

## COUNCIL OF LEGAL EDUCATION



### EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

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

**THURSDAY 24<sup>TH</sup> JUNE 2021**

**DURATION: 3 HOURS**

**Instructions to Candidates:**

- (a) This paper contains THREE (3) printed pages including the cover page, with a total of Six (6) questions.
- (b) Candidates MUST answer FIVE (5) questions.
- (c) Question ONE is compulsory and carries 20 marks.
- (d) All other questions carry 10 marks each.
- (e) Answers MUST be supported by relevant case law and statutory provisions where required.

**PLEASE TURN OVER**

#### **QUESTION ONE**

- a) Citing relevant case law and statutory provisions, discuss an Advocate's duty to the legal profession. (10 marks)
- b) Discuss the role of the Law Society of Kenya in the enhancement of professional ethics in the legal profession in Kenya. (10 marks)

#### **QUESTION TWO**

The Law Society of Kenya, through its Senior Counsel Committee has advertised a call for applications for conferment of the rank of Senior Counsel. Mr. Newton wishes to apply and requests you to assist him prepare his application. Mr. Newton has been in practice for 10 years. Mr. Dishon had lodged a complaint against Mr. Newton which was settled after a plea of guilty was entered before the Disciplinary Tribunal and an order made for restitution of funds which had been held by Mr. Newton.

- a) What professional standards and ethical issues would you consider when preparing Mr. Newton's application? (5 marks)
- b) What advice would you give Mr. Newton? (5 marks)

#### **QUESTION THREE**

Sarah, a State Counsel, is instructed by the Director of Public Prosecutions to conduct a prosecution against Evans who is charged with the offence of robbery. Investigations are still ongoing in the case and hearing is scheduled to commence on 5<sup>th</sup> November 2021.

On 2<sup>nd</sup> June 2021, Sarah engages in a chat discussion relating to this case on a WhatsApp group with other State Counsel from the Office of the Director of Public Prosecutions. In the course of discussions, she elaborates the strategy she intends to employ to ensure the accused person is convicted. Members of the WhatsApp group have urged her to ensure success at all costs.

- a) Discuss Sarah's professional and ethical responsibilities in the foregoing scenario citing relevant statutory provisions and case law. (5 Marks)
- b) The Director of Public Prosecutions has instructed you to prepare a legal opinion in response to an anonymous complaint received against Sarah's conduct in relation to her chats in the WhatsApp group. You are required to make recommendations on any actions to be taken against Sarah. (5 Marks)

#### **QUESTION FOUR**

"The role of an Advocate to provide the duty of care is first to his client". *Anonymous*

Identify and discuss two areas where disclosure and privilege are crucial and cite any limitations where applicable. (10 marks)

#### QUESTION FIVE

- a) Ms. Maureen, an Advocate, represents the Purchaser in a Sale Agreement transaction. Ms. Maureen's client intends to Purchase a townhouse erected on all that property known as Riruta/Riruta 5/570 from Mr. Karimi, the Vendor. The Purchase Price is Kshs. 5,000,000 with 10% deposit payable on execution of the Sale Agreement. Mr. Karimi's advocate, Mr. Okello, has agreed to release the completion documents on the strength of the Purchaser's Advocate's unconditional professional undertaking to pay the balance of the Purchase Price within seven (7) days of registration of the transfer in favour of the Purchaser. Mr. Okello, the Vendor's Advocate, has requested you, a Pupil in his Law Firm to draft a suitable undertaking in terms acceptable to the Vendor. Draft the professional undertaking. (5 marks)
- b) Nine (9) days after completion of the registration of the transfer in favour of the purchaser, Ms. Maureen advocate has failed to honor her professional undertaking to the Vendor's Advocate, Mr. Okello. Highlight the professional ethics, standards and principles that have been violated by Ms. Maureen Advocate. (5 marks)

#### QUESTION SIX

The Constitution of Kenya 2010 Article 50(2) provides:

*"Every accused person has the right to a fair trial, which includes the right to choose and be represented by an advocate and to be informed of this right promptly."*

- (a) Explain whether you may or may not accept to represent an accused person in a case in which you consider the defence to be very weak and therefore slim chance of success? (5 marks)
- (b) Explain whether you may or may not reasonably accept to represent a plaintiff in a civil claim you consider very weak? (3 marks)
- (c) The Law Society of Kenya encourages Advocates to offer *pro bono* legal services to indigent clients. Explain two (2) reasons why advocates are encouraged to offer *pro bono* legal services? (2 marks)



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**COUNCIL OF LEGAL EDUCATION**  
**EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES**

UNIT CODE: **A T P E C S** SUBJECT/UNIT ..... **PROFESSIONAL ETHICS** .....

