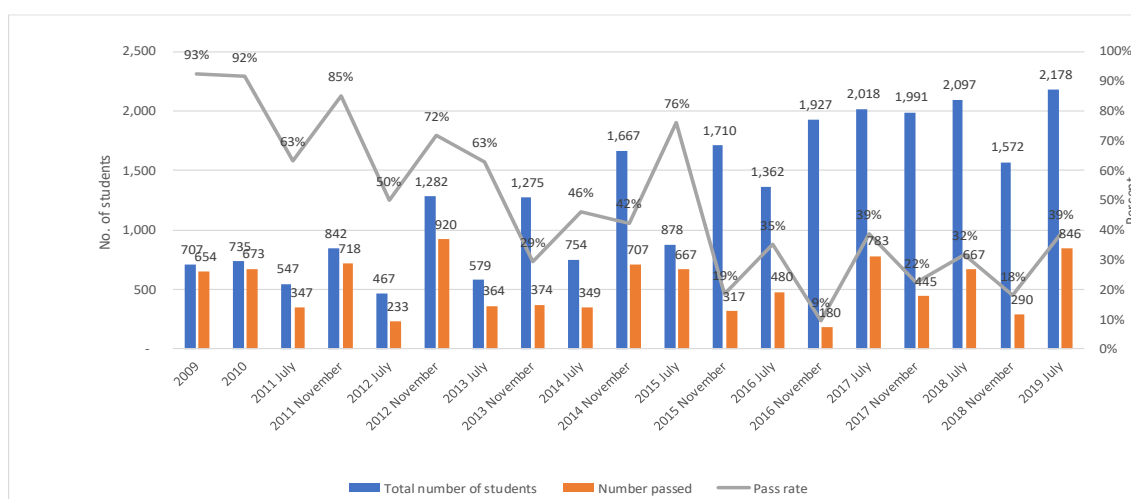
4 Bar Examinations Performance and its Correlates

4.1 Bar examinations performance

150. The bar examinations are conducted bi-annually in July and November where students may opt to sit for their examinations the first time in either November or July. However, students are not expected to sit for the July series in the same year of registration in the ATP. In the context of the Bar examinations performance, a “pass” is defined as passing all 9 prescribed units of the Advocates Training Programme, which requires a 50 per cent pass mark in each subject. Where a student fails, they may opt to apply for a remark of the affected paper or papers. On the other hand, a student may also choose to resit their paper in either July or November. Therefore, there are two different examination groups in both July and November which includes first sittings and also resits. KSL allows students a maximum of 10 attempts per unit. The advocates training programme though must be completed within five years from the date of registration. Prior to November 2016, reports of results did not indicate whether the results relate to first sittings or resits. Similarly, student records do not indicate the number of resits a student has undertaken in order to pass. In addition, it is important to note that the students sitting in an examination series may be students who registered in a previous year or years, and further that not all students sit or resit all their papers in one sitting or examination series. This section focuses on student performance in the bar examinations and on factors explaining student performance.

151. Bar examinations performance varies across the sitting periods with only a small percentage of students passing the examinations during the first sitting. In the November examination series, the performance was erratic dropping from a high of 85 per cent in 2011 to a low of 9 per cent in November 2016 before it improved at 18 per cent in November 2018 (Figure 2 and Table 3). The highest decline in bar examination performance was recorded in November 2015. The decline was from 42 per cent in November 2014 to 19 per cent in November 2015 (Figure 2). This period coincides with when the bar examinations function was transferred from KSL to CLE.

Figure 2: Trends in ATP students and Bar examination performance, 2009-2019



Source: Council of Legal Education and Kenya School of Law ¹⁷

Table 3: Performance in November Regular Examinations/First-Sitting, 2016 – 2018

Year	Total number of students	Year of Registration (No of Students)								Total Number passed	Overall Pass rate (%)
		2012	2013	2014	2015	2016	2017	2018			
November 2016	1,927	1	1	-	13	1,912	-	-	180	9%	
November 2017	1,991	-	-	-	6	36	1,949	-	445	22%	
November 2018	1,572	-	-	-	1	10	45	1,516	290	18%	

Source: Council of Legal Education, 2016 – 2018

Table 4: Performance in the November Resits, 2016 – 2018

Year	Total number of students	Year of Registration (No of Students)												Total Number passed	Overall Pass rate (%)
		2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018			
November 2016	887	1	4	5	8	24	34	117	694	-	-	-	166	19%	
November 2017	1,394	1	-	-	-	-	35	60	333	965	-	-	297	21%	
November 2018	1,628	1	-	-	-	-	1	45	196	511	874	-	186	11%	

Source: Council of Legal Education, 2016 – 2018

¹⁷ Total number of students refers to all the students undertaking both regular and resits during a respective period. According to the regulations, a student is permitted up to 10 attempts per unit.

152. According to the results presented July bar examinations, performance was higher in July during the review period. The performance was reported at 63 per cent in July 2011 with a high of 76 per cent in July 2015 (Figure 2). However, the performance declined to 39 per cent in July 2019 resits (Table 6), but this was higher than November 2018 resits performance of 11 per cent (Table 4). This can be attributed to the high number of resits in July. As an example, in July 2019 students who sat for bar examinations were 2,178 students (Table 6) whereas in November 2018 1,628 students sat for bar examinations (Table 4).

Table 5: Performance in July Regular Examinations/First Sitting, 2017 - 2019

Year	Total number of students	Year of Registration (No of Students)					Total Number passed	Overall Pass rate (%)
		2014	2015	2016	2017	2018		
July 2017	63	2	6	55	-	-	13	21%
July 2018	80	1	-	14	65	-	20	25%
July 2019	101	-	2	5	13	81	33	33%

Source: Council of Legal Education, 2017 – 2019

Table 6: Performance in July Resits, 2017 – 2019

Year	Total number of students	Year of Registration (No of Students)								Total Number passed	Overall Pass rate (%)
		2008	2012	2013	2014	2015	2016	2017	2018		
July 2017	2,018	-	1	43	93	563	1,318	-	-	783	39%
July 2018	2,097	1	-	2	65	268	743	1,018	-	667	32%
July 2019	2,178	-	-	1	-	178	464	687	848	846	39%

Source: Council of Legal Education, 2017 – 2019

153. Tables 5 and 6 indicate that students perform better in the July series as compared to the November series mainly because July series is dominated by examination resits. This could be attributed to first, exposure to the nature of bar examinations during first sitting, higher level of preparation, and understanding of the subject matter after exposure to practical experiences during pupillage. However, it is important to note that examination series include candidates from prior years which affects the overall pass rate. In this regard,

CLE should improve the method of reporting and communicating the results by further disaggregating and analyzing student performance by year of registration and also discounting students who have not registered for any bar examinations previously. During the period under review, enrolment increased from 1,389 students in 2011 to 3,669 students in 2018. Enrolment for July 2019 was 2,178 students.

154. Further, performance varies across ATP units. The highest performance was recorded in Trial Advocacy while the lowest performance was recorded in Commercial Transactions which has registered a low pass rate in both first sittings and resits in both July and November series (Table 7). High performance in trial advocacy can be attributed to the fact that its delivery mode is relatively practical compared to the other units. Commercial Transactions is comprehensive and comprises of 10 sub-units which makes it more complex both in delivery and in performance. Other units with lower pass rate include Civil Litigation, Conveyancing and Legal Writing.

Table 7: ATP performance by Unit 2016-2019

	July 2016		November 2016 Regular		November 2016 Resit		July 2017 Regular		July 2017 Resit		November 2017 Regular		July 2018 Regular		July 2018 Resit		November 2018 Regular		July 2019 Regular		July 2019 Resit	
Total Number of Candidates	1,362		1,927		887		63		2,018		1,991		80		2,097		1,572		101		2,178	
Pass/Fail	Pass (%)	Fail (%)	Pass (%)	Fail (%)	Pass (%)	Fail (%)	Pass (%)	Fail (%)	Pass (%)	Fail (%)	Pass (%)	Fail (%)	Pass (%)	Fail (%)	Pass (%)	Fail (%)	Pass (%)	Fail (%)	Pass (%)	Fail (%)	Pass (%)	Fail (%)
Overall	35	65	9	91	19	81	21	79	39	61	22	78	25	75	32	68	18	82	33	67	39	61
Civil Litigation (ATP 100)	-	-	46.5	53.5	32	68	56	44	71.5	28.5	68.5	31.5	65.0	35.0	54.0	46.0	73	27	44.5	55.5	45.0	55.0
Criminal Litigation (ATP 101)	-	-	83	17	79	21	64.5	35.5	52.5	47.5	57	43	49.0	51.0	26.0	74.0	82.5	17.5	53.5	46.5	25.5	74.5
Probate and Administration (ATP 102)	32.5	67.5	86.5	13.5	75.5	24.5	71	29	78	22	85.5	14.5	81.5	18.5	54.5	45.5	87.5	12.5	72.5	27.5	70.0	30.0
Legal Writing and Drafting (ATP 103)	33	77	55.4	44.5	36.5	63.5	34	66	35.5	64.5	50	50	66.5	33.5	41.5	58.5	51.5	48.5	41.5	58.5	43.5	56.5
Trial Advocacy (ATP 104)	61.5	38.5	91	9	100	0	73	27	71	29	96	4	89.5	10.5	27.5	72.5	94	6.0	92.5	7.5	94.5	5.5
Professional Ethics (ATP 105)	34.5	65.5	71.5	28.5	50	50	64	36	69.5	30.5	92.5	7.5	86.0	14.0	18.0	82.0	87.5	12.5	82.5	17.5	76.0	24.0
Legal Practice Management (ATP 106)	90	10	77	23	42	58	68	32	69.5	30.5	71	29	62.0	38.0	71.0	29.0	51.5	48.5	71.5	28.5	55.0	45.0
Conveyancing (ATP 107)	89.5	10.5	26.5	73.5	12.5	87.5	55.5	44.5	79	21	61.5	38.5	35.5	64.5	74.0	26.0	39.5	60.5	41.5	58.5	47.0	53.0
Commercial Transactions (ATP 108)	76.5	23.5	23.5	76.5	16.5	83.5	26	74	40	60	51.5	48.5	54.0	46.0	62.0	38.0	45.0	55.0	51.0	49.0	53.0	47.0

Source: Council of Legal Education (2016-2019)

4.2 Factors Influencing Students' Performance in Kenyan Bar Examinations

4.2.1 Legal Education at Undergraduate (University) Level

4.2.1.1 Admissions criteria for the Bachelor of Laws (LL.B)

155. As indicated in previous sections of this report, the minimum entry requirements for the LL.B program have been set at C+ in KCSE with B (plain) in English or Swahili languages. In 2017/2018, the Kenya Universities and Colleges Central Placement Service (KUCCPS) established a new subject cluster point system for various courses. According to this cluster system, the Bachelor of Laws is placed in Cluster 1 and a student seeking to study law is now required to attain grade B in Kiswahili or English, whereas prior to this, an applicant was required to have a B in English only. Nonetheless, the law only prescribes minimum entry requirements and does not necessarily place a ceiling on entry requirements. Therefore, some universities offering the LL.B require higher entry grades and have also establishing additional internal admissions criteria including requiring personal statements of motivation, interest in the law profession and administering oral interviews. This is a positive factor as it encourages identification of critical learner attributes for students pursuing legal education.

156. Comparatively, proficiency in the English language is a critical component in studying law. In the UK Bar Professional Training Course (BPTC), proficiency in English language is a key requirement regardless of one's first language. Although it is not a mandatory requirement, the Bar Standards Board places emphasis on fluency in English, recommending that students must be able to demonstrate that their oral and written English language ability is at least equivalent to a minimum score of 7.5 in each section of the International English Language Testing System (IELTS) academic test, or a minimum score of 73 in each part of the Pearson Test of English (academic).¹ On entry to the course, providers require students to sign a statement that they are aware of the standard of English Language required, and that they consider that they have satisfied the language requirement. If the course provider considers that any aspect of a student's language ability is not at the required level after they have commenced the course, the provider must, as soon as the issue is identified, require the student to take one of the language tests above, and provide a test certificate certifying that they have achieved the required scores.¹ Over and above proficiency in English, the UK Bar Standards Board prescribes a pass in the Bar Course Aptitude Test (which measures critical thinking) as one of the minimum entry requirements.¹

157. There is a strong correlation between students' performance in the Bar examinations and performance at high school (KCSE, IGCSE, GCE, IB and A level grades). An analysis of student high school grades against their performance in the Bar examinations indicated that students with higher high school grades have consistently performed better in the Bar examinations compared to students with lower high school grades. In 2017, 92.3 per cent of candidates who undertook the ATP and who had high school grades of A passed the examinations in the first sitting. Further analysis indicates that in the same year, only 44.4 per cent of candidates who undertook the ATP and who had high school grades of C passed the examinations.

Table 8: Students' performance in Bar examinations

High School Grade	2010		2011		2013		2014		2016		2017	
	Pass (%)	Fail (%)	Pass (%)	Fail (%)	Pass (%)	Fail (%)	Pass (%)	Fail (%)	Pass (%)	Fail (%)	Pass (%)	Fail (%)
A	66.7	33.3	100	0.0	80.8	20.0	100	0.0	100		92.3	7.7
A-	77.8	16.7	100	0.0	100	0	100	0.0	97.5	2.5	75	25
B+	73.7	21.1	100	0.0	95.7	4.3	93.8	6.3	85.7	14.3	66.7	33.3
B	75.6	22.2	97.9	2.1	98.4	1.6	88.4	11.6	86.8	13.2	70.6	29.4
B-	45.8	54.2	90.9	9.1	95.8	4.2	76.6	23.4	93.2	6.8	25	75
C+	53.1	40.6	90.9	9.1	90.5	9.5	80	20	80.0	20.0	28.1	71.9
C	38.5	61.5	83.3	16.7	100		71.4	28.6	100	0.0	44.4	55.6

Source: KSL Data (2010-2017)

158. The current entry requirements are relatively low for the LL.B program. The KUCCPS has established a cut-off point system for law however the points vary across universities and there have been variations in the cut-off points for law over time (refer to Table 9). University of Nairobi tend to have higher cut-off points while as universities launch their LLB program they tend to have lower cut-off points.

Table 9: KUCCPS Cut-Off System for Law

Institution	2018 Cut-off	2017 Cut-off	2016 Cut-off	2015 Cut-off	2014 Cut-off	2013 Cut-off
Africa Nazarene University	35.505	31.556	26.715	31.395	-	-
Catholic University of East Africa	36.022	35.877	29.802	31.380	-	-
Egerton University	38.496	38.443	32.416	41.988	-	-
JKUAT	38.910	38.760	35.265	42.429	-	-
Kabarak University	36.791	34.462	26.878	-	-	-
Kisii University	36.423	35.008	28.622	41.125	42.484	41.401

Kenyatta University	39.437	39.299	36.304	43.212	43.024	42.203
Mount Kenya University	34.066	-	-	-	-	-
Moi University	38.650	38.799	34.337	42.789	42.910	41.931
University of Embu	22.851	-	-	-	-	-
University of Nairobi	40.096	39.710	39.195	43.480	43.340	42.9

Source: KUCCPS, 2014-2018

159. In light of these circumstances, the students could be subjected to an additional screening process before admission to the LL.B program at university. The quality of students entering university can be controlled by pre-screening. For example, in USA, the Law School Admission Test (LSAT) is administered by the Law School Admission Council (LSAC) in most USA law schools. LSAT is designed to measure a limited number of skills necessary for student success in law school (Beinstein, 2017). Similarly, Alphran et al (2011), Georgakopoulous (2013), Wightman (1998) and Deborah Merritt (2015) found that LSAT scores have a significant relation with pass rate in Bar examinations. In a report by the American Bar Association (2019), they noted that low Bar pass rates can be attributed to a law school's weak admissions policies emphasizing that LSAT scores are predictive of a student's performance in the Bar examinations. A standardized test should therefore be introduced at university level.

4.2.1.2 Compliance and Quality Assurance in Universities

160. It was noted that some universities did not comply with certain provisions of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016. These Regulations prescribe various tenets of quality assurance which universities are required to maintain prior to and after licensing. These regulations govern legal education providers and provide requirements for admission requirements, core courses, qualifications of academic staff, required infrastructure, class size, the ratio of students to lecturer; the physical facilities of the legal education provider including library resources, ICT facilities, lecture halls, moot courts, tutorial and discussion rooms and other available resources including library stock and library size, which are all aspects of quality assurance. Given the importance of quality assurance in higher education, it is critical to ensure compliance with the standards prescribed.

161. For example, the study found that some universities do not offer all the prescribed core courses (such as labour law, law of business associations and law of bankruptcy) as mandatory courses. These units are offered instead as electives. As a result, students may inadvertently fail to take up these courses which are required as a pre-requisite to admission to KSL. Additionally, law graduates are expected to have covered these units at a foundational level, prior

to admission to the ATP. These students may subsequently be required to undertake and complete additional remedial classes for the missing core courses.

162. Further, despite increase in enrolment of students in universities, there is a shortage of lecturers with some classes having a student-lecturer ratio of 1:25 instead of the prescribed 1:15. There is need to ensure that while the numbers of students are increasing, the facilities and resources are equally increased to meet student demand. Facilities and resources (including human resources such as lecturers) ought to increase to match the rise in student numbers. In July 2019, 2,178 students sat for the bar examinations which was almost four times (547 students) those in July 2011.

163. It was also established that the requirements for library stock and library sizes are not strictly complied with in various legal education providers. For instance, some constituent universities did not have a law library. Availability of library resources is essential to a law programme as they are required for reference to core textbooks, journals, case law, court decisions, statutes, laws, regulations and treaties among other materials. Therefore, ensuring that the library resources are current, and in sufficient quantity with sufficient continuing access to meet faculty and student needs is a key component for bar examinations performance. Further, a law library ought to provide a collection that meets the research needs of the law school's students, satisfies the demands of the law school curriculum, and facilitates the education of its students. It also ought to be able to support the teaching, scholarship, research, and service interests of the faculty.

164. From a review of the student record files at KSL which contain copies of student high school certificates and transcripts, it was clear that some students who had been admitted to the LL.B program at certain universities did not attain the requisite high school language grades and had not been subjected to bridging courses. It is important to note that some of these students are, however, eventually able to gain admission to the ATP through court orders.

165. The number of universities licensed and accredited to offer the LL.B has increased which has impacted on the ability of CLE and CUE to adequately monitor all universities. Insufficient monitoring of the universities is a decisive factor affecting the quality of legal education being offered in universities and quality of law graduates who ultimately sit for Bar examinations. There is a proliferation of universities and monitoring of all the universities is difficult. Previously, public universities established under an Act of Parliament were not subject to another institution which posed challenges in regulation of public universities. Further, there is limited access to information by the public on data

held by universities concerning enrolment rates, number of graduates, gender and nationalities of students, employment outcomes, staff establishment and class sizes. CLE and CUE can be strengthened as regulators by strengthening their interagency relationships, ensuring continuous monitoring and evaluation of legal education providers and providing for periodic inspections. Encouraging public and consistent disclosure of detailed annual reports submitted to CLE and CUE is also an important tool in enhancing accountability.

4.2.1.3 Delivery of legal education offered in undergraduate level

166. Tied to quality assurance is an assessment of the legal education being offered at undergraduate level to prepare students at a foundational level to be able to successfully undertake and complete the ATP, which follows the LL.B. In line with the recommendations of the Denning Committee, in order for one to qualify to practice law in Kenya, one must undertake and complete a four-year Bachelor of Laws degree which principally teaches the academic principles of law, followed by professional legal training in a training law school combined with pupillage. Thus, accredited universities have been mandated to provide theoretical and foundational principles for law and KSL provides clinical legal training to students enrolled in the ATP. Thus, Kenya has a two-tiered legal education system. While undergraduate courses offer theoretical underpinnings of key principles of law and lays the foundation towards understanding key legal principles, the ATP offers training in skills and techniques required to practice law. The ATP thus provides technique-oriented training to complement the theoretical approach towards law teaching which is imparted at undergraduate level.