REGISTRATION NUMBER: ..... DATE: **24<sup>TH</sup> JUNE 2021** .....

**INSTRUCTIONS TO CANDIDATES**

1. Enter the Unit code, Subject of the Examination, Admission Number and Date in the spaces provided. The admission number should be as it appears on the Examination Card.
2. Do not write your name anywhere in this booklet.
3. Attempt each question on a fresh page of the booklet.
4. If an additional booklet is used, it MUST be fastened at the END of this booklet.
5. Insert in the column headed 'Question Number' the numbers of questions answered in the order in which you have attempted them.
6. Kindly ensure your handwriting is LEGIBLE.

Question Number	Examiner		Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials
1	08					
2	20					
3	09					
4	09					
5	09					
TOTAL MARKS	<b>55</b>					

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#### 4. Areas where Disclosure and Privilege are Crucial.

An Advocate owes a duty of care to their client. To achieve this, the client has a right to privilege in ~~the~~ confidential communications he or she makes to their Advocate. The Advocate ~~in turn~~ owes the client a duty of confidentiality which arises from this ~~right~~ right to privilege. The privilege is however not absolute, and there are circumstances where the disclosure must be made. Before discussing disclosure however, the following are ~~two~~ two areas of where privilege can be claimed by a client and the information must be kept confidential.

##### I. Areas where Privilege is crucial.

###### (a) Presenting Evidence in Court.

Communications between an Advocate and a client are confidential and subject to ~~that~~ Advocate - Client privilege. Section 134 of the Evidence Act places an obligation on an Advocate not to disclose communication between ~~themself~~ himself and his client leading up to the case. Similarly, section 137 of the Evidence Act makes a client uncommissible when they are required to disclose confidential communication between themselves and their client. This privilege is meant to ensure that a client is frank and free when communicating with their lawyer without fear that the information they give will be used to their detriment.

The limitation to this privilege is ~~where~~ a client consents to release of such confidential information. Where an Advocate becomes a witness with the client's consent and gives part of the privilege information as testimony, the privilege is waived as the adverse party may cross-examine the Advocate who must reveal the confidential information.

(b) In Commercial Transactions.

The duty of confidentiality and privilege to the client also arises in commercial transactions, for instance, where a client intends on listing shares to the Nairobi Stock Exchange, before the prospectus is issued, an Advocate involved in the transaction is bound to keep all information strictly confidential to prevent any adverse consequences to the client such as leaking of proprietary information, intellectual property, among others. The same applies in case of due diligence during a merger or acquisition where a lot of proprietary information is disclosed. It is vital for the Advocate to keep the information confidential and claim privilege if required to disclose it in a ~~judicial~~ forum.

The limitation to this duty in commercial transactions is where the information is already in the public domain. Where this is the case, the information is no longer confidential and privilege ~~to~~ cannot be claimed.

2. Areas where Disclosure is Critical.

(a) Disclosure in the interest of an Advocate.

Disclosure is necessary, be it in a court situation or otherwise where:

1. The Advocate has completed the transaction successfully and is in pursuit to collect legal fees. In this case, disclosure of correspondence, receipts and other information is necessary in order for the Advocate to collect their duly earned fees. It would be wrong for confidentiality and privilege to be claimed as this would totally frustrate collection of fees and affect access to justice since Advocates would now require advance payment for every brief they take.

The limitation to this is where an advocate selfishly

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seeks to disclose privileged information to gain an unfair profit from a third party. This would amount to professional misconduct as it breaches the Advocate's duty of ~~honesty and integrity~~.

Q. Where an Advocate is being sued by the Client

An ~~client~~ who sues an Advocate implicitly waives privilege. The suit may be in any form, including a complaint about professional misconduct. The Advocate may disclose confidential information in such a circumstance in order to defend themselves.

(b) Disclosure required by law and to avoid an illegality.

The law may also require disclosure. For instance, the Proceeds of Crime and Antimony ~~Whiskery~~ Act limits privilege by requiring disclosure of confidential information where money laundering or any proceeds of crime are involved or suspected. An Advocate is also under a duty to ensure that they disclose ~~a~~ confidential information to prevent a crime, fraud or any illegal activity, whether or not ~~that~~ the attorney to this activity is directed by the client.

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### 1 (a) Advocate's Duty to the legal Profession.

An Advocate owes a duty to the legal profession, in addition to the duties they owe to the client and to the court. Some of the duties which the client and Advocate owe to the profession are as follows:

#### (1) Duty to uphold the dignity of the profession.

An advocate owes a duty to uphold the dignity of the profession. Section 60 of the Advocates Act defines professional misconduct as an act or omission which is so disgraceful that it undermines the dignity of the advocate. An Advocate must always act in a way that will promote the public belief in the profession. This duty not only involves care not to commit professional misconduct, but a greater duty to ensure that the Advocate is beyond reproach.

Lord Denning in the Norman Case compared an Advocate to a High Priest. Just as a High Priest during the time of the Bible had to be beyond reproach to work in the temple, so must an Advocate be beyond reproach. It is the reputation of the profession that is of importance and an advocate must also hold themselves out in a way that positively advance the reputation of the legal profession.

#### (2) Duty towards fidelity of the law. (1)

An advocate is an officer of the court and the legal profession is a profession that must adhere to the law. An Advocate's first duty is towards fidelity of the law. This duty directly coincides with the legal profession as the profession is one which has monopoly over the law and therefore must adhere to the law. An advocate must therefore ensure that they always act within the proper legal procedures in all they do. An Advocate must not break the law for a client or mislead the court as this not only brings disrepute to the profession, but undermines

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The rule of law which is the bedrock of the legal profession. The Law Society of Kenya Standard of Professional Ethics and Conduct recognises the lawyers duty towards fidelity of the law, and makes it a professional misconduct for an advocate to fail in this duty.

### (3) Duty to fellow Advocates in the Profession.

An advocate also owes duty ~~to~~ duties to their colleagues in the profession be it advocates, clerks, clients, courts and all other stakeholders. For advocates, a ~~law~~ an advocate owes their colleagues a duty to be courteous at all times, and he or she must not embarrass their colleagues at any time. This duty ensures that dignity is upheld in the profession and that quality service is provided to clients and all stakeholders.

### (4) Duty to Act Independently.

An advocate also has a duty at all times to ensure that they act independently. This is a duty which will determine whether the legal profession is independent as a whole or whether it is compromised. An advocate must refuse to be unduly influenced by political, social, financial or emotional factors when they perform their duties. When each advocate acts independently, the legal profession prospers in advancement of justice.

### (5) Duty not to Undercut.

An advocate also has a duty to adhere to the minimum fees laid out in the advocates remuneration order. Charging less is an offence under section 45 of the Advocates Act as it brings the legal profession to a lower dignity by allowing unfair competition. In the case of Okeyo Omwania v Attorney General, the court held

that the legal profession is not a business, and therefore unfair competition must be avoided.

(6) Duty with regards to Advertisement (1)

An Advocate is under a duty to avoid advertising in a way which brings the legal profession to disrepute. This blanket prohibition is contained in section 5 of the Advocates Practice Rules. An advocate must advertise in accordance with the Advocates (Advertising and Marketing) Rules which prohibit acts of Chumpify and Taunting as this affects the proper functioning of the legal profession.

(7) Duty not to allow your name to be used by Unqualified Persons

Section 33 of the Advocates Act recognises that unqualified persons must be prohibited from offering legal services. An advocate owes a duty to the profession to prevent themselves from being represented or acted for by an unqualified person in both contentious and non-contentious matters. This duty was seen in the case of *Wilson Ndolo Ayah v National Bank of Kenya*.

(8) Duty to Act Competently and Diligently (1)

An advocate owes the stakeholders in the legal profession a duty to act competently and diligently at all times. This duty to the profession ensures that justice is obtained, and the standards of practice are high in terms of work product.

(9) Duty of Honesty and Integrity (1)

An advocate has a duty to act honestly and with integrity in their practice. This duty requires an advocate to be a person of high probity and not engage in conduct that will bring disrepute to the profession.