167. The LL.B and ATP are complementary in nature as the ATP pre-supposes that a student has already been imparted with sufficient and rigorous foundational underpinnings of law at university level. An estimated 74.3 per cent of former students strongly agree that quality of legal education received in undergraduate level influences performance in Bar examinations.

168. Further analysis reveals that 65.8 per cent of former students strongly disagree that the Bachelor of Laws programme adequately prepares them for Bar examinations. This could be attributed to the dichotomy between the teaching offered in universities and that in KSL as universities are not obliged to delve into practicalities of law. Thus, the foundational training at undergraduate level which focuses strictly on academic principles may not be adequately preparing lawyers who are undertaking the training programme. Alternatively, universities can introduce electives at university level for practical training.

169. The link between undergraduate academic teaching and ATP would need to be strengthened. Universities can benefit from introducing aspects of clinical legal education in their curriculum or investing in bar examination preparation courses for students prior to admission to ATP.

170. Comparatively, in foreign jurisdictions such as USA, India and Australia, law is a postgraduate degree; although in Australia it is not the default position, with most universities predominantly offering law as an undergraduate degree. Where law is taken as a second degree, it is expected that the maturity level and experience of students is higher. Offering law as a second degree would also expose lawyers to other disciplines in which they are expected to apply the law.

171. This may point to the need for a review of the structure of the entire legal education system to meet the overall objectives of the legal education system.

As an example, the Clinical Legal Education Association (CLEA) in USA has developed a Best Practices Handbook for Legal Education (2007). Whereas law is taken as a postgraduate professional degree in the USA, it is nonetheless important to review the measures law schools take to guarantee student success in the bar examinations. The CLEA advocates for law schools to improve number of students passing existing bar examinations by adequately preparing students for bar examinations. The CLEA recommends that law schools need to re-examine their current practices and make adjustments to the school curricula to enhance their students' chances of passing a bar examination on their first attempt. To this end, they propose that Law schools ought to offer bar preparation courses and inject sufficient clinical type of education in the curriculum. Other focal points are on inclusion of experienced practicing lawyers and judges as teaching resources to enrich the educational program; use of teaching methods that are most appropriate to achieve desired outcomes; use of diversified teaching methods and use of multiple methods of instruction; low student: lecturer ratio; maintaining small class sizes; use of technology such as audio-visual and computerized techniques of teaching and research; and availability of library resources including establishment of e-resources.

The Standard 403 of the American Bar Association (ABA) Standards and Rules of Procedure for Approval of Law Schools 2018-2019 also requires that law schools should ensure effective teaching by all persons providing instruction to its students. Effectiveness of teaching can be attained through orientation, guidance and mentoring for new faculty members; a faculty committee on effective teaching; class visits; critiques of videotaped teaching; institutional review of student course evaluations; colloquia on effective teaching; and recognition and use of creative scholarship in law school teaching methodology.

4.2.2 Structure of Advocates Training Programme and KSL Support

172. Currently, KSL offers the residential training for the ATP, as a service provider. Lecturers engaged by KSL deliver the course curriculum to prepare students to sit for the written bar examinations which are set by CLE. However, it is important to note that KSL administers and assesses only the project work and the oral examinations. The focus of this section is on the structure of the ATP and the facilitation provided by KSL to support delivery of the ATP, which trains students in preparation of the written examinations.

4.2.2.1 The Regulatory Framework for the ATP

173. A key finding was that the ATP does not have a clear regulatory framework whereas other programmes have a clear regulatory framework that legal education providers are required to comply with. Such a framework ought to prescribe the curriculum content, curriculum structure, qualifications of academic staff, teaching methods and mode of delivery, required infrastructure, class size, the ratio of students to lecturer; the physical facilities of KSL including library resources, ICT facilities, lecture halls, moot courts, tutorial and discussion rooms and other available resources including library stock and library size. This impedes the ability of CLE to enforce requirements on the structure and mode of delivery of the ATP.

4.2.2.2 Objectives of the Advocates' Training Programme at the Kenya School of Law

174. There is lack of convergence among stakeholders regarding the objectives of the Advocates' Training Programme, with some in favour of the status quo while others advocating innovation. From the literature, a critical consideration regarding the administration of Law Schools concerns the objectives of the professional legal education. In his article on 21st century clinical legal education, Amsterdam (1984) underscored the need for Law Schools to have as their paramount concern the transmission of '*ways of thinking*', more than the transmission of a *corpus juris*. He posits that beyond: (i) case reading and interpretation; (ii) doctrinal analysis and application; and (iii) logical conceptualization and criticism, which are often viewed as the conventional pillars of legal training, the objects of programme administration at law schools ought to place equal emphasis on the development of career-critical skills for legal practice including: ends-means thinking; hypothesis formulation and testing; decision-making under conditions of uncertainty; and contingency planning. This intended and superseding focus on imparting 'a specifically legal manner of thinking' in preference over transmitting the 'content of the law' is noted again by Spiegel (1987:583). The result is a fundamental paradox

concerning the design of law schools' examinations and whether they adequately reflect a contemporary skills-based emphasis or a traditional knowledge-based focus. In accordance with the literature review undertaken in this study, this study also sought to collect rich, thick descriptions of the ways in which the objectives of the Advocates' Training Programme may have affected the rate at which students have been passing law school Bar examinations in Kenya.

175. In this regard, there are arguments in favour of the present-day objectives of the programme versus arguments which indicate that the programme's objectives are inadequate. In favour of the current objectives of the programme is that the ATP enables trainees to begin to connect what is being done at school and what is being done in practice and to connect among broader professional networks to create opportunities for collaboration in the future. Further, the ATP complements the LL.B by providing technique-oriented legal skills. KSL seeks to impart important technical and practical legal skills which are not part of the curriculum for the LL.B programme, including advocacy, legal writing and drafting, client-advocate.

176. Understanding the objectives of the ATP is thus necessary to provide training in skills and techniques required to practice law. The justification for the ATP is mainly that law graduates do not have the skills and training necessary to represent or handle transactions on behalf of clients upon graduation from university. One of the biggest gaps at undergraduate level is a lack of basic lawyering skills, including legal writing and drafting of legal documents, communication (including client-advocate and advocate-advocate communication), client interviewing, counseling, negotiation, and trial skills. Such a contribution would be a necessary complement to the more profound academic training at university, the combined result of which is prepared to undertake supervised practice. Besides this, the ATP is key in providing lessons on professional ethics, etiquette and decorum.

177. In spite of this, the programmes' current objectives ought to be revised to meet the evolving demands of legal practice including the development of career-critical skills for legal practice including: problem-solving, critical thinking, ends-means thinking; hypothesis formulation and testing; decision-making under conditions of uncertainty; and contingency planning.

4.2.2.3 Duration and Quality of Contact with Material

178. Duration of Contact: 51.3% of the former Kenya School of Law students were of the view that the short duration of the course contributed to the poor performance among students, while the rest (47.7%) were of the view that the

duration of contact was sufficient to guarantee success in the programme. An estimated 76.3 per cent of former students strongly disagree that the ATP adequately prepares students to sit for the written bar examinations.

179. Students on the Advocates Training Programme lack sufficient contact-time with the material to develop a robust grasp of the relevant knowledge and skills. Admiraal, Wubbels and Pilot (1999) note that the duration of contact with legal material, in particular, the time spent on tasks, bears a positive correlation with student performance and motivation. For this reason, the study sought to explore the influence on student performance of the duration and quality of contact with legal material as transmitted through teaching and self-study. The following observations corroborate the findings in literature suggesting a positive correlation between time spent interacting with legal material and general student performance at the Kenya School of Law.

180. A review of the daily timetable for the ATP established that it is not efficient in maximizing on students' productivity. As the programme is half-day, the other half which is intended for firm discussion is unproductive. This is due to the fact that there are no facilities or rooms to accommodate the firms to enable them to have discussions. Further, former and current students reported that the sessions are not guided by a lecturer and there is no clear direction on the subject matter of discussions. The structure of the firm discussions which are scheduled in the afternoon should be reviewed to include supervision of students by lecturers and provide clearly assigned tasks.

181. Moreover, it was found that students have inadequate time to prepare for the examinations in November (approximately 2 weeks) due to lectures ending close to the start of the written examinations. Thus, students are forced to cram large amounts of information and do not have sufficient time to revise and prepare for the written examinations. A recommendation is that KSL should adjust the school calendar such that classes officially commence in January and end latest early October.

182. The former students expressed that the syllabus is at times not well completed or covered by the time they sit for the written Bar examinations and that there is no monitoring to find out if lecturers have covered the syllabus. Respondents suggested that KSL training should be extended to 2 years to afford students adequate time to learn; however, this would have implications on the tuition fees. Alternatively, the curriculum can be reviewed to synthesize the content, reflect current legal developments and reduce any duplications from the LL.B curriculum.

183. While reviewing the course outline for *Legislative Drafting*, experts in legislative drafting expressed that there is a disadvantage to the consolidation of units for this unit. In light of evolving demands in the legal market such as devolution of the legislative making process to county assemblies, legislative drafting has received prominence as a career course and ought to receive similar focus in the curriculum to ensure sufficient aptitude. As such, the teaching of subjects such as Legislative Drafting ought to be offered as a standalone taught unit at the Kenya School of Law. Specifically, experts emphasized that trainee advocates need robust instruction on the intricacies of legislative drafting. This includes how to write a legislative drafting sentence; identify and resolve competing interests in legislation; draft in plain language and adopt a gender-neutral or gender free approach to legislative drafting. There is also need to emphasize on basic foundational aspects of legislative drafting such as the distinction between a Gazette Notice and a Legal Notice and how to issue drafting instructions.

184. It would be useful to also assess the duration of the practical legal training programmes in other jurisdictions with similar objectives as the Kenyan ATP. In the UK, the BPTC (Bar Professional Training Course) which enables one to practice as a barrister is a twelve (12) month full-time program. The BPTC commences in September and be of at least 30 weeks duration, excluding vacations. The course may be delivered either full-time over one academic year or part-time over two academic years. The BPTC must be delivered as a course of 120 credits lasting a minimum of one academic year. Providers must ensure that it has a minimum notional study time of 1,200 hours spread out over three terms or two semesters totaling at least 30 weeks.¹⁸ The duration of the Law School of Tanzania Practical Legal Training Programme is also one-year. Similarly, Hong Kong's Postgraduate Certificate in Laws (PCLL) is conducted over a duration of one year full-time. In Malaysia, the Certificate in Legal Practice (CLP) is conducted by the Legal Profession Qualifying Board (LPQB).¹⁹ The LPQB does not conduct any preparatory courses for candidates sitting for the CLP examination, however, registered candidates are permitted to undertake their own preparation for the CLP examination or enroll themselves in a private college of their choice which offers such courses.²⁰ On the other hand, the Professional Legal Studies Course offered by the College of Law in New Zealand is thirteen (13) weeks full time with 455 contact hours. However, by their own admission, this is too short by international standards and is not ideal.²¹ The Singapore

¹⁸ Bar Professional Training Course Handbook, UK Bar Standards Board (2018-19).

¹⁹ https://www.malaysianbar.org.my/admission_requirements.html

²⁰ http://www.lpqb.org.my/index.php?option=com_content&view=article&id=67&Itemid=63

²¹ Review of The Professional Legal Studies Course, 2013: Report to the New Zealand Council of Legal Education.

Practical Legal Course (PLC) is six (6) months in duration. However, in a report published by a Committee to Develop the Singapore Legal Sector, this was also found to be insufficient for practical skills to be meaningfully imparted to law graduates.²² From comparative aspects, the dominant position for the duration of a practical legal training course/programme is a period of one year.

185. From the above interview extracts, it is intuitively evident that a major factor influencing the duration and quality of contact students have with course material is strongly dependent on the design and delivery of the relevant course curriculum, Kenya School of Law being no exception to this. It is to the role of the design and delivery of course curricula that this study will turn, specifically evaluating its relationship with student performance in the ATP.

4.2.2.4 Course Curriculum Design and Delivery

186. Kenya School of Law (KSL) is the only recognized institution in the country that is responsible for the provision of the Advocate Training Programme. This therefore means that KSL is responsible for developing the curriculum for the ATP and the content. As described above, the ATP comprises of 9 courses.²³ Discussion on what law students should learn and how the lessons are delivered is an important factor in determining the pass rate of students in Bar examinations.

Table 10: Correlation between course curriculum design and performance in the bar examinations

Factors Influencing Low Pass rate	Overall		Male		Female	
	Strongly Agree (%)	Disagree (%)	Strongly Agree (%)	Disagree (%)	Strongly Agree (%)	Disagree (%)
Lack of course curriculum	44.7	55.3	45.0	55.0	44.4	55.6
Unclear Course Curriculum	56.4	43.6	55.0	45.0	57.9	42.1
Wide content in the course curriculum	68.4	31.6	65.0	35.0	72.2	27.8

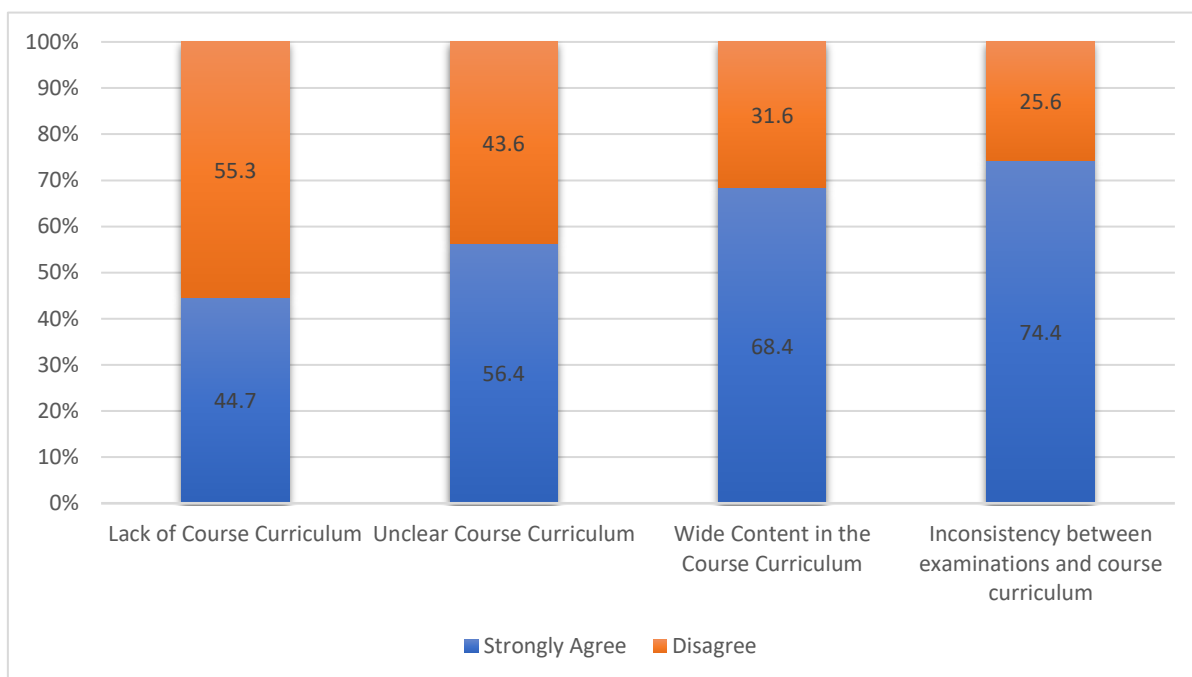
Source: Bar Examinations Survey (2019)

²² Report of the Committee to Develop the Singapore Legal Sector, 2007.

<https://www.mlaw.gov.sg/content/dam/minlaw/corp/assets/documents/linkclিকে1d7.pdf>.

²³ The 9 courses comprise Civil Litigation, Criminal Litigation, Probate & Administration, Legal Writing & Drafting, Trial Advocacy, Professional Ethics, Legal Practice Management, Conveyancing, Commercial Transactions

Figure 3: Influence of course curriculum design on performance in the Bar examinations



Source: Bar Examinations Survey (2019)

187. One of the key factors influencing performance in the Bar examinations is having a clear course curriculum. Findings from the study's survey administered to students on adequacy of course curriculum design and delivery indicate that 56.4 per cent of former students strongly agree that having an unclear course curriculum influences low pass rate in the Bar examinations. Conversely, 74.4 per cent of former students strongly agree that having a clear curriculum influences high pass rate in Bar examinations (Figure 3).

188. Former students also highlighted that the quality of course outline at the Kenya School of Law is poor. Further, a review of the course outlines established that a number of the outlines resemble a reading list such that the expectations are incongruous. Also, there is limited convergence between the marking and teaching of modules. In addition, the course outlines are also not pedagogically correct.

189. CLE's expectations are not clearly understood by both students and the lecturers who are expected to deliver the curriculum leading to improper methods to deliver the curriculum which is intended to prepare students to sit the Bar examinations. This points to divergence between the mode of teaching and delivering the curriculum which was noted to be more theoretical whereas former students noted that the written examination tests practical aspects. From the survey, emphasis was made for the course curriculum needs to be in line with what is tested. KSL should emphasize practical/problem solving aspects in

the curriculum rather than theory. Further, the course outlines ought to be detailed, professionally-tailored and updated to reflect current laws and court decisions. This would ensure that expectations of students, lecturers, examination setters, and examiners are in harmony. Former students reported that there is also no quality assurance to assess what the lecturer is teaching and if they have taught what is in the course outline. KSL and CLE should ensure monitoring of implementation of the curriculum.

190. An estimated 68.4 per cent of former students strongly agree that wide content in the course curriculum influences low pass rate (Figure 3). This is pointing to challenges in the design of the existing ATP curriculum at KSL. Reference was made specifically to the excessive number of units, shortness in duration of coverage of some course units and redundancies in the use of some course time, taking into account both the amount of material that needs to be covered to successfully complete the course. For example, as per the course outline for Legal Practice Management, Accounting for Lawyers which is not often offered by universities at undergraduate level, is introduced in the last semester of the term which does not provide students with sufficient time to understand the content and revise.

Comparatively, in terms of number of units for a law training course, there is benefit in looking at other comparator jurisdictions. The UK BPTC course curriculum consists of eight (8) mandatory courses which are divided into knowledge and skill areas. The knowledge areas test civil litigation and evidence, criminal litigation, evidence and sentencing and professional ethics whereas the skills areas test advocacy, opinion writing, drafting, conference skills and resolution of disputes out of court (including negotiation, mediation and arbitration).¹ The UK Bar Standards Board sets and marks the assessments for the knowledge areas and the providers set and mark the assessments for the skills areas (including resolution of disputes out of court) and options. In Singapore, Part B of the Practical Law Course (which applies to graduates who obtained their law degree in local universities) comprises nine (9) subjects of which seven (7) are compulsory and two (2) are elective. The seven (7) compulsory subjects are civil litigation practice, criminal litigation practice, insolvency law and practice, real estate practice, family law practice, ethics and professional responsibility, and professional skills.¹ The elective subjects are divided into Category A and Category B and each candidate must complete one subject from each category.¹ In New Zealand, in terms of course content and structure, students are required to complete seven (7) subjects (refer to Table 11).¹ In Malaysia, the CLP consists of five (5) courses which are criminal procedure, civil procedure, evidence, general paper and professional paper.

191. The former students were also of the view that the content taught in the ATP bears similar resemblance to what was covered at undergraduate level, as the content in KSL is more theoretical. Instead, students expect the ATP to focus more on practical aspects of the legal profession. This is exacerbated by duplications between content taught in the ATP and LL.B. The extent to which a

few courses seemingly reiterate the content covered in the LL.B represents a sub-optimal use of course time on the Advocates' Training Programme at the Kenya School of Law. The Kenya School of Law needs to ensure that there is ample time on the programme for the teaching and development of critical legal skills.

192. One of the findings is that Commercial Transaction Unit is very heavy and intensive. Commercial Transactions is split into various units at the university level (including Sale of Goods and Agency; Law of Bankruptcy; Law of Business Associations; and Intellectual Property, which is not prescribed as a core course for the LL.B) but at KSL it remains a single unit with many components including:

- i) Processes and procedures relating to companies;
- ii) Partnerships;
- iii) Agency;
- iv) Sale of goods;
- v) Hire purchase;
- vi) Moveable property/Chattels;
- vii) Negotiable instruments;
- viii) Insolvency;
- ix) Commercial agreements; and
- x) Intellectual property.

193. Due to the voluminous content in commercial transactions, students believe that it is not well covered because of limited time. In addition, units such as intellectual property may not be covered by all students at a foundational level as it is not a core course in the LL.B. Former students were of the view that there is need to break commercial transactions into smaller units for easy understanding. On the other hand, the content in commercial transactions may also be reduced for easier consumption.

194. Proper structuring of the Advocates Training programme is key. Only 21.6 per cent of the respondents agreed that there is proper structuring of the Advocates Training Programme. About 84.21 per cent of male respondents compared to 72.22 per cent of females disagreed that the Advocates Training Programme is well structured.

195. It was also observed that the ATP does not provide opportunities for continuous assessment tests at intervals throughout the duration of the training period. About 47.4 per cent of female respondents agreed that there is sufficient provision of continuous assessment tests compared to their male counterparts at 19.1 per cent. For those who scored upper second and lower second in undergraduate, 28.1 per cent and 42.8 per cent respectively agreed there is

sufficient continuous assessment tests throughout the year. Therefore, KSL should review the course curriculum by introducing mid-term examinations to help improve performance.

Provision of continuous assessment throughout the year is key in monitoring student's level of understanding. This has been recognized in the UK BPTC system, which emphasizes on the need for tutor: student feedback and continuous assessment for students to understand areas they need to improve. The UK BPTC contains two types of assessment: formative and summative. Formative assessment does not count towards the final mark but is deemed vital for student development and for tracking student progress. Course providers are responsible for setting and marking formative assessments and giving feedback that enables students to understand their areas of improvement.¹ Summative assessments all count towards the overall grade of the BPTC. Under the formative assessment, students must be provided with a number of opportunities to practice and to receive feedback in the following courses: *Advocacy*: the equivalent of twelve 15-minute practice exercises (of which three are summative assessments); *Conferencing*: 4 complete, tutor-observed conferences (of which one is a summative assessment); *Opinion Writing*: 6 assignments (of which one is a summative assessment); and *Drafting*: 6 assignments (of which one is a summative assessment).¹ The UK Bar Standards Board provides mock examinations in the three centralized modules for providers to use for formative purposes. Each summative assessment must be preceded by at least one formative assessment on which students must receive individual tutor feedback.¹

196. An estimated 76.9 per cent of former students strongly agreed that insufficient work experience prior to KSL in a law firm was a main factor in influencing student performance in Bar examinations. In this regard, it was observed that it is more beneficial for students to undertake the training, then proceed for pupillage and thereafter sit the Bar examinations for which they will be better placed and prepared to undertake.

197. Related to curriculum design, key informants highlighted the possible need to re-sequence and re-conceptualize the units on the Kenya School of Law Advocates' Training Programme to facilitate maximal retention of professional skills, given the programme's practical orientation. In this regard, there is need for greater innovation in the provision of legal training. This could include reconfiguring the sequence of units in the Advocates Training Programme to ensure that trainees commence rather than end with pupillage right before sitting for their examinations. More opportunities for acquiring practical experience need to be available for trainee advocates. There may be benefits in students undertaking further apprenticing opportunities before seeking admission to the Bar.

198. In addition, the system should be structured to require students in university to undertake an attachment at a legal practice organization in addition to the judicial attachment, then proceed to KSL to undertake the residential training, then thereafter complete pupillage for a minimum period of 1 year before sitting their Bar examinations. This way, students can apply practical knowledge acquired from pupillage while sitting for their bar examinations.

199. Albeit, in order to achieve these objectives, this study established that the pupillage programme is in need of restructuring due to challenges facing its success. The pupillage programme is served for a minimum period of 6 months after the residential training at KSL on a full-time basis. The areas of focus during pupillage are:²⁴

- i) Drawing pleadings and related documents;
- ii) Conducting client interviews;
- iii) Supervised court attendance;
- iv) Preparing submissions;
- v) Conducting detailed research;
- vi) Drafting conveyances and related documents;
- vii) Raising fee notes;
- viii) Drafting inter and intra office correspondence
- ix) Client care;
- x) Various filing systems;
- xi) Basic accounting;
- xii) General client care and attention;
- xiii) Critical thinking; and
- xiv) Such other work as shall be directed by the Director of the School from time to time.

200. The pupillage programme requires that a trainee receives instruction in the business, practice and employment of an Advocate under a pupil master of at least 5 years standing. Traditionally pupillage was served in the traditional law firm setting. However, the places of pupillage have been expanded to include other entities which have a legal department and have capacity to take in pupils to serve under an Advocate of the requisite standing. This capacity is based on exposure to substantial amount of legal work, office space and exposure to external lawyers.²⁵

201. In spite of the above, the study established that the pupillage programme is facing some challenges. First, it is difficult for KSL to monitor all the students undertaking pupillage, it is difficult to monitor the quality of a pupillage program where students may be working under private practitioners and similarly, student experiences may vary widely depending on what cases a firm or legal organization can provide for a student to be engaged in. In addition, employers and pupil supervisors noted that the pupillage system is in need of review as the current six (6) months are inadequate for sufficient mentorship or exposure to the prescribed areas of focus. Even though KSL has a feedback and reporting tool for pupil masters to evaluate their pupils through the workbook issued to pupils, it is also important to provide pupils with a similar feedback and reporting

²⁴ Kenya School of Law, Student Information Handbook (2016 – 2018)

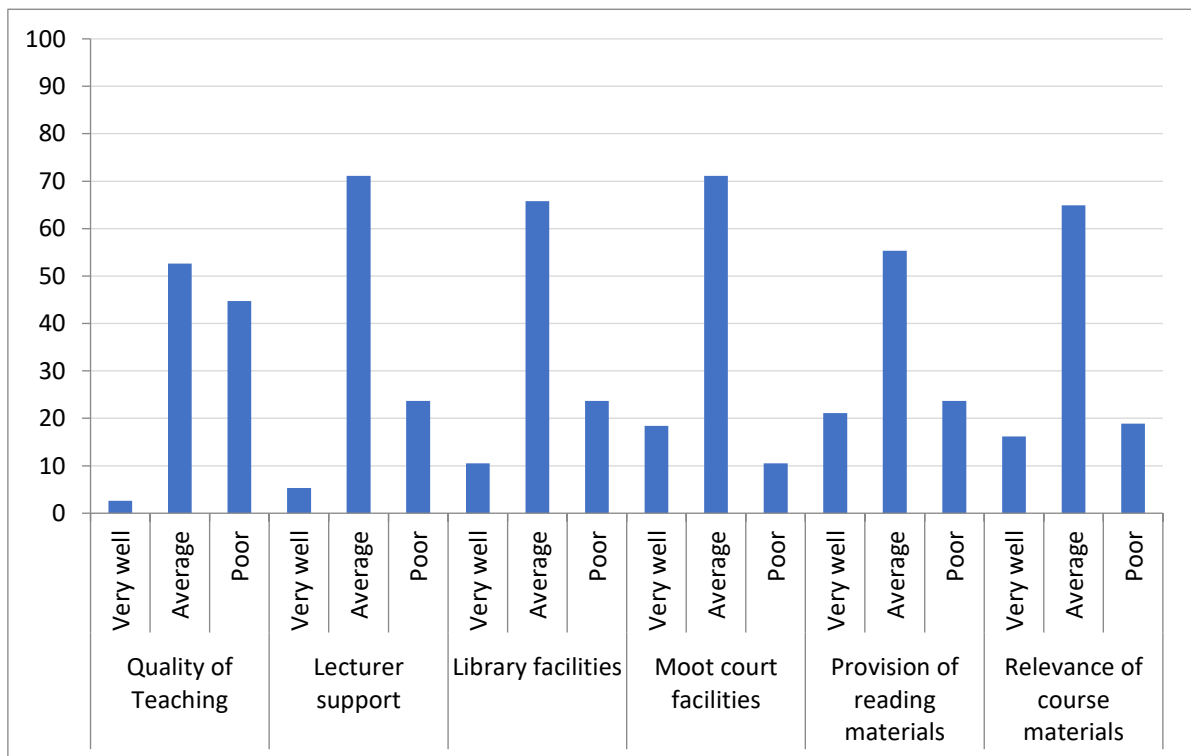
²⁵ Kenya School of Law, Student Information Handbook (2016 – 2018)

mechanism evaluating their supervisors and their pupillage experience to ensure increased and better supervision of the pupillage programme. While the study recommends that pupillage ought to commence prior to sitting for the bar examinations and last for a duration of at least one (1) year, it is critical to re-evaluate the pupillage programme which is intended to enrich the knowledge, skills and training received in both the LL.B and the ATP.

4.2.2.5 KSL Facilitation

202. KSL offers the training component of the ATP. Therefore, the quality of teaching, composition of lecturers, teaching methods, modes of delivery of teaching, resources and infrastructure offered at KSL in delivering the training are significant considerations in performance of students in Bar examinations.

Figure 4: KSL performance in various aspects



203. In addition to the above, most respondents (55.3 per cent) agree that quality of teaching in Kenya School of Law was above average. Further analysis indicates that 44.7 per cent of former students agreed that quality of teaching in Kenya School of Law needed improvement (Figure 4).

204. More men (50 per cent) than women (15 per cent) agree that the lecturer support in Kenya School of Law was average. Similarly, more men (7 per cent) than women (2 per cent) agree that the quality of teaching at the Kenya School

of Law is poor. Overall, 71.1 per cent of respondents agree that the quality of lecturer support is average.

205. A number of former students (24 per cent) thought that KSL has poor library facilities; while 65.8 per cent thought the facilities were average. Only 21.1 per cent of the former students were content with the provision of reading materials provided by the institution. Former students reported that the library is poorly equipped as it either lacks many critical law books or does not have enough books to cater to the student population. In this regard, the library should be updated with newer books (relevant to newer syllabuses) and a greater quantity of books should be provided by the library.

206. Similarly, most respondents (71.1 per cent) agree that the moot court facilities at the Kenya School of Law are average. Most of the people agreeing were males and students with a degree classification of second-class lower division at 75 per cent and 85.7 per cent, respectively. Further analysis demonstrates that similarly most of the students agreeing that the moot court facilities at the Kenya School of Law were average were former students who had received high school grades of A to A- (73.1 per cent) compared to those who had high school grades B+ to B- (66.7 per cent).

207. Most of the former students (55.3 per cent) agree that provision of reading materials is average. Most of those agreeing were students with a degree classification of second-class lower division (71.4 per cent), males (60.0 per cent) and those aged 22–25 years (57.1 per cent). This is compared to students with second-class upper division (50.0 per cent), females (50.0 per cent) and those aged 26–30 years (52.4 per cent).

208. In terms of relevance of course materials in the ATP, 64.9 per cent of respondents agreed that they were average. More men (68.4 per cent) than women agree that the relevance of course materials was average. An analysis of the age groups indicates that most of those aged 22–25 years (76.9 per cent) compared to those aged 26–30 years (57.1 per cent) agreed that the relevance of the course materials was average.

4.2.2.6 Teaching Methods and Mode of Delivery

209. Most respondents strongly agree that the teaching methods and mode of delivery influence high performance in Bar examinations. Former students strongly agree that use of case studies during teaching (82.1 per cent), practical mode of teaching (87.5 per cent), provision of template legal documents (85.7 per cent) and practical examples during teaching (73.5 per cent) influence high

performance in Bar examinations. Further analysis indicates that most of the former students (95.0 per cent) agree problem questions for discussion are an effective way of covering the Advocate Training Programme. Most of the students (74.3 per cent) agree that the quality of teaching contributes to a high pass rate at the programme. Despite this, a significant percentage of students (44.7 per cent) thought that the quality of teaching at the institute was poor.

210. Most respondents (62.2 per cent) strongly agree that inappropriate teaching methods can have a deleterious effect on student performance in the Bar exam. Ensuring that the teaching methods for the ATP are appropriate to meeting the objectives of the programme and meeting the expectations of the examinations are critical to ensuring success in Bar examinations. Former students commented that the teaching methods in undergraduate bear resemblance to those adopted in ATP. The method used is largely the lecture method where the lecturer dictates, and students record notes which is not ideal for a training programme. The lecture method in ATP is ultimately not ideal. It should not be a rhetorical approach with students taking notes. A clinical and practical approach is better suited to the objectives of ATP as there is significant focus on transactional aspects.

211. Former students strongly agree that use of revision seminars and use of tutorials are important factors in influencing high performance of students in Bar examinations at 68.6 per cent and 67.7 per cent, respectively. Certain universities noted that, upon request, they provide revision seminars prior to Bar examinations to students at KSL.

212. A mixed or varied approach would also be ideal, as teaching methods should vary across subjects. Some courses such as trial advocacy require role play and presentations. The methods of teaching and learning should be appropriate to the particular subject matter. Lectures, for example, are appropriate primarily when knowledge has to be imparted. However, this is not ideal in meeting the objectives of the ATP. In that respect, the New Zealand Council of Legal Education recommends that the Professional Legal Studies Course be delivered through a teaching method involving initial instruction followed by closely monitored trainee demonstration of the skill and teacher feedback.²⁶ This concurs with the preference for adopting a mixed method of delivery of the course. In order to develop and hone a skill, such as that of drafting, a student should be provided with as many opportunities as possible to practice, guided by continual individual feedback and constructive criticism from

²⁶ Review of the Professional Legal Studies Course, 2013: Report to the New Zealand Council of Legal Education.

the instructor. Feedback should be at an individual and personal level as students reported that the feedback they receive is too generalized and insufficient attention is given to the needs and circumstances of individual students. Nonetheless, it is important to note that these objectives can only be met with a lower student: staff ratio.

213. Existing literature on learning theory bears out the fact that not all approaches are equal in the transmission of legal knowledge and skills. In particular, authors point to the superiority of certain techniques in specific circumstances, such as that of employing small-group seminars engaged in analyzing multiple legal problems for the learning of black letter law (Feinman and Feldman, 1985) or deploying certain approaches to pass certain examinations. Other techniques include, role modelling, provision of instruction, provision of feedback, use of Socratic questioning, management of contingencies and the application of cognitive structuring. Such efforts to optimize learning ought to seek to increase both cognitive acquisition – what am I learning? - and meta-cognition - how and why am I learning this material.

4.2.2.7 Lecturer requirement and selection criteria

214. Most former students (81.6 per cent) were of the view that lecturers were not conversant with the teaching material. Further, some lecturers were deemed not competent to teach the subjects they are handling. Still on the influence of curriculum delivery and design on student performance, several stakeholders brought into question the adequacy of expertise among student trainers at the Kenya School of Law in the areas they are expected to deliver in class. The study found that some lecturers in the ATP were not allocated units in their areas of expertise or their areas of specialization in law.

215. Most respondents strongly agree that quality of teaching and quality of lecturers are key factors in influencing students' performance in Bar examinations at 74.3 per cent and 68.6 per cent, respectively. Most respondents (81.8 per cent) strongly agree that if the lecturers are current practitioners this has a strong influence on higher performance of students. This is followed by if lecturers are judicial officers (68.8 per cent), if lecturers are from academia (53.1 per cent), if lecturers are from public sector organizations (38.2 per cent) and if the lecturers are from civil society (25.0 per cent).

216. There is need to ensure that trainers are current practitioners with relevant expertise in the area being taught. In this regard, KSL should revisit the recruitment criteria for lecturers. Emphasis should be to engage practitioners to teach however in addition to this, KSL should train them to teach by providing

mandatory and regular courses on pedagogy. Lecturers at KSL should be persons who are recognized and renowned experts in that area of law. While allocating units, KSL assess how much subject matter expertise a lecturer has in that area of law.

217. The need for current and relevant practical experience among trainers at the Kenya School of Law reflected the desire for students to develop a grasp of contemporary issues and skills facing Kenya's legal sector. A key point was that while a number of lecturers are current practitioners, they lecture on subjects which are not their area of specialization in practice. Practical experience in legal practice and in a particular area of law is critical in the ATP as legal practice is dynamic and mutable. It is important for a lecturer delivering a legal training programme to be up to date with current practice.

218. Unfortunately, however, this need for relevant and current practice experience also conflicts with other concerns raised by the interviewees on the challenges to student learning occasioned by over-commitment of their trainers to professional activities of legal practice, to the detriment of the quantity and quality of time spent with their students. A key challenge in curriculum delivery at KSL has related to the use of non-permanent, non-full-time teaching staff thus reducing contact time between students and lecturers and availability for consultation. Some students are disadvantaged in relation to the number of contact hours they receive with their lecturers. Alternatively achieving better teaching can be realized by assigning lecturers lighter course loads and having lecturers at KSL teaching only one class, and not only one unit.

219. Lecturers should be allocated subjects that they are best qualified and able to teach. A training needs assessment should be undertaken among lecturers at KSL. Further, KSL need also to encourage more students to complete and submit the lecturer assessment evaluations which are already in use. In addition, KSL to act on issues raised in lecturer assessment questionnaires and lecturer evaluations completed by students. Lastly, KSL needs to invest in improving pedagogy.

220. Based on responses from former students, the availability and quality of lecturers for clinical mentorship and consultation was highlighted as another salient contributor to student performance. This not only points to the need for the Kenya School of Law to further reconfigure its approach to class sizes, but implicit in the findings is an inordinate and plausibly detrimental over-emphasis on the conception of trainers at the Kenya School of Law being exclusively lecturers. Instead, the findings suggest demand for the trainers to re-conceptualize their roles not just as lecturers, but as professional mentors,

facilitators of knowledge, seminar leaders and fundamentally, deployers of other learning methods beyond lecturing, such as Socratic dialogue. A key intellectual constraint in this regard may be the use of restricting nomenclature such as 'lecturers' rather than 'trainers' which in addition to being outcome-focused, implies the use of a broader set of skills than lecturing.