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### 10. Duty to uphold Professional Undertakings.

An advocate also has a duty to the profession to uphold professional undertakings. These undertakings facilitate conducting business in the profession and without them, it would be difficult to complete transactions. An Advocate must therefore ensure that their word becomes their bond for the good of the profession.

(10x)  
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### 1 (b) Role of the law society

### 1 (b) Role of the Law Society of Kenya in Enhancement of Professional Ethics.

The Law Society of Kenya is a professional body which self-regulates the legal profession in Kenya. It is established under the Law Society of Kenya Act. Section 4 of the Act sets out the role that the Law Society of Kenya plays in promoting ethics in the legal profession. This is as follows:

#### 1. Standards of Learning and Entry into the Profession

The Law Society of Kenya (LSK) plays an important role in ensuring that those who enter into the profession are persons who are properly trained and qualified in the practice of law. It does this in collaboration with the Kenya School of Law and the Council for Legal Education. Without qualification standards, the Advocates who enter the profession are more likely to commit professional misconduct and often have ethical issues.

#### 2. Continuous learning in the Profession

The Law Society of Kenya also plays an important role in organizing seminars and learning forums to assist members to advance knowledge on a continual basis. This helps to improve practice standards and service delivery to the public by ensuring that advocates are highly skilled in service delivery.

#### 3. Licensing of Advocates Annually

The Law Society of Kenya also licenses advocates every year to practice law. There is a distinction between a person whose name is in the roll of Advocates and a person qualified to practice law. LSK ensures that only qualified persons may practice law as was seen in *Wilson Ndolo Ayah v KBLK* through licensing. This

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improve the standards of ethics by preventing unqualified persons from practicing law in Kenya.

#### 4. Developing Codes of Conduct

The LSK has developed the LSK Code of Standards of Professional Ethics and Conduct (SOPPEC). This serves as a binding self-regulatory guideline that controls the conduct of advocates in Kenya. Breaching any of the 12 standards in SOPPEC is professional misconduct which can lead to disciplinary action.

#### 5. Enforcement of Standards

The LSK Secretariat, in collaboration with the Advocates Complaints Commission and the Disciplinary Tribunal ensure compliance of the Standards of professional ethics in Kenya by investigating and punishing professional misconduct by Advocates.

#### 6. Setting Practice Conditions

The LSK also assist Advocates to have conducive practice standards for instance by, reviewing the remuneration of Advocates in collaboration with the Chief Justice. This ensures that Advocates have good practice conditions which ensures that they can act independently in their practice.

#### 7. Developing Advocacy Government and State Agencies

The LSK also plays a vital role in advising various arms of the government on matters to do with the law. The LSK also provides advice which influences legislation in Kenya. This ensures that the rule of law is promoted, therefore improving professional ethics in Kenya.

### 8. Pro Bono Services and Legal Aid

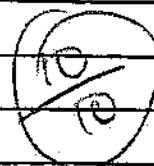
The Law Society of Kenya also plays an important role in society by providing legal aid through legal clinics such as the legal aid court. This ensures access to justice is attained and members of the public understand their rights and remedies for professional misconduct in the profession.

### 9. Improving the Image of the Legal Profession.

The LSK plays an important role in ensuring the legal profession has a positive image and reputation in the public. It does this by disseminating information to the public on the law, procedures, practice guidelines and media appearance to educate the public on the role of advocates in various matters. This presence in the public by the LSK builds rapport and trust between the profession and the public, and enhances the image and reputation of the profession.

### 10. Improving efficient disposal of Cases in Court.

The LSK plays an important role as an amicus curiae to assist the court in disposal of matters. The LSK also aids in preparing opinions to the court on contentious matters to assist in efficient disposal.



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Do not write in  
either margin2(a) Professional Standards Breached by Mr. Newton.1. Duty 1. Fiduciary Duty to Client

Advocates are in a position of trust with regard to their clients' money and property. Mr. Newton, being an advocate is also under this duty and is obliged to always take care of their clients' property and funds. Moreover, Mr. Newton is prohibited from converting or appropriating client funds without the client's authority. Dishan made a complaint in this regard and having been found guilty, Mr. Newton has breached this duty.