221. In prescribing effectiveness of teaching in law schools, Standard 403 of the ABA Standards requires a law school to ensure effective teaching by all persons providing instruction to its students. Efforts to ensure teaching effectiveness include: orientation, guidance and mentoring for new faculty members; a faculty committee on effective teaching; class visits; critiques of videotaped teaching; institutional review of student course evaluations; colloquia on effective teaching; and recognition and use of creative scholarship in law school teaching methodology.²⁷ Standard 404 of the ABA Standards outlines the responsibilities of full-time faculty. These include: Teaching, preparing for classes, being available for student consultation about those classes, assessing student performance in those classes, and remaining current in the subjects being taught; participating in academic advising, creating an atmosphere in which students and faculty may voice opinions and exchange ideas, and assessing student learning at the law school; engaging in scholarship, as defined by the law school; service to the law school and university community, including participation in the governance of the law school, and curriculum development; service to the profession, including working with judges and practicing lawyers to improve the profession; and Service to the public, including participation in pro bono activities. A law school is required to periodically evaluate the extent to which the faculty discharges its core responsibilities under the law school's policies and the contributions of each full-time faculty member to meeting the core responsibilities of the faculty.²⁸

4.2.2.8 Student-lecturer Ratios

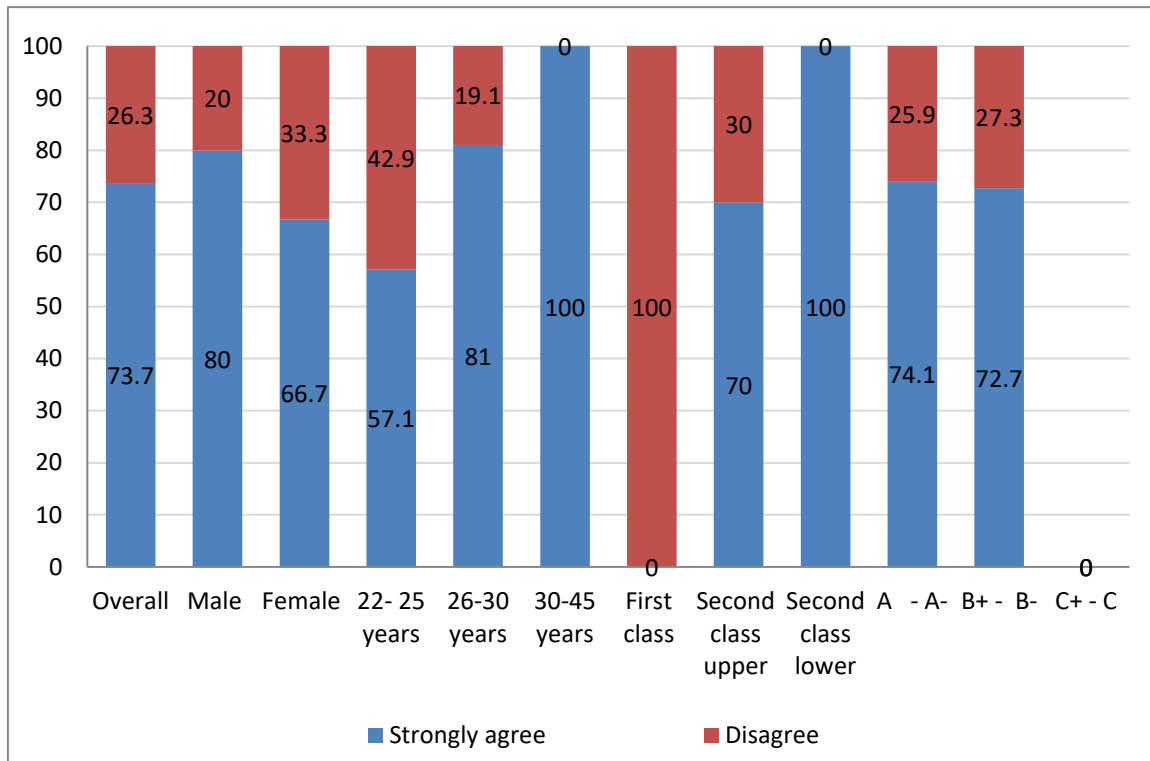
222. The study found that the student-lecturer ratio at KSL is too high and the student numbers are unmanageable for a practical training course. Over 73.7 per cent of former students strongly agree that high lecturer: student ratio influences high pass rate in the Kenyan Bar examinations (Figure 5). Currently, there are 24 lecturers comprised of 16 part-time and 8 full-time staff, which is not sufficient to accommodate student intake of between 1,000 and 2,000 students. With the high number of student enrolment, the availability of teaching staff is limited. However, with smaller classes and lower student-lecturer ratios, there are opportunities for more personalized interaction, individualized

²⁷ Standard 403 ABA Standards, 2019-2020

²⁸ Standard 404 ABA Standards, 2019-2020

attention and lecturers are also better able to review and assess the students' level of understanding. It also allows for attention to detail.

Figure 5: The extent to which high student-lecturer ratio influences pass rate



Source: Bar Examinations Survey (2019)

223. The findings suggest that most students' regard high student-staff ratios as bearing considerable influence on their preparation for Bar examinations, with older students and students with weaker academic track records attributing greater importance to the accessibility of the lecturers than other students.

224. High student-to-staff ratios and a lack of relevant expertise among lecturers were viewed as two key Achilles' heels of the training programme. This overall concern regarding high staff-student ratios at KSL is that a practical legal training programme cannot be properly delivered in with a large number of students. As a result, the Kenya School of Law is a practice-oriented school that teaches practice theoretically; when indeed a clinical approach is best for practical training at KSL. On the other hand, clinical training requires a lower student-staff ratio. High student-staff ratio impacts performance as students lose out on individual attention. More contact time is needed between the students and lecturers, who need to be able to guide the students. Lecturers also need to ensure that they have periodic meetings with their students to reflect on the assignments given and gauge the understanding of the students.

225. Former students reported that they receive minimal guidance in terms of follow-up and feedback. It is recommended that lecturers delivering the ATP ought to provide continuous practical assignments to engage students in the work as continuous assessment is more important in honing certain skills as opposed to an examination. Continuous assessments create the opportunity for constant learning. In order to manage the numbers being admitted in KSL, increase access and reduce congestion it is recommended that KSL should concentrate on decentralization of the ATP.

4.2.2.9 Resource Constraints

226. A final challenge related to the administration of law school training which received considerable mention in the stakeholder interviews concerned the adequacy of resources to effectively administer both professional legal education and the requisite prior legal training.

227. The quality of teaching at the KSL has in part been impeded by inadequate infrastructure, which would be partially remedied by the construction of a physical library which has since stalled, as well as encouraging the adoption of e-resources at the Law School.

228. Factors such as inadequate on-campus accommodation contributes towards a non-conducive studying climate which adversely affects the performance of law students, in particular those who undertook their LL.B outside Nairobi and are forced to find housing and accommodation.

229. While the number of students in institutions is increasing, there has not been an equal increase in the resources and facilities available to these students. In order for KSL to absorb all the students being admitted to the ATP, they must have sufficient resources.

4.2.2.10 Relevance and Quality of Skills Being Developed in ATP

230. In assessing whether the skills acquired in the Advocates Training Programme are relevant and sufficiently-developed for lawyers embarking on legal practice, it was noted that there is need for increased emphasis on:

- i) Soft skills;
- ii) Practical experience;
- iii) Problem solving;
- iv) Drafting/writing skills;
- v) IT skills; and
- vi) Communication skills.

231. Legal practice requires apt communication skills, practical understanding of a legal problem (as opposed to theory), identification of a legal issue, identification of issues for determination, problem solving skills, crucial understanding of aspects of the law. Further, IT skills are pertinent in the current global environment. A number of legal resources (such as Kenya Law Reports, Practical Law, DMS and international case law reports) are accessed through ICT systems.

232. Therefore, in summary, the study identified a number of challenges and strengths surrounding the current design and delivery of the Advocates Training Programme at the Kenya School of Law. Respondents cited unclear curriculum, inefficient teaching, improper training, poor teaching methods, high turn-over of lecturers and poor facilities as some of the challenges facing the ATP. Students also reported that the facilities were not sufficient to allow proper group or firm discussion. Further, they reported that the number of rooms were inadequate to convene firm discussions and students are thus forced to convene in make shift areas that are not conducive. Other factors cited by respondents were a poorly stocked library, high enrolment rate and centralization of KSL within Nairobi.

233. Strengths such as providing various examination models through the oral examinations, project work and written examinations were identified as highlights of the ATP as they accommodate a variety of students' learning styles and strengths. The ATP also bridges the gap between academia and practice by providing training on the fundamentals of legal practice.

234. The Advocates Training Programme would require a review in light of the quality, function and availability of its lecturers; the forms of delivery required to optimize acquisition of legal skills; standardizing the content of lessons and (oral) examinations; enhancing students' appreciation of learning expectations and intended outcomes; and remedying poor exam-taking techniques.

4.2.2.11 Unclear and unpredictable admissions criteria for the ATP

235. The ATP has in the recent past been the subject of many court cases in which LL. B graduates from various universities have had their applications to KSL rejected on account of failure to meet the minimum university entry requirements for the LL. B. This is pointing to a disconnect between the universities, KSL and CLE on the guidelines, requirements or qualifications for admission to the LL.B course. The lack of clear guidelines or changes in the said requirements has led to many students graduating with LL.B degrees however they may not be able to be admitted to the ATP on the basis that their pre-university qualifications did not meet the requirements of CLE.

236. Cases such as *Joan Wambui Kimani v Kenya School of Law & 2 others [2019] eKLR*, *Republic v Council of Legal Education & 2 others ex parte Michelle Njeri Thiongo Nduati, Adrian Kamotho Njenga v Kenya School of Law [2017] eKLR* and *Kevin Mwiti & Others vs KSL and Others (Constitutional Petitions 377, 395 and JR 295 of 2015 (Consolidated))*, *Gloria Munyiva Mbevi & another v Africa Nazarene University & 2 others [2019] eKLR* have significantly affected the admission requirements.

237. The above cases have indicated that a number of students have been admitted to KSL through court orders. A review of the above cases have revealed inconsistencies in the admission criteria for the ATP, and LL. B. KSL is required to admit students who may have otherwise been barred from admission. Thereafter, KSL is forced to regularize and revise their requirements based on a particular judgment and cohort of students. The inconsistencies and lack of clarity in the admissions and entry criteria starting from LL.B to KSL have led to admission of students who may not have otherwise been qualified. The provisions in the law are inconsistent; there is an inconsistency between the Act and the Regulations. Where applicants are successful in Court, KSL is forced to admit all students in that year *en masse* which is detrimental in preserving the sanctity of the admissions process and the certainty of the admissions criteria. From a review of the case law above, the study established that the entry requirements are unclear, inconsistent and unpredictable and therefore there is need for standardization of entry requirements.

238. The case law has also pointed to a significant challenge with the system of equivalencies, with conflict between decisions made by the Kenya School of Law, Commission for University Education, Kenya National Qualifications Authority and Council of Legal Education (see *Republic v Kenya School of Law [2019] eKLR ex parte Victor Mbeve Musinga*).

4.2.3 Examinations

239. Previously, until 2015, KSL had been undertaking training of candidates in the ATP and setting, administering and marking the examinations. However, the inter-agency relationship between KSL and CLE was restructured leading to a separation of KSL and CLE in 2015. Currently, KSL trains the students undertaking the ATP, in preparation to sit for the written Bar examinations at the end of the year which are set, administered and marked by CLE. However, while CLE sets and marks the written Bar examinations, KSL administers and assesses the oral examinations and project work components of the ATP, which contribute to the overall final grade.

240. The structural arrangement between KSL and Council of Legal Education (CLE) is that KSL offers the training and administration of the project and oral examinations while CLE administers the written examinations. CLE prepares and marks the examinations in accordance to the course curriculum shared by KSL. According to CLE, CLE sets the exam in accordance with the course curriculum provided by the KSL, and it draws its exam setters from a pool of professionals comprising legal professionals, accountants, university lecturers, lawyers, human resource management specialists, accountants, judicial officers, non-governmental organizations (NGOs) and academia. The criteria of selecting exam setters is based on the subjects they are specialists in. CLE engages and outsources professional examiners for purposes of the setting, marking and moderating the written Bar examinations; they have not employed personnel within the institution for this purpose. CLE relies on professionals who are experts in a particular area. Initially, CLE had advertised externally for examiners. However, they did not receive sufficient responses. Due to the low response received to the external advertisement, they resorted to sourcing through the referral method. There are four levels to the examinations process in CLE for the written Bar examinations: setting; administering the written Bar examinations; marking; and moderating. Thereafter, if a student fails, CLE undertakes the remarking and resitting processes.

1) Stage One: Setting the written Bar examinations

241. Exam setters are requested to select the subject they would like to set. The exam setters comprise of practitioners, judicial officers, officers from the Attorney General's office, prosecutors, persons from the NGO sector and academics. Essentially, they are a mixed grill; however, the minimum qualification for an exam setter is a Masters degree. CLE subjects the exam setters to residential training. They are trained on how to set the exam and are subject to strict controls. For instance, on the exam setting day, they are not allowed to enter the exam setting room with any piece of paper nor leave with any paper. Exam setters may only request CLE to borrow books on their behalf. CLE does not allow exam setters to use technology and there are strict rules against carrying of any material both in and out of the premises. CLE maintains a safe for custody of the papers to which only two individuals have access. Exam setters also prepare the marking scheme.

2) Stage Two: Administering the written Bar examinations

242. For purposes of administering the Bar examinations, CLE is required to hire external venues within Karen such as Bomas, JKUAT and KSL to

accommodate the numbers who are sitting for the written Bar examinations. CLE hires examination invigilators who are also trained and are drawn from a pool of individuals who have prior work experience with another examining body such as KNEC or KASNEB. Invigilators must have a minimum of a degree; however, CLE does not permit lawyers to invigilate. Previously, the student: invigilator ratio was 50: 1 (1 invigilator per 50 students). However, due to a number of cheating incidents, CLE has now adopted a ratio of 25:1. Since then, CLE reported that only one incident of cheating has occurred. Lawyers are not allowed to invigilate the examinations. Students are given leeway to defer a paper to sit it at a later date provided they give notice of 24 hours. There is 1 paper per day starting on a Thursday and ending on the third week on a Tuesday. KSL requests for the past papers officially after the written Bar examinations.

3) Marking the written Bar examinations

243. Examiners are also trained on the marking process. CLE engages a minimum of five (5) and a maximum of six (6) examiners. Most examiners are practitioners as they examine the practical and clinical aspects. All examiners are required to sit together to review the questions set and prepare their own marking schemes. Thereafter, they are furnished with the marking scheme prepared by the exam setters and they are required to harmonise the two documents to compile the final marking scheme. This is intended to encourage examiners to apply their independence by requiring them to prepare the answers. The examiners conduct "dummies"; every paper has five (5) "dummies". In this process, the examiners mark the same paper for the same student individually using the marking scheme to ensure there are no significant variances in marks awarded across the different markers.

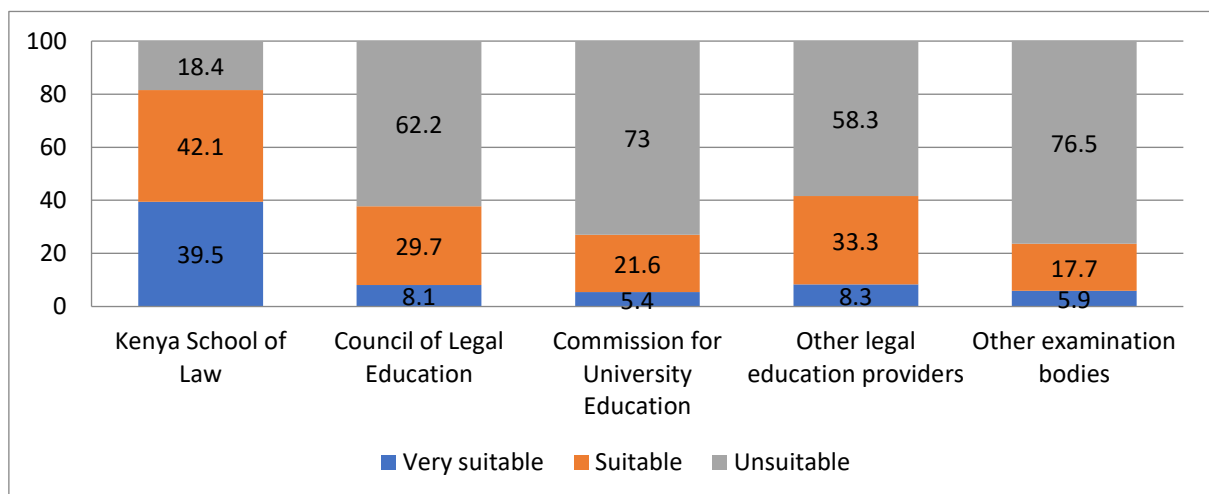
244. CLE uses the same moderator who assessed the questions to moderate the examination papers. The moderators are given freedom to sample the papers; however, they must sample at least 30 per cent. After the script is marked, officers from CLE are assigned to review the script to confirm that the whole script is marked, that every paragraph is marked and that the additions are accurate. There is one officer who keys in and inputs the marks and a second officer who confirms if the first officer has correctly inputted the marks. CLE releases the results two to three months from the date of the examinations. Students are afforded 30 days after the release of results to opt to remark or not. This grants candidates the opportunity to have their paper looked at again by an independent person.

245. CLE has also established its own internal quality control systems to minimize the risk of malpractice. Of concern, however, was the years of

experience of some examiners, with a few having less than four (4) years post-qualification experience. The risk of disconnect between the legal practice adopted by examiners and that adopted by the lecturers was also pertinent. This is perpetuated by inadequate meeting of the minds between the individuals teaching the curriculum and those setting and marking the written examinations; incongruent interpretations of course outlines by lecturers, setters and examiners; and inadequate consultation between KSL and CLE. In 2015, KSL and CLE were separated from each other, leading to a disconnect between the two institutions. During this transitional phase, there was lack of coordination and harmony between KSL and CLE. KSL reported there were challenges in sharing the course outlines for the ATP with CLE. However, in 2019, they shared the course outlines with CLE and performance improved slightly in July 2019. There is anticipation that performance may improve going forward as a result of this increased exchange and sharing of information between KSL and CLE.

246. About 39.5 per cent of the former students recommended that the Kenya School of Law is very suitable to administer and assess the oral examinations. Similarly, about 42.1 per cent of the former students agree that the Kenya School of Law is suitable to administer and assess the oral examinations. 39.5 per cent recommended that Kenya School of Law was very suitable to administer and assess the project work, compared to other legal education providers (8.3%), Council of Legal Education (8.1%), other examination bodies (5.9%) and Commission for University Education (5.4%) (Figure 6). However, there were mixed reactions based on gender, age, degree classification and high school grades of respondents. Analysis by age group shows that most of those who proposed that Kenya School of Law is most suitable to administer and assess the oral examinations were those aged 26–30 years (42.9%), those aged 30-45 years (50%) followed by those aged 22–25 years (35.7%).

Figure 6: Suitability to administer and assess orals



Source: Bar Examinations Survey (2019)

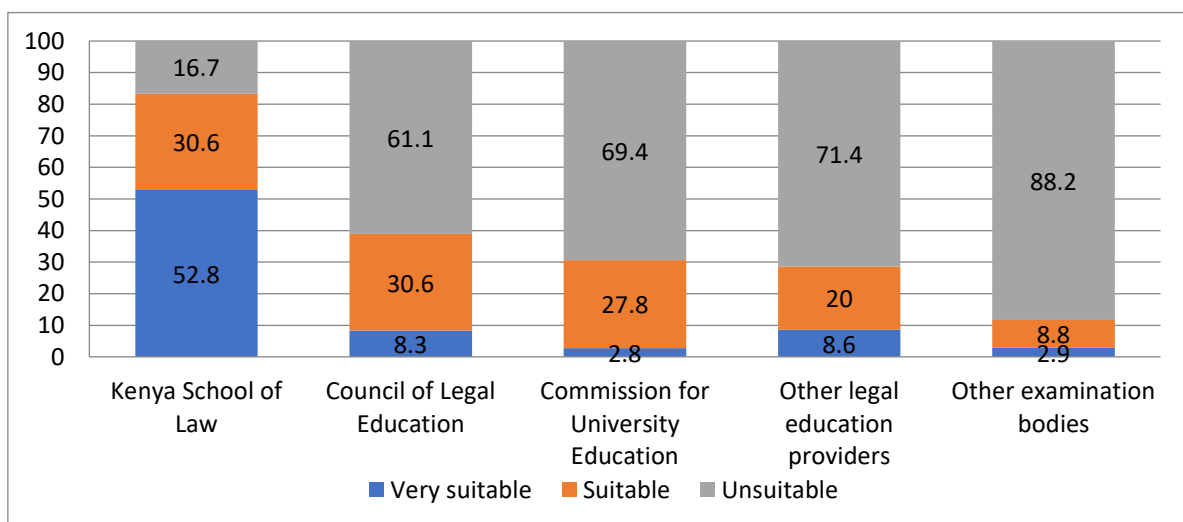
Table 11: Suitability to administer and assess orals

	Kenya School of Law			Council of Legal Education/ommission for University Education						Other legal education providers			Other examination bodies		
	Very suitable	Suitable	Unsuitable	Very suitable	Suitable	Unsuitable	Very suitable	Suitable	Unsuitable	Very suitable	Suitable	Unsuitable	Very suitable	Suitable	Unsuitable
Overall	39.5	42.1	18.4	8.1	29.7	62.2	5.4	21.6	73	8.3	33.3	58.3	5.9	17.7	76.5
Sex															
Male	35	50	15	0	35	65	5	25	70	10.5	36.8	52.6	11.1	27.8	61.1
Female	44.4	33.3	22.2	17.7	23.5	58.8	5.9	17.7	76.5	5.9	29.4	64.7	0	6.3	93.8
Age															
22- 25 years	35.7	57.1	7.1	7.1	21.4	71.4	7.1	28.6	64.3	7.7	30.8	61.5	8.3	16.7	75
26-30 years	42.9	33.3	23.8	5	35	60	0	15	85	10	35	55	5.3	20.1	73.7
30-45 years	50	50	0	0	50	50	0	50	50	0	50	50	0	0	100
Class															
First class	0	100	0	0	0	100	0	0	100	0	0	100	0	0	100
Second class upper	40	43.3	16.7	6.9	27.6	65.5	6.9	24.1	68.9	10.7	35.7	53.6	7.7	23.1	69.2
Second class lower	42.9	28.6	28.6	14.3	42.9	42.9	0	14.3	85.7	0	28.6	71.4	0	0	100
High school grade															
A - A-	38.5	42.3	19.2	4	32	64	8	20	72	12	32	56	8.3	12.5	79.2
B+ - B-	41.7	41.7	16.7	16.7	25	58.3	0	25	75	0	36.3	0	0	30	70

Source: Bar Examinations Survey (2019)

247. About 52.8 per cent of the former students agree that the Kenya School of Law is the most suitable to administer and assess the project work. 52.8 per cent agreed that Kenya School of Law was very suitable to administer and assess project work, compared to other legal education providers (8.6 per cent), Council of Legal Education (8.3 per cent), Commission for University Education (2.8 per cent), and other examination bodies (2.9 per cent) (Figure 7). However, there were mixed reactions based on gender, age, degree classification and high school grades of respondents. The analysis indicates that most females (56.3 per cent) compared to males (50.0 per cent) agreed that Kenya School of Law was the most suitable to administer and assess project work. Analysis by age groups shows that mostly those who aged 26–30 years (68.4 per cent) and those aged 30-45 years (50.0 per cent) agreed that Kenya School of Law is most suitable to administer and assess project work.

Figure 7: Suitability to administer and assess project work



Source: Bar Examinations Survey (2019)

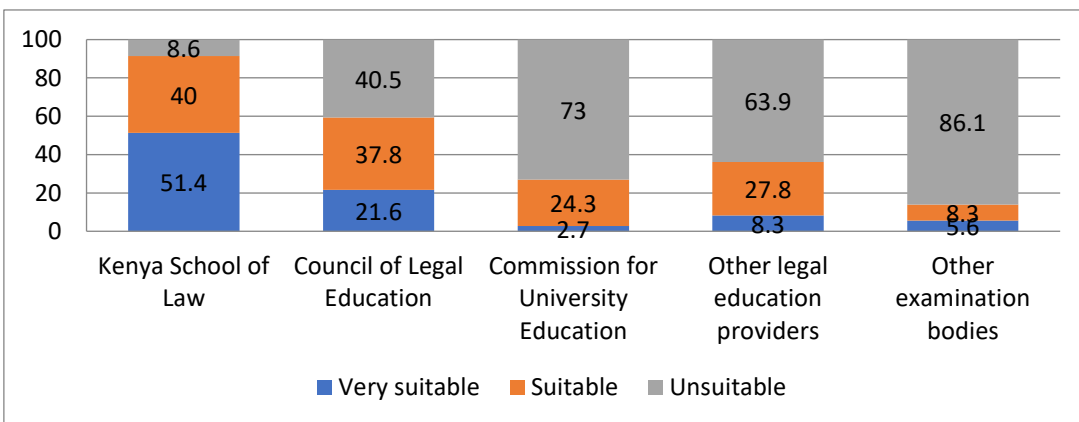
Table 12: Suitability to administer and assess project work

	Quality of Teaching			Lecturer support			Library facilities			Moot court facilities			Provision of reading			Relevance of course		
	Very well	Average	Poor	Very well	Average	Poor	Very well	Average	Poor	Very well	Average	Poor	Very well	Average	Poor	Very well	Average	Poor
Overall	2.6	52.6	44.7	5.3	71.1	23.7	10.5	65.8	23.7	18.4	71.1	10.5	21.1	55.3	23.7	16.2	64.9	18.9
Sex																		
Male	5	60	35	5	60	35	15	55	30	15	75	10	20	60	20	10.5	68.4	21.1
Female	0	44.4	55.6	5.6	15	11.1	5.6	77.8	16.7	22.2	66.7	11.1	22.2	50	27.8	22.2	61.1	16.7
Age																		
22- 25 years	0	28.6	71.4	7.1	78.6	14.3	14.3	71.4	14.3	14.3	71.4	14.3	28.6	57.1	14.3	15.4	76.9	7.7
26-30 years	4.8	66.7	28.6	4.8	61.9	33.3	9.5	57.1	33.3	23.8	71.4	4.8	14.3	52.4	33.3	14.3	57.1	28.6
30-45 years	0	100	0	0	70.3	24.3	0	100	0	0	50	50	0	100	0	0	100	0
Class																		
First class	0	0	100	0	100	0	0	100	0	0	100	0	0	100	0	0	100	0
Second class upper	3.3	55.3	43.3	3.3	66.7	30	13.3	63.3	23.3	20	66.7	13.3	26.7	50	23.3	10.3	65.5	24.1
Second class lower	0	57.1	42.9	14.3	85.7	0	0	71.4	28.6	14.3	85.7	0	0	71.4	28.6	42.9	57.1	0
High school grade																		
A - A-	3.9	50	46.2	3.9	73.1	23.1	7.7	69.2	23.1	15.38	73.1	11.5	26.9	53.9	19.2	12	68	20
B+ - B-	0	58.3	41.7	8.3	66.7	25	16.7	58.3	25	25	66.7	8.3	8.3	58.3	33.3	25	58.3	16.67

Source: Bar Examinations Survey (2019)

248. About 51.4 per cent of the former students agreed or strongly agreed that the Kenya School of Law is the most suitable to administer and assess the written bar examinations. 21.6 per cent agree that the Council of Legal Education is very suitable to administer and assess the written examinations followed by other legal education providers (8.3 per cent), other examination bodies (5.6 per cent) and Commission for University Education (2.7 per cent) (Figure 8). The analysis further indicates that most males (57.9 per cent) compared to females (43.8 per cent) strongly agree or agree that other examinations bodies are most suitable to administer and assess the written Bar examinations. Analysis by age groups shows that most of those who agreed that Kenya School of Law is most suitable to administer and assess the written Bar examinations were those aged 26–30 years (61.1 per cent), those aged 30–45 years (50.0 per cent) compared to those aged 22–25 years (42.9 per cent).

Figure 8: Suitability to administer and assess written Bar examinations



Source: Bar Examinations Survey (2019)

Table 13: Suitability to administer and assess written Bar examinations

	Kenya School of Law			Council of Legal Education			Commission for University Education			Other legal education			Other examination		
	Very suitable	Suitable	Unsuitable	Very suitable	Suitable	Unsuitable	Very suitable	Suitable	Unsuitable	Very suitable	Suitable	Unsuitable	Very suitable	Suitable	Unsuitable
Overall %	51.4	40	8.6	21.6	37.8	40.5	2.7	24.3	73	8.3	27.8	63.9	5.6	8.3	86.1
Sex															
Male	57.9	31.6	10.5	10	45	45	0	25	75	5.3	26.3	68.4	5.3	10.5	84.5
Female	43.8	50	6.3	35.3	29.4	35.3	5.9	23.5	70.6	11.8	29.4	58.8	5.9	5.9	88.2
Age															
22- 25 years	42.9	50	7.1	21.4	21.4	57.2	7.1	21.4	71.4	7.7	23.1	69.2	7.7	15.4	76.9
26-30 years	61.1	33.3	5.6	25	40	35	0	20	80	10	25	65	5	5	90
30-45 years	50	50	0	0	100	0	0	50	50	0	50	50	0	0	100
Class															
First class	0	100	0	0	0	100	0	0	100	0	0	100	0	0	100
Second class upper	44.8	44.8	10.3	20.7	34.5	44.8	3.5	24.1	72.4	10.7	28.6	60.7	7.1	10.7	82.1
Second class lower	100	0	0	28.6	57.1	14.3	0	28.6	71.4	0	28.6	71.4	0	0	100
High school grade															
A - A-	48	40	12	16	44	40	0	32	68	8	36	56	4	12	84
B+ - B-	60	40	0	33.3	25	41.7	8.3	8.3	83.3	9.1	9.1	81.8	9.1	0	90.9

Source: Bar Examinations Survey (2019)

249. Most former students agree or strongly agree that training (75.0 per cent), overall examination function (48.7 per cent), orals (67.6 per cent), project work (69.4 per cent) and written Bar examinations (59.5 per cent) should be conducted by the Kenya School of Law. Most former students agree or strongly agree that regulation and supervision of ATP should be conducted by the Council of Legal Education. This points to overall consensus that training and examination should be carried out by one institution, specifically the Kenya School of Law, complemented by strong regulation of the ATP by the Council of Legal Education. There is a wider agreement that KSL should be given the task of administering the examination function including orals, project work and the written exam since they are in a good position to know to what extent the syllabus has been covered and are familiar with the curriculum and content covered. There is therefore a nexus between what is taught and what is examined.

250. Only a small number of former students (2.7 per cent) agree that other legal education providers should offer the training and examination function of the ATP, respectively. This also points to disagreement among former students to have other legal education providers undertaking the training or examination functions of the ATP.

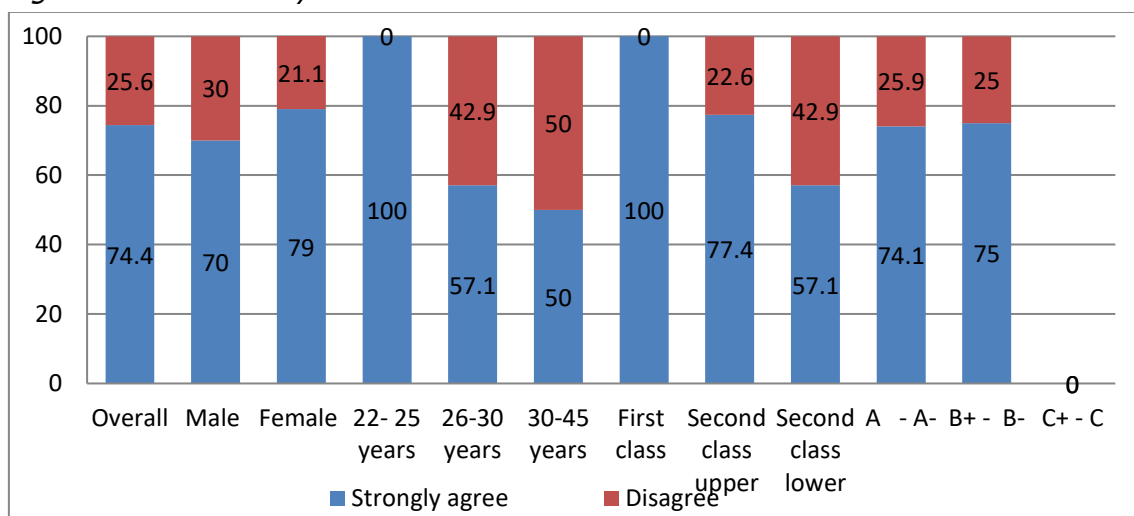
251. Most former students (75.6 per cent) strongly agree that a weak relationship between KSL and CLE influences low pass rate in Bar examinations. Further, most former students (75.7 per cent) strongly agree that overlaps in functions of KSL and CLE influence low pass rate in Bar examinations.

252. An estimated 76.3 per cent of former students strongly disagree that the examinations set are consistent with the material that is taught and 65.8 per

cent of former students similarly strongly disagree that the examinations set are consistent with course curriculum. The survey findings highlighted challenges in exam performance which were linked to inconsistencies between the written examination and content taught, and the written examination and course curriculum.

253. Further, 86.8 per cent of former students strongly agree that inconsistency between the examinations and content taught is a main factor that has a detrimental effect on students' performance in the Bar Examinations. KSL and CLE should have unison in terms of syllabus content and examinations.

Figure 9: Inconsistency between examinations and course curriculum



Source: Bar Examinations Survey (2019)

254. As shown in the graph above, most former students (74.4 per cent) (Figure 9) who have undergone the Kenya School of Law Advocates' Training Programme strongly felt that inconsistencies between the examinations and the course curriculum significantly affects student pass rates. Moreover, these sentiments were more pronounced among younger students and students with strong academic track records at undergraduate level.

255. It was estimated that 71.8 per cent of former students strongly agree that inadequate time allocation during the written examinations is a main factor influencing poor performance. Further, regarding the examinations, 56.4 per cent strongly agree that inadequate spacing and intervals in between written examinations are main factors influencing poor student performance. Former students reported that exam questions are sometimes demanding on time and too many questions are tested in a shorter time frame. Former students reported that the examinations set by CLE have a larger number of questions being tested within a shorter time frame. This points to the need to recalibrate the examination model and exploration of other examination models which afford

students a fair process. There is also need to revisit the process of setting the examinations. Stakeholders reported that examinations days are not spread out to give students enough time for revision as one is required to sit for a paper daily. Nonetheless, cognizance is made of the fact that CLE is required to hire external venues for the written examinations and increasing the intervals between examinations may have implications on the cost of hiring the venue to cater for additional days. This may consequently also have an implication on the examination fee which is charged by CLE. CLE should reduce the number of questions tested or increase the time allocated for questions.

256. One of the findings is that the written exam is administered by CLE but it emanates from the curriculum developed and delivered by KSL. Therefore, in case the curriculum is not completed on time there is a possibility of students encountering questions that were not covered in class. Further, the examination questions set are sometimes not based on the course outline and are not based on what had been taught in class. Of concern was the unpredictable structure of the examinations (for example, changes in number of questions set and number of compulsory questions compared to previous years). These challenges could be as result of exclusion of lecturers by CLE from the examination process and insufficient consultation between CLE and KSL on the scope of coverage of the course outline. Further, it was reported that CLE sets the exam timetable in July, which is considered too early in the school calendar and does not afford them the opportunity to consult lecturers on status of implementation of the curriculum at the end of the year prior to students sitting the examinations. Periodic evaluations could be carried out to assess the status of implementation of the syllabus.

257. It was observed that the exam was not piloted by the examiners to find out how much time is required to complete the examinations, and therefore students found that the time allocation was inadequate. In this regard, former students remarked that the time required to answer the questions is, at times, inadequate especially for papers that require significant drafting. The institutions setting the exam would need to consider time allocations for questions and perhaps pilot the examinations to assess if it is practical to answer the required number of questions within the timeframe. Similarly, former students complained of the exam timetable being heavy since there were no breaks or intervals in between the examination days to give them enough time for revision as one is supposed to sit for a paper daily for nine days consecutively.

258. Further, 63.6 per cent of former students strongly agree that existence of a scoring rubric is critical in influencing high performance in Bar examinations.

259. An estimated 87.2 per cent of former students strongly agree that lack of understanding of examiners' expectations is one of the main factors influencing poor performance by students in Bar examinations. This is further supported by 84.6 per cent of former students who strongly agree that lack of clarity on exam expectations influences poor performance in Bar examinations.

260. Most (64.7 per cent) of former students agree that provision of marking schemes is critical in influencing high performance. While it was reported by 53.1 per cent of former students that past papers are useful, this ought to be complemented by provision of marking schemes. Former students reported that past exam papers are available but with no accompanying marking schemes and students are not aware of the marking criteria, besides the total number of marks to be allocated. It is expected that while students should be reading over and above what is taught in class, there is need to ensure a fair process and providing students with necessary material and ensuring that they understand the examiners' expectations and what the examiners are looking for. The marking criterion should be shared with the students.

261. Attendant to this, most former students (94.7 per cent) reported that unclear criteria adopted in remarks and resits was a main factor influencing poor performance. Students who are resitting the exam are not aware of where they went wrong in the first sitting and what they should do differently to pass in their next attempt.

262. Most former students (79.5 per cent) strongly agree that the broad scope of questions for oral examinations is a main factor influencing poor student performance. Stakeholders reported that oral examinations are not well-structured since students are asked significantly disparate questions and this has a great impact on the final grade. Similarly, there are no guidelines for oral examinations and the scope of questions asked is wide and at times fall outside the scope of the content in the ATP and even outside the scope of topics in law, which is disadvantageous to the students. Questions posed during the oral examinations should be limited to what is taught in KSL.

263. Currently, the tuition fees are paid to KSL amounting to Ksh. 145,000 while the examination fees are paid to CLE and amount to Ksh. 45,000 to cater for all examinations. Further, the fees for remarking and resitting of examinations are paid to CLE at Ksh. 15,000 and Ksh. 10,000 respectively for each affected paper. In this respect, the study found that students do not receive a refund even where they are successful after a remark. It is recommended that where students request for remark of their papers and pass, they ought to receive a refund. Notwithstanding the above, it should be noted that there is no automatic right

to pass in education where an examiner is satisfied according to the marking scheme that a candidate has not met the threshold for passing. However, what is crucial is ensuring a fair, credible, objective and transparent process.

4.2.4 Other Factors

264. Low Bar pass rates can also be attributed to adverse structural barriers and systemic factors, detrimental personal attributes among students and constraints in administrative resources. While the interviews undertaken typically focused on assessing established influences on student performance as drawn from key literature, the study nevertheless sought to accommodate emergent or unforeseen themes identified by the informants as key causes and contributors to current law school Bar pass rates in Kenya.

Students personal attributes:

265. Cognizant that the education is as much a factor for production as it is for consumption, the study also peered into the influence of individual student traits on student performance in the law school Bar examinations. In this regard, the study found that student exhibited observable personal characteristics that either risked impeding or stood to promote individual success on the Kenya School of Law Advocates' Training Programme; traits which were identified as lacking adequate organization skills and lacking exam-taking technique which are key to passing the Advocates' Training Programme. Still others suffered from a defeatist psychological mindset, based on pre-established perceptions of the experience at KSL. In addition, it is important to note that at undergraduate level, students are provided with opportunities to take re-sits.

266. Conversely, respondents signaled that better performing students displayed distinctly different characteristics from those indicated above such as demonstrating personal drive, as well as a proclivity for learning, consultation and upholding sound professionalism and decorum.

267. Former students who passed all of their 9 examinations at the first-sitting attributed their success to strong personal motivation and having the right attitude and discipline towards studies at KSL. This includes maximizing on marks from project work and the oral examinations, reading the assigned readings and diligently reviewing class work after teaching hours.

268. On the other side, a number of the lecturers lamented that some of the students did not put in more effort in their studies, and they tended to miss classes and assignments. This was also witnessed by pupil masters who claimed that some pupils lacked seriousness in their task; they could not conduct

themselves professionally by reporting late to work and failing to perform tasks as per the requirements.

269. Employers, pupil masters and recruitment officials noted that the background of the student matters and influences performance in the Bar examinations and in the workplace. Factors identified included the high school and the university that the student attended whereby private schools teach better in terms of English and writing skills. Similarly, private universities have better resources, facilities and student-lecturer ratio compared to public universities.

270. Over the past 15 years, the quality of pupils has been deteriorating, a number of respondents remarked. Employers reported that they are required to invest heavily a significant amount of time and resources in training and retraining pupils as they are not adequately trained at the commencement of pupillage. They are required to make significant revisions to pupils' work due to grave grammatical errors and poor quality of writing and English language skills. Recurrent issues reported by employers were poor English writing and grammar skills, lack of professional etiquette, and disregard for punctuality and observing reporting times among pupils which are areas the ATP ought to place more emphasis on.

271. Employers reported that there were both extremes in the quality of the pupils. Some are very good and some are very poor. When asked whether the legal education system (including the LL.B and ATP) was preparing graduates for practice, employers and pupil supervisors expressed dissatisfaction with the quality of outputs of the system, which are the pupils they receive as some of the first points of contact. Recurrent issues were lack of initiative and pro-activeness, professionalism, unwillingness to learn, unwillingness to engage and lack of decorum. In light of this, there is need for mentorship to be instilled from LL.B and in the Advocates Training Programme. This can be achieved by embracing mentorship programmes and fostering partnerships with esteemed Advocates of high repute.

272. Some students study law due to pressure from their parents. This was different from seeing law as a calling. Further, placement of students by KUCCPS and JAB had led to students being placed to pursue law when they may not have wanted to do law.

273. It was admitted that KSL receives the products of the universities. Students who started law school with low grades will either immensely struggle to complete their law degree and if they do eventually complete, albeit with very

poor grades, they may equally struggle to pass the Bar examinations. It was posited by other respondents that the same students who were struggling in university continue struggling in KSL. The university also requires students also resit failed papers. Some students in university can fail up to 9 out of 12 units in a year; however, they eventually complete the programme by repeating and resitting the examinations until they eventually qualify for the degree and proceed to KSL. Universities have internal policies on resits and failures to ensure self-regulation and failing in university or any education system is not unusual. Universities have internal self-regulation systems and controls and are at liberty to discontinue a student who is repeatedly failing and unable to demonstrate ability to complete the LL. B programme.

Structural disadvantages:

274. Besides challenges at the individual level, the interviews highlighted plausible causes and contributors to the low law school Bar pass rates in Kenya in recent years, occurring at deeper levels of society. This includes Persons with Disabilities. It may be beneficial to explore various modes of content delivery as being a factor which may affect the absorption of legal course content. In this regard and contrary to the 2013 Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, law teaching in Kenya is not adequately disability-sensitive, by seeking to optimize learning conditions for law students facing disabilities, as well as addressing structural and invisible barriers to participation such as the costs of learning equipment for disabled students which need to subsidize and at a minimum, may include enabled laptops and screen-readers – placing a higher economic barrier to participation on them than students without disabilities may face.

275. Class attendance is an influencing factor in performance of students. As part of observations, students' class attendance dwindles throughout the year and student attendance is a significant problem. Students who either neglect or fail to attend classes are affected by lack of understanding of concepts explained in class. Lecturers who supervise orals draw on the material taught in class which leads to information gaps and lapses in critical information which may be examined. Student attendance and failing to attend the training is a contributing factor and is likely to result in their failure in the Bar examinations. A biometric system can be used to enforce class attendance as opposed to signing, given that students frequently sign for their friends and classmates.

276. In spite of the above, it should be recognized that some students fail to attend classes when they have to work to raise sufficient funds for the

programme. Student Bar pass rates may also be affected by the cost of legal training, especially among students who owing to challenging economic strains are compelled to pursue legal training while undertaking employment or attending to other personal commitments. This is particularly the case for students who previously relied on and had access to the Higher Education Loans Board (HELB) scheme to finance their undergraduate studies. Students struggle to meet their basic expenses hence distracting them from their core objective to learn. There may be benefits to reducing the financial burden of the programme through loan assistance programmes.

277. Local students were at an advantage when taking Bar examinations compared to foreign-trained law students. Students trained in non-Commonwealth universities were at greatest disadvantage due to, among other things, the phrasing of the examinations and disparate legal systems. The international students need to be critically relooked at and the system of integrating them to the legal system and profession needs to be reviewed to ensure they can comprehend local laws. KSL should consider the needs of foreign students who may not be conversant with the system, language complexities and cultural norms over which local students may have an advantage.

Assessing the Industry's and Law School's Philosophy:

278. There is a critical misalignment of motivations among stakeholders within the legal sector, respondents say. A critical factor associated with the outcomes of these legal developments concerns both the *ab initio* and evolving aspirations, achievements and philosophies of Kenya's legal sector. Concerning the causes of and contributors to low pass rates at the Bar examinations in Kenya, one interviewee cited an adverse shift in the aims and aspirations of the industry. Alluding to a critical misalignment of motivations among stakeholders within the legal sector, is that some students are pressured to pursue a legal education and did not do so by personal choice. Conversely, students who view law as a vocation may have greater drive to succeed in legal education and practice.

279. It follows that a major philosophical concern in respect of legal education is the existence of an inordinate emphasis on strengthening the sector by increasing the quantity of lawyers, and not a strategic focus on quality. It is this supposed over-emphasis on the number of lawyers receiving training, that has precipitated an ongoing and anticipated decline in quality across the legal sector.

280. According to some interviewees, the extent of failure at the Bar examinations is as much a matter of perception, as it is reality. Proponents of this position pointed to the true object of Bar examinations as serving as a critical

filter to distinguish between students and skilled practitioners of the law. This opposes the prevailing philosophy that law school Bar examinations simply represent a superficial 'rite of passage' in one's natural progression from professional legal education to professional practice.

281. Still the study established a philosophical conundrum around the appropriate communication and reporting of examination statistics. At present, law school Bar examinations rates are determined on the basis of a student's capacity to pass neither some nor most, but all of the units taught on the Advocates Training Programme. Further, the examination reports include students who did not register for specific examinations and also includes students who registered for the ATP in a prior year. It follows that the current reports on failure rates may grossly understate the true performance of students on the law school Bar examinations, at the level of each unit. When reported in this manner, Kenya's law school Bar pass rates suggest a major challenge in first-time, across-the-board pass rates there may be incorrect 'framing' or communication of the overall examination outcomes. Further, such statistics ought to discount those who elected not to sit for specific examinations.

282. Stakeholders within the legal sector hold disparate, and in some cases, antagonistic conceptions of the objectives of legal training. Ideally, a practicing lawyer's job is to know where to get the law. Yet, former students reported that they are cramming information rather than seeking to understand the law. This position supports the view that students were not adequately being equipped to undertake the actual work of legal research, practice and advocacy, as much as they are being prepared to become better academic consumers of legal content and discourses.

Systemic or cultural factors:

283. Interviewees pointed to the fact that the extent of failures in the law school Bar examinations may still be attributed to existing systemic or cultural factors. Other counterproductive factors affecting student Bar exam performance may include negative social trends, negative cultures and lack of societal values such as examination cheating facilitated by various kinds of favour and quid pro quos.

Internal Controls:

284. There were concerns that there may be weak internal controls and that CLE engages examiners from some private universities therefore creating a conflict of interest. It was felt that this places students from such universities at a more advantageous position. Nonetheless, CLE has established strong internal quality controls and processes to ensure objectivity, credibility and integrity of the examination process.

5 Lessons Learned from Case Studies on the Conduct and Structure of Bar Examinations in Various Jurisdictions

285. This section focuses on bench-marking on Global Programme Administration Standards from various jurisdictions. The countries were selected based on the structure of the legal system, credibility of the Bar examinations and countries who have recorded comparatively higher pass rates in the Bar examinations.

5.1 South Africa

286. South Africa is a useful comparator country for purposes of this study as its system for legal education and the Bar examination is not too dissimilar from that of Kenya. However, there are salient distinctions which may provide key insights for consideration. The legal education system of South Africa may resonate with the Kenyan case due to similarities in their structure.

5.1.1 Lesson 1: Structure of Examinations: Pupillage as a Pre-requisite to Bar Examinations

287. In South Africa, the LL.B degree is essentially a four-year undergraduate programme.²⁹ 1 year of practical training is required after the LL.B degree and consists of a practical course during the first half and followed by Bar examinations and advocacy training skills towards the end. A person who wants to practice as a lawyer, either as an attorney or an advocate, must undergo one year of vocational training before being permitted to practice as an independent professional lawyer. Professional training to become an advocate is provided by the constituent 'Societies of Advocates' of the General Council of the Bar of South Africa (GCB). Pupillage, beginning on 15 January and ending 31 December, including an examination is a prerequisite to qualify to be admitted to the Roll of Advocates. During pupillage, a pupil advocate will be paired with an experienced advocate to see firsthand how real work is carried out in chambers and in the courts. Pupillage is a learning experience and is unpaid. Pupillage consists of practical court craft, legal document drafting skills and procedural law.

288. South Africa has nine Practical Legal Training Schools (PLTS) approved by the provincial law societies.³⁰ They supplement an LL.B graduate's training with a required five-week practical training course before clerkship. If a law graduate

²⁹ David McQuoid-Mason, *The New Four Year Undergraduate LL.B. Programme in South Africa: On-Going Challenges*, <https://olt.qut.edu.au/law/clea/gen/static/news/sp99/LL.B.htm> (last visited 29th March 2013).

³⁰ Golub S., *Battling Apartheid, Building a New South Africa*, in *Many Roads to Justice: The law-related work of ford foundation grantees around the world* (Mary McClymont and Stephen Golub eds., 2000).

undertakes an additional five months training at a PLTS, he or she “need only serve one year of articles [of clerkship], instead of two.” Articles of clerkship might be undertaken at private law firms, university law clinics, justice centers run by the Legal Aid Board, or public interest law firms, such as the Legal Resources Center. After the clerkship, the law graduate must pass the attorney’s admission examination to apply for admission as an attorney.³¹

289. During the 1970s the South African Bars introduced a system of pupillage in addition to the Bar examination in an endeavor to ensure that persons entering the profession were competent. After the Pretoria Bar School had, in 1978, introduced its own Bar Examination, in 1980 the GCB created the National Bar Examination Board (the NBEB) to set and conduct a system of examinations for pupils with the object of testing whether or not they were ready to enter practice after completion of their pupillage.

290. This improvement in the pass rate has been attributed to improvements in the pupillage system and in the training in advocacy which is now provided, at no extra cost, to pupils by the law society; and secondly, the greater selectivity employed by the larger law societies in admitting applicants to pupillage. There is, by this reason a circular connection and a hypothetical "chicken and egg" question, between the Bar examination and the vocational training/pupillage which employs on-the-job training method.

5.1.2 Lesson 2: Institutional Structure: Separation of Training, Regulatory and Examining Bodies

291. The institutional structure for the South African Bar Examinations is tripartite in nature with three distinct and separate institutions conducting training, regulation and examinations. Whilst the NBEB reports and is accountable to its parent body, the GCB, it is autonomous in as much as the decisions which it takes in all matters regarding the syllabus, standards and conduct of the Bar examinations and who does and who does not pass them, are taken by it free from any undue influence, interference or instruction from the GCB or from another person or body.

292. The NBEB is made up of two categories of members, all of whom are appointed by the GCB. The first category consists of:

(a) a national convener, at present a senior member of the Durban Bar;

³¹ Golub S., *Battling Apartheid, Building a New South Africa*, in *Many Roads to Justice: The law-related work of ford foundation grantees around the world* (Mary McClymont and Stephen Golub eds., 2000).

(b) a national pupillage coordinator, who is at present a member of the Cape Bar;

(c) five regional or provincial conveners, all members of the Bar, of whom four each represent the interests of one of the four major Bars which are examination centres, viz Johannesburg, Pretoria, Cape Town and Durban, whilst the fifth represents the interests of all the remaining smaller South African Bars;

(d) a chief examiner, at present a senior member of the Johannesburg Bar, who represents the examiners generally;

(e) seven moderators, all of whom are Judges or retired Judges of the Supreme Court of Appeal (the SCA) or of the High Court of South Africa. At present one of the moderators is the President of the SCA, one is a serving judge of appeal in the SCA, one is the serving Deputy Judge-President of a provincial division, one is a retired Deputy Judge-President, one is a retired judge of the High Court and the remaining two are serving judges of the High Court.

293. Both the President and the serving judge of the SCA were appointed whilst they were judges of provincial divisions. All judges have been drawn from various divisions of the High Court so that they can bring to the NBEB their knowledge and experience of those various divisions. Some of the board's members have served on it for many years. This is conducive to continuity. Others have been appointed more recently and have imported new ideas and approaches. The national pupillage coordinator attends the meetings of the NBEB and liaises with the board to ensure harmony between the board's decisions and the national pupillage programme. The second category of members of the NBEB consists of the various examiners, all members of constituent Bars, who set the question papers in the various subjects on which candidates are examined and mark the candidates' answer scripts. There are two or more examiners for each subject. Some of them are senior counsel, others are juniors of senior or middle junior status, all drawn from the Pretoria and Johannesburg Bars.

294. The NBEB is, in essence, an examining body. While it liaises regularly and generally with the Bar regarding the training of pupils and their preparation for the Bar examinations, and to this end holds meetings from time to time with those involved in teaching and training the board preserves its proper distance from preparation for the examination and advocacy training: thus, no examiner or judge-moderator may participate in the training or lecturing programme, nor may any examiner examine any candidate who is or has been his pupil.³²

³² <https://www.sabar.co.za/law-journals/2014/april/2014-april-vol027-no1-pp08-11.pdf>.

5.1.3 Professional Qualifications

295. The legal profession is divided into two branches, attorneys (solicitors) and advocates (barristers). An attorney is the person with whom to make first contact when seeking legal advice, or if you have a legal problem. Attorneys handle a large variety of affairs for individuals and companies. Attorneys can now also apply to have a right of appearance in the High Court. The advocates' profession in South Africa is a referral profession. This means that a client approaches an attorney who, in turn, instructs an advocate.

296. To be admitted as attorneys, prospective attorneys must complete articles of clerkship, must be fit and proper, must complete a law course and must be South African citizens or permanent residents. To qualify, prospective attorneys must:

- (i) Work at a law firm under the guidance of a practicing attorney.
- (ii) Complete a Practical Legal Training (PLT) course.
- (iii) Complete specified board examinations.

297. A prospective attorney can complete articles of clerkship in two years by taking the PLT course part-time while working at a law firm, or in one and a half years by taking the PLT course full-time in six months, and then working in a law firm for one year. A prospective attorney who has completed the PLT and their examinations can apply to the court for admission as an attorney.

298. Advocates have expertise in various areas, especially in the presentation of cases in court. They are not permitted to accept instructions from the public but can only accept briefs from attorneys. Advocates are experts in the presentation and argument of cases in court, and also give legal advice and assist with the drafting of legal documents. Advocates must practice as sole practitioners. A prospective advocate who wants to be part of the Bar must also undertake pupillage of one year.

5.2 East Africa

299. Tanzania's legal curriculum is closely coined to the Kenyan one especially in terms of the course content design and procedure of delivery. This practice is similar to the one in Uganda which is offered in a two-tier manner beginning with under graduate and post graduate diploma.

300. In Tanzania, any person who wishes to practice law in Tanzania must be a law graduate with Bachelor of Laws degree or equivalent qualifications

recognized by the Council for Legal Education in Tanzania. Procedures for admission demand the law graduate to possess a post-graduate diploma in legal practice which is offered by the Law School of Tanzania.

301. Presently the law school of Tanzania offers one-year practical legal training programme, which is compulsory for any law graduate aspiring to be enrolled as an advocate of the High court of Tanzania. This programme is divided into two semesters. The first semester covers classroom instructions for up to twelve weeks while the second semester involves a period of clinical law (field placement) followed by written and oral examinations. Successful candidates are awarded the Post graduate diploma in legal practice and can proceed to apply to become Advocates. In South Africa and Tanzania, the clinical/vocational training (pupillage) is conducted prior to undertaking the examinations. Although the Bar examinations in Tanzania are relatively new, with the Law School of Tanzania having been established in 2007 under the Law School of Tanzania Act, 2007 its students' performance in the Bar examination has improved over the years.

5.3 The United Kingdom (England, Wales and Ireland)

302. In England, Wales and Northern Ireland, the common law system is applied. All lawyers must possess a law degree or must have completed a conversion course. A qualifying law degree in England and Wales consists of seven modules drawn from Public Law (constitutional and administrative law), European Union Law, Procedural Law (law of evidence), Criminal Law, Law of Obligations (contracts, tort and restitution), Property Law (real property) and the Law of Trusts and Equity.

303. Prospective solicitors must enrol with the Law Society of England and Wales as a student member and take a one-year course called the Legal Practice Course usually followed by two years apprenticeship called Training Contract. Prospective barristers on the other hand must apply to join one of the four inns of court then complete the one year Bar Professional Training Course followed by a year's training in a set of Barristers' Chambers called Pupillage. The four inns of court is a collective term for four institutions that include: the Middle Inn, Inner Inn, Lincoln's Inn and Gray's Inn.

304. Scotland's legal education bears significant difference from that of England, Wales and Northern Ireland. When the kingdoms of England and Scotland merged to form the Kingdom of Great Britain, the terms of the Treaty of Union guaranteed that Scotland's legal system would continue separate from that of England and Wales. Scots law is founded upon Roman or civil law although

today it has evolved into a pluralistic system using both civil and common law. Lawyers are divided into solicitors and advocates.

305. Solicitors are members of the Law Society of Scotland. They can only practice in the lower courts of Scotland. Advocates are members of the Faculty of Advocates and are allowed to appear in the superior High Court of Justifier and Court of Session. Membership of either but only one can be attained by sitting for that body's professional examinations or by obtaining exemption through the award of a qualifying law degree and successful completion of the Diploma In Legal Practice.

306. Diploma In Legal Practice trains students on the practical elements of becoming a lawyer in Scotland. It consists of a broad range of compulsory modules. To become a solicitor, one needs to have a two-year traineeship with a law firm. To become an advocate, students need to undertake a training of 21 months with a solicitor before a further nine-month unpaid traineeship with an experienced advocate known as devilling. Scottish solicitors and advocates are entitled to practice elsewhere in the European Union so long as they satisfy the requirements.

307. Comparing the legal education in the United Kingdom and in Kenya, several similarities and differences can be noted. For instance, in both jurisdictions, for a person to qualify to be a lawyer, one needs to have a qualifying law degree. Secondly, both jurisdictions have Law Societies. In England and Wales, there is the Law Society of England and Wales, in Scotland there is the Law Society of Scotland and in Kenya there is the Law Society of Kenya.

308. Thirdly, in both jurisdictions, the qualifying law degree course takes a period of three to four years to be acquired. A similarity in the courses studied can also be observed for example Law of Torts, Law of Contracts, Criminal Law, Procedural Law among others. Fourthly, the existence of apprenticeship programs in both jurisdictions is also noted. In Kenya, England and Wales, there is the pupillage training while in Scotland there is the devilling traineeship.

309. Fifthly, in both Kenya and Scotland, a hybrid of both common law and civil law is used. Though initially Scots law was founded upon Roman or civil law, it has evolved into a pluralistic system using both civil and common law. Sixthly, in both jurisdictions, after graduation, post graduate courses are offered for one to decide on his area of specialization. One could decide to be a barrister, solicitor or advocate.

310. Several differences also exist. Firstly, in England there is the existence of the four inns of court which do not exist in Kenya. Secondly, in England, lawyers are divided into solicitors and barristers, in Scotland they are divided into solicitors and advocates while in Kenya we have lawyers and advocates. To add on this, in the United Kingdom, there are conversion courses which one can undertake to become a lawyer while in Kenya there are no conversion courses. This is well brought out in the case of *Muamar Onyango Khun v CLE and 2 others (2014) eKLR*. The petitioner received a BA degree in Politics and Law from the University of Bradford UK. He was then awarded a Master of Laws degree by the University of London. He then applied to the second respondent (Kenya School of Law) for admission into the Advocates’ Training Program. This was rejected by the Kenya School of Law on the grounds that he was not a holder of a Bachelor of Laws Degree.

311. The UK also permits a number of centres to offer the training and it is not a centralized institution that offers the training which is distinct from the Kenyan situation whereby it is currently the Kenya School of Law offering the training program.

5.4 New Zealand

312. New Zealand adopts the common law legal system and also adopts a two-tier legal education system. For these reasons its system for administration of the Bar examinations would be useful for comparison purposes. There are various types of law degrees available in New Zealand whereby one may opt to undertake a Bachelor of Laws (LL.B) or may undertake conjoint or double degrees for example Commerce and Law; Business and Law; Economics and Law and other variations. It is intended that the university law course provides the foundation of knowledge to understand the discipline whereas where a graduate seeks to practice law, they must undertake the Professional Legal Studies Course which prepares graduate lawyers for admission to practice. Applicants to the course must have completed a New Zealand Law Degree or have completed a Law Degree internationally recognized and assessed by the New Zealand Council of Legal Education. Upon successful completion, one may apply to be admitted as a barrister or solicitor of the High Court of New Zealand. The Professional Legal Studies Course comprises mandatory and elective subjects as presented in table below.

Table 14: New Zealand Professional Legal Studies Course Content

Mandatory Practice Areas	- Core	Mandatory - Professional Areas	Elective Practice Areas
Civil Litigation		Lawyers’ Skills	In House Practice

Commercial Practice	Interviewing Advising	and	Criminal Practice
Property Practice	Negotiation Mediation	and	Corporate Practice
	Advocacy		

Source: College of Law New Zealand

313. The courses are divided into core areas and professional areas with a distinction drawn between the two areas. Core Practice Areas and Professional Areas are compulsory for all courses. However, students select their Elective Practice Area based on their individual professional interest.

314. In terms of course content and structure, students need to complete seven subjects. Three units are undertaken as on-site interactive workshops including Interviewing and Advising, Negotiation and Mediation and Advocacy.³³ As part of the Council of Legal Education requirements for task-based learning, the programme must provide interactions through which students develop knowledge and skills in:³⁴

- (i) Fact analysis and investigation;
- (ii) Practical legal research and analysis;
- (iii) Problem-solving;
- (iv) Writing;
- (v) Drafting;
- (vi) Office/personal management;
- (vii) Professional conduct; and
- (viii) Knowledge of substantive and procedural law relevant to core and elective practice areas.

315. The Institute for Professional Legal Studies (IPLS) focuses its teaching approach on "learning by doing".³⁵ During the course, trainees are equipped with the actual skills necessary for legal practice, rather than a mere knowledge of those skills; that is, they learn how to do (by practicing doing), as well as what to do. For example, rather than being taught about interviewing techniques and

³³ <https://www.collaw.ac.nz/learnwithus/our-programmes/professional-legal-studies-course/programme-overview>.

³⁴ <https://www.collaw.ac.nz/learnwithus/our-programmes/professional-legal-studies-course/programme-overview>.

³⁵ <https://www.ipls.org.nz/course-information/ipls-teaching-approach/>.

assessed on their knowledge of the interviewing process, trainees are coached in practicing interviewing techniques and are assessed on their conduct in an interview.³⁶ Similarly, rather than being asked to outline the components of a defended hearing in a criminal matter, trainees will first be coached and then assessed, on their conduct in a defended hearing – involving the delivery of an opening address, conduct of examination-in-chief and cross-examination and the delivery of a closing address.³⁷

316. The duration of the IPLS is 13 – 18 weeks comprised of either onsite or online courses. The full-time onsite course lasts 13 weeks and runs from February to April. IPLS focuses on building skills and competencies for barristers and solicitors through use of transactions. The skills taught either touch on, or work through, a range of transactions commonly met by newly admitted lawyers in their first three years of practice.³⁸

317. Its focus is the development of transferable skills, rather than transactional knowledge. IPLS training teaches the underlying and fundamental skills that lawyers use, singularly or combined, to enable them to perform the specific transactions required in practice.

318. Skills-based training does not focus on the sequential and procedural steps of carrying out transactions but provides opportunities for lawyers to practice the skills by applying them to a range of transactions representative of the work they will be doing. Skills are enduring, whereas transactions are finite and ever changing. During the course, trainees undertake a range of exercises and activities to develop their skills in general practice, litigation practice and professional responsibility.

319. On graduation, trainees have generic transferable skills and some transactional contextualizing for those skills. After which they are considered ready for supervised training in client transactions and should be able to apply the skills learnt on the IPLS course to transactions they are asked to perform in the course of their employment.

320. The Council of Legal Education in New Zealand plays regulatory and supervisory roles however it administers and conducts examinations for foreign qualified lawyers. It ensures the quality and provision of education and practical legal training. The general function of the New Zealand Council of Legal Education include: defining and prescribing courses of study for the examination and

³⁶ <https://www.ipls.org.nz/course-information/ipls-teaching-approach/>.

³⁷ <https://www.ipls.org.nz/course-information/ipls-teaching-approach/>.

³⁸ <https://www.ipls.org.nz/course-information/ipls-teaching-approach/>.

practical legal training of persons wishing to be admitted as barristers and solicitors in New Zealand; arranging for the provision of those courses of study; arranging for the moderation and assessment of those courses of study; delivery of practical legal training; assessment of qualifications particularly those of overseas law graduates and legal practitioners wishing to practise in New Zealand; administering and conducting certain examinations required to be taken by some overseas and other applicants.

5.5 The United States of America

321. The section below highlights key parameters relevant to the admission of students at leading global-renown Law Schools. In particular, reference is made to programme administration practices at leading schools in the United States, arising from the fact that akin to the Kenya School of Law:

- (i) Students are required to sit for and pass the LSAT examinations prior to admission to law school.
- (ii) Law is a second degree and can only be pursued after one has completed a prior degree.
- (iii) Law Schools in the United States are professional (and not academic) law schools;
- (iv) Passing of Bar examinations is widely accepted as the terminal stage of professional legal education at US Law Schools;
- (v) Law Schools in the United States are required to disclose their administrative practices in observance of Standard 509 of the *American Bar Association's Standards and Rules of Procedure for Approval of Law Schools (2018-2019)*; and
- (vi) Select US Law Schools would serve as appropriate comparators in this study, owing to their graduates consistently registering high pass rates across a variety of domestic and international legal Bar examinations.

5.6 Assessing Pass Rates in Various Jurisdictions

322. Issues have arisen concerning the mode of reporting and communication by CLE concerning the results. In order to be considered as having “passed the Bar Examinations” in Kenya a student is required to have passed all 9 units which each require a grade of 50 and above. This adopts the pass/fail model.

323. The Bar Examinations in South Africa also faced similar challenges surrounding student performance in the Bar examinations. Whereas previously a typical pass rate was approximately 65 per cent to 70 per cent, it is now in the region of 90 per cent. In November 2013, the pass rate was approximately 88 per cent. The pass rates for some previous years were:

Table 15: Trends in Bar pass rates in South Africa

Year	Pass Rate
June, 1995	58.8
November, 1995	65.22
June, 2000	63
November, 2000	50.5
2005	78
2007	88.7
2010	96.49
2011	93.2
2012	91

Source: General Council of the Bar of South Africa

Table 16: Trends in Bar Pass Rates in Ghana, 2017-2019

Year	Pass Rate (%)
2017	19%
2018	9%
2019	11%

Source: Ghana General Legal Council

Table 17: Trends in Bar Pass Rates in UK BPTC, 2010-2017

Year	Number of enrollments	Number of candidates who are successful	% of candidates who are successful
2009/10	1,793	1,207	67.3
2010/11	1,407	1,256	89.2
2011/12	1,670	1,354	81.1
2012/13	1,743	1,335	76.6
2013/14	1,565	1,120	71.6
2014/15	1,502	1,145	76.2
2015/16	1,408	1,092	77.6
2016/17	1,424	1,137	79.8
2017/18	1,619	1,014	62.6

Source: UK Bar Standards Board, BPTC Statistics

324. Key lessons to learn from the success registered in the UK BPTC include that the BPTC has high entry requirements which focus on proficiency in English. Further, applicants are subjected to an additional test (Bar Course Aptitude Test) which assesses critical thinking skills. Lastly, the BPTC has mechanisms for continuous assessment and feedback through the formative assessments. These are measures that the Bar Standards Board has put in place to ensure student success.

Table 18: Overall trends in Bar Pass Rates in USA, 2016-2018

Year	No. of First-Time Takers	No. of First-Time Takers who passed the Bar examinations	% of First-Time Takers that Pass the Bar examinations
2016	35,009	26,026	74.34
2017	33,333	25,780	77.34
2018	33,007	24,689	74.80

Source: ABA Section of Legal Education and Admissions to the Bar

325. In USA, they record disaggregated data pertaining to “first time takers”, first-time pass rate, those who registered but did not sit for the examinations and first-time takers from prior years. A graduate who takes the Bar examination in a Uniform Bar Examination (UBE) jurisdiction is counted as a first-time taker in the jurisdiction where the examination was taken. The graduate must be reported as having passed or failed as a first-time taker in that jurisdiction. If a graduate elects not to sit for a Bar examination, he or she is not counted in computing the school’s pass rate.

Table 19: Trends in overall Bar pass rates for first time takers across various States in USA, 2016-2018

State	2016 (%)	2017 (%)	2018 (%)
Alabama	79.51	79.29	79.58
Arizona	63.06	63.99	69.77
Arkansas	69.42	77.49	69.61
California	60.05	66.19	60.34
Colorado	76.02	75.37	72.98
Connecticut	77.40	77.69	65.09
Delaware	68.94	75.95	67.97
District of Columbia	74.11	74.6	69.79
Florida	65.68	67.9	65.15
Georgia	71.40	73.23	71.19
Hawaii	79.17	75.71	79.7
Idaho	79.22	79.33	75.37
Illinois	77.83	79.82	76.23
Indiana	69.89	72.88	73.25
Iowa	74.43	86.57	83.67
Kansas	77.40	81.51	74.78
Kentucky	74.31	69.02	73.82
Louisiana	72.73	76.85	75.73
Maine	77.30	74.38	65.81
Maryland	70.38	66.7	66.02
Massachusetts	78.72	79.3	79.6

Michigan	75.0	75.14	73.91
Minnesota	79.13	80.07	78.29
Mississippi	75.88	63.95	62.07
Missouri	83.48	86.3	82.1
Montana	80.17	82.61	71.57
Nebraska	83.06	81.67	78.13
Nevada	59.88	72.1	68.37
New Hampshire	72.77	75.96	56.25
New Jersey	67.15	69.89	69.54
New Mexico	73.42	85.71	72.73
New York	81.01	83.92	81.3
North Carolina	62.07	65.22	65.17
North Dakota	72.6	71.21	75.44
Oklahoma	76.85	86.9	79.74
Ohio	75.19	75.52	77.22
Oregon	63.97	82.55	76.57
Pennsylvania	75.12	79.64	76.84
Rhode Island	N/A	64.66	63.41
South Dakota	54.88	68.18	77.46
Tennessee	77.05	78.83	76.23
Texas	77.04	76.57	73.12
Utah	77.65	82.61	83.56
Virginia	75.44	75.62	76.38
Washington	76.97	77.88	77.53
West Virginia	73.26	75.0	68.98
Wisconsin	73.47	78.88	77.52

Source: ABA Section of Legal Education and Admissions to the Bar

326. It is important to note that various States in USA had varied models of examination. For example, under the California Bar Examination, the General Bar Examination consists of three parts: five essay questions, the Multistate Bar Examination (MBE), and one performance test (PT).³⁹ The parts of the examination may not be taken separately. The MBE consists of a six-hour, 200-question multiple-choice examination. On one day, applicants are given three hours during the morning session to answer three essay questions; during the afternoon session, applicants are given three hours and 30 minutes to answer two essay questions and one PT; of which each essay question is designed to be answered in one hour and the PT is designed to be completed in 90 minutes.⁴⁰ Thereafter, the MBE is administered the following day.⁴¹

³⁹ <http://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Exam/Description-and-Grading-of-the-California-Bar-Exam>.

⁴⁰ Ibid.

⁴¹ Ibid.

Table 20: Admissions disclosures from world-leading law schools offering professional legal education⁴²

Name of Institution	Global Ranking (2019) (QS)	Global Ranking (2019) (THE)	Domestic Ranking (2019)	Student Bar Pass Rate -% (2018)	Acceptance Rate (2018) - %	Student to (All) Faculty Ratio	Student to (Full-time) Faculty Ratio	Typical Section Class Size	Average Age of Student (at Bar Sitting) ⁴³
Harvard Law School	1	7	3	96.74	12.86	1.66:1	3.27:1	80	-
Yale Law School	4	4	1	96.76	6.85	0.79:1	2.19:1	65	28/29
Stanford Law School	5	1	2	94.68	8.72	0.86:1	1.73:1	30	-
Columbia Law School	9	15	5	97.28	16.97	1.02:1	3.52:1	99	-
NYU Law School	10	9	6	97.36	23.57	0.93:1	2.51:1	85	-
Chicago Law School	11	6	4	98.58	17.48	1.03:1	2.38:1	96	27/28
Pennsylvania Law School	30	16	7	92.09	14.58	1.04:1	2.89:1	84	28/29

⁴² Information sourced from American Bar Association (ABA) Standard 509 Disclosure Reports and Bar Passage Reports, as well as respective institutional websites.

⁴³ Estimated from average age of matriculation into the 3-year Law Schools programmes.

327. From the table above which highlights salient statistics in respect of programme administration practices at US Law Schools that consistently register high Bar pass rates, several key characteristics are observable at each of the institutions:

- (i) That these Law Schools have relatively low acceptance rates, rejecting more than 8 in every 10 applicants to Law School;
- (ii) That students at these Law Schools are likely to benefit from high levels of contact time with and individualized attention from faculty members owing to low ratios of students to faculty members;
- (iii) That the small class sizes are likely ensure better monitoring of student learning and progress; and
- (iv) That between 27 and 29, students may benefit from a higher level of psychological and emotional maturity both during their law school experiences and when sitting their legal Bar examinations.

328. The measures above point to aspects in the training which contribute towards student success. This includes low acceptance rates, low student-lecturer ratios, higher contact time and individualised attention and the benefit of maturity owing to the fact that law is pursued as a graduate degree. However, there is a risk that in adopting the American model whereby law is undertaken as a professional degree and by trying to be both theoretical and practical, the system might flounder in both aspects; and we will have a legal education that is "insufficiently theoretical as well as insufficiently practical." (Jakad, 2007).

Table 21: Trends in Bar pass rates in the Philippines, 2000-2017

Year	Passers/Total Examinees	Passing Percentage (%)
2000	979/4,698	20.48
2001	1,266/3,849	32.98
2002	917/4,659	19.68
2003	1,108/5,349	20.71
2004	1,659/5,249	31.61
2005	1,526/5,607	27.22
2006	1,893/6,187	30.60
2007	1,289/5,626	22.91
2008	1,310/6,364	20.58
2009	1,451/5,903	24.58
2010	982/4,847	20.26
2011	1,913/5,987	31.95
2012	949/5,343	17.76
2013	1,174/5,292	22.18
2014	1,126/5,984	18.82
2015	1,731/6,605	26.21
2016	3,747/6,344	59.06
2017	1,724/6,748	25.5

Source: Office of the Bar Confidant, Supreme Court of the Philippines

Table 22: Trends in Bar pass rates in Malaysia, 1984-2018

Year	Number of Candidates		Number of Clear Passes				Overall Performance	Overall Percentage (%)
	Main Examination	Supplementary Examination	Main Examination	Pass Percentage (%)	Supplementary Examination	Pass Percentage (%)		
1984	96	22	74	77.08	17	77.27	91	94.79
1985	119	54	61	51.26	40	74.07	101	84.87
1986	137	47	88	64.23	24	51.06	112	81.75
1987	161	50	104	64.60	41	82.00	145	90.06
1988	170	57	111	65.29	38	66.67	149	87.65
1989	243	107	120	49.38	74	69.16	194	79.84
1990	376	162	187	49.73	67	41.36	254	67.55
1991	400	211	185	46.25	105	49.76	290	72.50
1992	544	338	193	35.48	197	58.28	390	71.69
1993	945	171	356	37.67	121	70.76	477	50.48
1994	1,162	243	335	28.83	168	69.14	503	43.29
1995	1,442	231	410	28.43	176	76.19	586	40.64
1996	1,548	406	420	27.13	248	61.08	668	43.15
1997	1,430	239	419	29.30	190	79.50	609	42.59
1998	1,320	310	418	31.67	250	80.65	668	50.61
1999	1,217	288	360	29.58	205	71.18	565	46.43
2000	1,026	197	337	32.85	158	80.20	495	48.25
2001	921	190	119	12.92	160	84.21	279	30.29
2002	921	96	224	24.32	86	89.58	310	33.66
2003	739	144	136	18.40	121	84.03	257	34.78
2004	770	130	156	20.26	97	74.62	253	32.86
2005	841	141	221	26.28	79	56.03	300	35.67
2006	705	82	107	15.18	78	95.12	185	26.24
2007	679	104	166	24.45	82	78.85	248	36.52
2008	628	130	161	25.64	110	84.62	271	43.15
2009	579	109	169	29.19	69	63.30	238	41.11
2010	706	124	257	36.40	88	70.97	345	48.87
2011	822	167	258	31.39	115	68.86	373	45.38

2012	860	140	228	26.51	122	87.14	350	40.70
2013	855	146	187	23.04	130	89.04	327	38.25
2014	980	179	223	22.76	152	84.92	375	38.27
2015	1,113	192	240	21.56	181	94.27	421	37.83
2016	1,369	271	303	22.13	245	90.41	548	40.03
2017	1,500	317	420	28.00	208	65.62	628	41.87
2018	1,532	325	457	29.83	208	64.00	665	43.41
	29,777						13,068	

Source: Malaysia Legal Profession Qualifying Board

329. According to the Legal Profession Qualifying Board (QB) examination statistics, the overall CLP performance (which includes resits) fell below 50% in 1994 and has been declining since then after a re-grading of results.

6 Emerging Issues, Conclusions and Recommendations to Improve Performance in the Bar Examination

330. Based on the findings of this study, the study formed the following recommendations:

Admissions criteria

331. **Based on the finding that there is a connection between high school grades and performance, the university admission criteria for the LL.B need to be reviewed.** The entry requirements for admission to the LL.B should be sustained at high levels. There is also need to place more emphasis on English grades and for applicants to demonstrate proficiency in the English language. Additional admission criteria should be introduced including introduction of a standard exam prior to admission to university testing English, language and comprehension skills (similar to the USA LSAT or the UK IELTS or the Pearson Test of English). Universities ought to increase selectivity of admission of students through requiring personal statements and interviews as is the case in Strathmore Law School.

332. **In light of the finding that there are inconsistent admission criteria for both the LL.B and ATP, it is recommended that the admission requirements to be streamlined to ensure they are clear and predictable.** The threshold for the admissions requirements should not only be defined in terms of grades but also in terms of clarity and predictability. If the admission criteria were clear it would guide applicants in knowing what to work towards and manage expectations. That said, general admission requirements may not be the only issue. In addition, is need to limit admission of students to LL.B and ATP by admitting the number of students that can adequately be accommodated by the available resources and facilities.

Quality of legal education in undergraduate level

333. **The study found that there is an increase in the number of universities offering law which has increased in the number of enrolments while the cut-off points vary across all universities. Therefore, intake should be more competitive at undergraduate level and there is need to manage the numbers being admitted.** Quality assurance at university level can only be achieved through limiting the numbers being enrolled and admitted in University.

334. **The study found that 65.8 per cent of former students strongly disagree that the Bachelor of Laws programme adequately prepares them for Bar examinations. Based on this, universities ought to invest in developing all-rounded graduates. This can be achieved by inculcating mandatory prior work experience within the university curriculum** which exposes students to legal practice and enables them to know what to expect. While in university, students need to undertake an attachment in a law firm or organisation with a legal practice department, besides the judicial attachment. Emulating the experience in the Strathmore Law School, Strathmore Law School, in addition to the compulsory judicial attachment which is mandatory in all universities, Strathmore requires its students to undertake community-based attachment which is non-legal after they complete their 1st year of undergraduate education. This could include working in a children's home or church which is intended to encourage the spirit of pro bono. After completion of the 3rd year of university education, its students are required to work in a law firm for a period of 10 weeks. Strathmore Law School places students in both local and international firms in Kenya, Italy, Madrid, Argentina, Washington in USA and others. In addition, they have established exchange programs through 27 established partnerships with universities such as Leigen, Gronigen, Cornell among others. Employers have observed that through this investment in its students, Strathmore Law School produces high quality graduates. Exchange programs could be introduced within universities to expose students to various jurisdictions and learning environments.

335. **An estimated 74.3 per cent of former students strongly agree that quality of legal education received in undergraduate level influences performance in Bar examinations. In light of this, CLE should ensure as a matter of priority that standards are maintained among legal education providers by monitoring and enforcing compliance with quality assurance and accreditation requirements.** In this regard, there is need for standards to be enforced from one centralised institution. CLE to consult with universities on mode of setting examinations, the standards of examinations and questions being set and the implementation of the curriculum. CLE to be empowered to heavily collaborate with the universities to ensure that the standards are being maintained throughout the currency of the Bachelor of Laws programme. This would improve the quality of training being imparted. The regulatory bodies need to strongly monitor and regulate legal education providers including KSL and universities including the facilities, implementation of the curriculum and quality of teaching. There is need for intensified monitoring of universities including how they teach, what they are teach, how they implement the curriculum and how they set examinations at university. CLE to enhance reporting obligations and mechanisms by legal education providers. In

addition to the above, the Commission for University Education should strictly enforce the requirements for lecturers.

336. **While universities are required to submit an annual report to CLE of its activities and progress in ensuring quality standards⁴⁴, some reports do not capture sufficient data. On the other hand, reports for some universities are not publicly available or information is reported in inconsistent formats across various universities. Universities should maintain, publish and publicize comprehensive data annual on their activities, students and graduates.** This information to include student age, gender, race, nationality, entry grades, bar pass rates and employment outcomes. This is based on the practice adopted by the ABA, which requires law schools to publicly disclose annually on their websites (in a prescribed and standardized format) information on admissions data; tuition and fees, living costs, and financial aid; conditional scholarships; enrollment data, including academic, transfer, and other attrition; numbers of full-time and part-time faculty, professional librarians, and administrators; class sizes for first-year and upper-class courses; number of seminar, clinical and co-curricular offerings; employment outcomes; and data on Bar pass rates of its graduates. The reporting also ought to be standardized. It would also be important for universities to undertake a graduate tracer study of all LL.B and ATP graduates to establish where the graduate students, both those who pass and those who fail, are engaged in after the ATP programme. These studies involve the identification and follow-up of graduates from Universities, to consider their views about their experiences during their degree studies and their transition into the job market.

KSL Facilitation and the Advocates Training Programme

337. **Based on the finding that the acceptance rate at KSL is too high and that the screening process is inadequate, there is need to control quality of students entering KSL** by pre-screening before admission to the KSL by mandatory application of the pre-Bar examinations to all applicants to examine basic legal knowledge and English skills. In addition, is to sensitize the conduct and structure of the pre-Bar examinations.

338. **Students undertaking the ATP lack sufficient contact-time with the material to develop a robust grasp of the relevant knowledge and skills. Therefore, students need to have adequate time with the course material.** Students should have opportunities to receive more diverse or

⁴⁴ Regulation 10 (4) (d), Legal Education (Accreditation and Quality Assurance) Regulations, 2016

lengthier professional experiences while at university, by expanding their work opportunities beyond judicial attachment and facilitating opportunities for acquiring experience in legal practice. In this regard, the judicial attachment at university level ought to be complemented by work experience in a law firm or other organisation with undertaking legal practice. Through such apprenticing, students are then likely to receive adequate practical exposure to facilitate their preparations for pupillage during the Advocates' Training Programme. Further, the timetable for the ATP should be reviewed to ensure that the time allocated for firm discussion is utilized in a productive manner.

339. **The study found that the ATP is not well-structured to achieve its intended objectives. There is therefore need for greater innovation in the provision of legal training.** This could include reconfiguring the sequence of units in the Advocates Training Programme to ensure that students undertake and complete pupillage right before sitting for their examinations as opposed to completing the programme with pupillage. This notwithstanding, the structure of pupillage needs to be revisited as the current six (6) month period may not be sufficient or productive, as pupil masters are not able to meaningfully train the pupils, develop mentorship or have sufficient contact with them during this short period. More opportunities for acquiring practical experience need to be available for trainee advocates. KSL to explore and take advantage of new technologies in delivery of the ATP. KSL to digitize its processes and upload documents online to improve access to exam past papers, marking schemes and related documentation. KSL should also establish and adopt e-learning and e-resources by increasing the use of technology in the training such as web-based training. Nonetheless, there is need to balance e-learning aspects bearing in mind that law is a collegial profession which involves significant interaction with members of the public and other colleagues. Therefore, introduction of e-learning should not lose sight of the practical exercises required in delivery of some of the courses in the ATP and should consider the nuances in ensuring appropriate teaching methods are applied according to the subject matter at hand. Technological applications therefore should be fused with aspects on curriculum design and delivery.

340. **Based on the finding that there are high number of entrants in KSL which is not coupled by adequate resources, the Government need to properly fund and strengthen KSL to deliver the ATP.** The funding from the Government is critical in ensuring resource availability and ensure construction of the necessary infrastructure. The resources need to complement and accommodate the number of students being enrolled into the programme.

341. **The study found that a high number of entrants to the ATP with the growing admissions in various universities across the country. Therefore, there is need to decentralize the Kenya School of Law services.** KSL should decentralize its services to accommodate the high number of entrants to the ATP. This is in recognition of their industry expertise and experience however they will need to replicate the human resource components in the other centres. While most respondents agreed that it was undesirable to establish private training centres immediately due to the already weak quality assurance of the LL.B programme, respondents were of the view that decentralization of KSL complemented by an aggressive regulator in CLE would reduce the congestion.

342. **The study found that the student-lecturer ratio at KSL is high. It is therefore recommended that the Kenya School of Law to adopt small classes and reduce student-lecturer ratio.** It is recommended that smaller classes of 15-20 students is ideal in imparting practical teaching aspects and providing a one on one mentorship. Attendant to this is the need to increase the number of lecturers.

343. **Based on the finding that the ATP does not incorporate sufficient practical elements in the training, KSL should enhance practical aspects of teaching in the ATP through diversification of teaching methods.** This can be achieved by focusing on legal clinics, case studies, problem questions, provision of template legal documents, role plays, learning-by-doing and transactional cases. The practical approach to teaching to be adopted including focus on problem-solving. The case for Trial advocacy, which has consistently recorded remarkably high performance over the years even in comparison to other units, should be emulated in adopting the practical mode of teaching. Further, lecturers ought to provide continuous practical assignments with individualized feedback to engage students in aspects touching on problem-solving, transactions, procedure and practical aspects of legal work relevant to the course.

344. **The study found that most former students (81.6%) expressed that lecturers were not conversant with the teaching material. Further, some lecturers were deemed not competent to teach the subjects they are handling. In this regard, the lecturers delivering the ATP ought to be individuals who have expertise in the relevant subjects who can prepare course content and teaching material adequately as well as spend enough time with the students.** Lecturers to teach in their area of practice, expertise or specialization. Practical experience in a given area of law is critical as legal practice is dynamic and fast-changing. Lecturers ought to be

assigned courses in which they have expertise, in their own chosen field of practice and in which they feel at ease with the content. Lecturers to be conversant with the subject matter of the unit they are expected to deliver. A training needs assessment to be carried out for lecturers while student evaluations of lecturers should be acted upon. In addition, lecturers at KSL should be trained on teaching methods and delivery of content, which can be achieved through regular courses on pedagogy and ensuring that members of the academic staff periodically upgrade their teaching skills. KSL also ought to increase the number of lecturers they have engaged.

345. **Attendant to this is the need to engage with experts in a particular area of specialization and practical training.** This can be achieved through increase use of guest lecturers who are industry experts in a particular field. Industry experts can be incentivized to participate through awarding of LSK/CPD points. Specifically, legislative drafting experts from the Kenya Law Reform Commission or the State Law Office who practice legislative drafting on a day to day basis can be engaged to provide practical courses on legislative drafting. Public prosecutors from the Office of the Director of Public Prosecutions can similarly be engaged on matters concerning criminal litigation. A course like professional ethics can benefit from someone who has worked with the Advocates Complaints Commission or Advocates Disciplinary Tribunal. Other industry experts on conveyancing, criminal litigation, civil litigation, commercial transactions can be engaged as guest lecturers prior to students sitting the examinations to elucidate and clarify certain concepts based on their practice and experience. Additionally, KSL to engage with professionals such as Toastmasters to train its students on presentation and public speaking skills.

346. **The study found that there is no scholarship or bursary available at KSL for students undertaking the ATP, which often forces underprivileged students to work part-time to raise their tuition fees thus distracting them from their studies. There is need to establish and operationalize a structured loan/sponsorship scheme at KSL** to ease the financial burden on students undertaking the ATP. KSL can engage with HELB or other agencies that are willing to provide student loans. There is need to increase the funding disbursed through HELB, to cater not just for the examinations set and marked by CLE but also the ATP tuition fees. The current loan scheme established by HELB and CLE (Bar Examination Loan Application) caters only for examination fees and is sent directly to CLE.

347. **The study found that the curriculum and course outlines for the units in the ATP are not up to date with current developments in law. KSL needs to continuously update the curriculum.** The current spacing for

review of the curriculum is five (5) years which is too wide. Review of the curriculum can be conducted every two (2) years to ensure the curriculum is updated to reflect evolution in the law and address market needs. The curriculum should also be geared towards practical training and acquiring soft skills.

Examinations

348. **The study found that there were inconsistencies between the examinations, the course curriculum, and the content taught. The curriculum should be aligned to what is to be tested through increased coordination between KSL and CLE.** In addition, periodic evaluations could be carried out to assess the status of implementation of the syllabus. Expectations and outcomes between both institutions need to be clear.

349. **The study found that while past exam papers are available, they are not accompanied by marking schemes and therefore students do not understand the marking criteria or the examiners' expectations. In this regard, CLE ought to provide students and lecturers with past papers accompanied by their respective marking schemes.** This will clarify examiners' expectations. Attendant to this is a recommendation for CLE to share its expectations with students and CLE may wish to train students on examination techniques and hold revision sessions prior to the written Bar examinations. Students to be clear on objectives to be met, marking schemes and educated on revision and examination techniques. While students ought to read widely, there should be a fair process in availing reading and reference materials.

350. **In addition to the above, CLE to publish and publicize past papers and select answers** as is the case in the State Bar of California which publishes its past papers and selected answers on its website for the essay questions set in its Bar Examinations.

351. **It was found that there are insufficient continuous assessments during the ATP. In light of this finding, it is recommended that CLE and KSL should introduce continuous assessments to ensure that students understand the content being taught and are engaged with the materials.** Continuous assessments would also ensure adequate preparation of students rather than relying on a single exam at the end of the training programme. This would have the benefit of enabling lecturers to identify students facing academic or personal challenges to their progress while the programme is still underway. It would also enable lecturers to monitor and review the performance of students to enhance their level of understanding of

issues and provide opportunities for remedial action. Lecturers ought to provide continuous practical assignments to engage students in the work as continuous assessment is critical in honing certain skills. Continuous assessments create the opportunity for constant learning.

352. **While it is a critical component of the ATP and contributes 20% of the final grade, there are no guidelines for the oral examinations and the scope of questions posed to candidates is wide and undefined. There is need to develop clear guidelines for the oral examinations.** The scope of coverage and parameters for the oral examination needs to be defined and students informed of the same prior to their examination. Further, the oral examinations ought to be restricted to topics in law within the ATP.

353. **Notwithstanding the findings that most former students strongly agree that training and examination should be carried out by one institution, specifically the Kenya School of Law, in the event that the examination function remains with the Council of Legal Education, they should adequately consult and work closely with the Kenya School of Law.** In the current institutional arrangement whereby training and examination functions are carried out by two separate institutions (KSL and CLE, respectively), there is need for the body setting the exam to consult with the body training and implementing the curriculum. There is need for greater coherence, harmony and coordination between KSL and CLE. This should be complemented by improving the resources at KSL.

Regulation of Legal Education

354. **The study found that some legal education providers are not complying with the prescribed legal requirements and regulations. Therefore, CLE should be strengthened as a regulator for legal education.** The regulation of undergraduate legal education should be streamlined between CUE and CLE so that CLE has a clear mandate to regulate legal education. The sector needs a strong regulatory function. However, it is not possible, in its current capacity, for CLE to also regulate themselves. Given the nature of our society in Kenya [being susceptible to undesirable activities such as cheating], it is better to have the centralized regulation of standards. CLE ought to enhance its monitoring and evaluation. CLE should not be the regulator and examiner. Quality control systems for the ATP to be put in place including a clear regulatory framework. In addition, CLE to enhance monitoring and evaluation of the ATP program, to include regular inspections.

355. **One of the findings of the study was that the ATP does not have a clear regulatory framework defining the methodology for its delivery. In view of this finding, it is recommended that CLE to establish a regulatory framework for the ATP prescribing the curriculum, structure, duration, content, teaching methods, class size, contact hours, student-lecturer ratio and recruitment criteria for lecturers, which it should strictly monitor.** CLE ought to ensure regular quality of standards check, by ensuring the course curriculum is followed and implemented, evaluation and assessment of lecturers, as well as updating the teaching content. There is also need to revise the curriculum review timelines from 5 years to 2 years.

356. **In light of the findings that the method of reporting of bar examination results does not convey sufficient information, CLE should publish and publicise detailed reports on results of the Bar examinations which should be disaggregated further** into gender, first-time takers, candidates from prior years and those who elected not to sit for specific examinations. CLE to reconfigure the mode of reporting and communicating the results to capture the aspects of passing the first-time (first-time takers) and should discount those who elected not to sit for specific examinations.

357. **The study found that data, statistics and information in the legal education sector are scantily available thereby hampering access to information to the public. As part of regulation, CLE, in collaboration with legal education providers and KSL, should enhance access to information by publishing and publicising reports on data and statistics within the legal education sector.** Emulating the American Bar Association, CLE, KSL and universities ought to publish public reports on enrolment data, entry grades, the number of graduates from a certain year, when they elected to sit for their Bar examinations, the bar pass rates of their graduates and their employment status. This would require concerted exchange of information and collaboration from universities. This should be supported by accurate and up-to-date records. It also requires heavy effort and investment in time and resources however such public reports would provide useful consumer information for students in choosing a law school, assessing the employability of graduates from certain universities and for policy makers in legal education and the legal sector. Ultimately, this enhances public awareness, appreciation and understanding of the sector.

358. **The study found that there is no internal complaint handling system in KSL and CLE. KSL and CLE should both set up an internal**

complaint handling mechanism besides the Legal Education Appeals Board⁴⁵ to reduce the number of cases proceeding to Court regarding admissions and examinations and which have a detrimental impact on the admissions process and the ATP.

⁴⁵ The Legal Education Appeals Board is established under Section 29 (1) of the Legal Education Act, 2012 and it hears appeals made to it by any party or a reference made to it by the Council on any matter relating to Legal Education Act.

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Appendices

Annex 1: Data obtained from KSL

Student Profiles
Student Age
Student Gender
Foreign vs local degree
Degree classification of students at undergraduate level for foreign and local students
University awarding the degree prior to admission to the Kenya School of Law for both local and foreign students admitted
Location of University (including country and campus for local universities)
Additional degree(s);
If student is part-time or full-time
Overall high school grades (including KCSE, IGCSE, GCE, IB and A level grades)
Language grades at high school for English and Kiswahili
Students with Certificate or Diploma in Law
Performance of students who have undertaken the pre-bar examinations;
Contributions of each assessed component to the final grade
Performance per subject/unit
Performance per assessed component (project work, oral examinations and written examinations)
Performance of students who have sat for resits
Performance of students after remarks
Students' attendance rate
Number of students admitted to the Kenya School of Law
Number of local and foreign students admitted to the Kenya School of Law
KSL Facilitation
Number of staff administering the course units
Nature and number of units taught and examined
Course curricula, course outlines and course content for each unit
Structure of the course
Mode of teaching
Number of students per lecturer
Employment status of lecturers
Experience and qualifications of lecturers
Tuition fees
Remark and resitting fees
Relationship Between KSL And CLE
How is the exam set and how is it linked to the curriculum
Marking schemes preparations for each unit
The exam timetables for each sitting; structure of assessment
Preparation and development of curriculum and syllabus

Conduct and structure of the Bar Examination
Monitoring of implementation of curriculum
Responsibility over assessment of the four components of the ATP
Enforcement of standards
Composition (adjunct vs part time; practitioners vs academia), qualifications and employment of examiners
Interaction of examiners with KSL
Legal and regulatory framework, guidelines, policies and processes over setting and examination of Bar Examinations
Program regulations and standards for ATP
Relationship between CLE and the Commission for University Education
Preparation and development of curriculum and syllabus
Monitoring of implementation of curriculum
Enforcement of standards
Legal and regulatory framework, guidelines, policies and processes
Program regulations and standards for ATP
Relevant literature
Reports on previous studies on legal sector reforms by previous Taskforces including the reports by the Muigai Taskforce, Akiwumi Report and the Report by Senior Counsel Fred Ojiambo

Annex 2: Glossary of Cases

1. *Adrian Kamotho Njenga v KSL [2017] eKLR*
2. *Eunice Cecilia Mwikali Maema v Council of Legal Education & 2 others [2013] eKLR*
3. *Jannah Tusasirwe & 10 others v Council of Legal Education & 3 others [2017] eKLR*
4. *Joan Wambui Kimani v Kenya School of Law & 2 others [2019] eKLR*
5. *Kevin Mwiti & Others vs KSL and Others (Constitutional Petitions 377, 395 and JR 295 of 2015 (Consolidated))*
6. *Peter Githaiga Munyeki v Kenya School of Law [2017] eKLR*
7. *Republic vs Kenya School of Law & Council of Legal Education ex parte Daniel Mwaura Marai [2017] eKLR*
8. *Republic v Council of Legal Education & another ex parte Sabiha Kassamia & another [2018] eKLR*
9. *Republic v Council of Legal Education & 2 others ex parte Mitchelle Njeri Thiongo Nduati [2019] eKLR*
10. *Republic v Kenya School of Law [2019] eKLR ex parte Victor Mbeve Musinga*