(1)

2. Duty of Honesty and Integrity

Mr. Newton also had a duty of honesty and integrity towards Mr. Dishan. Converting and appropriating Mr. Dishan's funds without his authority is a breach of this duty. This not only speaks about Mr. Newton's competence, but it also brings the profession to disrepute.

3. Duty of Competence and Diligence

Dealing with Mr. Dishan's funds without proper care speaks to the competence and diligence of Mr. Newton. Mr. Newton seemingly failed in this regard because he ought to have known that he would commit professional misconduct that would lead to disciplinary issues if he converted or misappropriated Mr. Dishan's funds.

4. Duty of Care to Client

Mr. Newton has also breached his duty of care to Mr. Dishan. Advocates owe clients a duty to always act in the best interest of the client and advance this

(1)

interest. Mr. Newton, by appropriating or converting Mr. Dihen's money may have hindered Mr. Dihen from completing a transaction or even delayed the process. This amounts to professional misconduct.

### 5) Fidelity to the law.

Mr. Newton has also failed in his duty towards fidelity to the law. The Advocates (Accounts) Rules 2002 prohibit an advocate from appropriating or converting client funds without the consent or authority of the client. Mr. Di Newton broke this law which greatly undermines the rule of law and makes us question his fidelity to the law.

(S/S)

### 2 (b) Advice to Mr. Newton.

In his application, I would advise Mr. Newton as follows:

#### 1. First offender.

Mr. Newton is clear of applying to become a senior ~~counsel~~ counsel which means that he must be beyond reproach. Since he has already tarnished his record, Mr. Newton can claim that this was a first offence which he is remorseful for and has since changed and upheld the standards of professional conduct which he is bound to uphold. This is good advice as this is normally a mitigation factor in claims of professional misconduct.

#### 2. He fully reimbursed Mr. Dihen.

Mr. Newton can also claim that he cooperated in the disciplinary process, admitted his guilt and fully reimbursed Mr. Dihen. This shows that, despite their shortfall, Mr. Newton is an honest and a person and

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A person of great integrity.3. Inexperience at the time of the Offense.

Mr. Newton may also claim that when he committed the offence, he was very new to the practice of law and the mistake was a result of inexperience. Mr. Newton must however show that his record since that time is stellar and that he is of irreproachable morality.

4. Person of Good Standing and Charity.

Mr. Newton may also show that he is in fact a person of good moral standing who engaged in acts of charity, and recognized the importance of pro bono to the public. This will show that he is not dishonest and selfish and that appropriating or converting Disha's money was an honest mistake as opposed to a selfish and fraudulent act.

5. Contribution to the Legal Profession.

Mr. Newton must also show that he has greatly contributed to the legal profession as a whole. Despite that shortfall with Mr. Disha, in order to be granted confirmed the rank of senior counsel, Mr. Newton must be distinguished in practice and his contribution to the legal profession must be very clear. 10 years of practice is not the only requirement, but neither a distinguished practice as that captured in section 14 of the Advocates Act. Without this, Mr. Newton is not qualified to be a senior counsel. He may show this by showing his publications, cases that have greatly contributed to jurisprudence in Kenya and overall contribution in his 10 years of practice.

(4/5)

(9/10)

### 3(a) Scrath Professional and Ethical Responsibilities.

#### 1. Duty of Confidentiality.

Sarah owes the victim, and the state in this case, the client, a duty of confidentiality. Sarah has breached this duty by going onto WhatsApp discussing confidential matters of a case without the victim's waiver of privilege. This is contravention of her duty under the LSK Standards Code of Ethics, and under section 134 of the Evidence Act. Sarah has therefore not only broken the law but she has breached the duty of confidentiality.

#### 2. Duty of Fidelity to the law.

The state counsel in the WhatsApp group have urged Sarah to ensure that she gets a conviction at all costs. This is wrong and unethical. Sarah must not deviate from the law and breach Evans' right to a fair trial under article 51 of the Constitution. Sarah must not tamper with witnesses or withhold evidence that shows the innocence of Evans. She must act in a professional and ethical manner and ensure that, if the evidence points to an acquittal for Evans, she ensures that this is done.

#### 3. Duty of Competence and Diligence.

Sarah also owes the ethical duty of acting with skill and care in the prosecution of the case. Sarah must act within the parameters of the law and put her best foot forward in prosecuting the case. She must ensure that she does a good job and offers high quality service to the state and victim. Although she seems to be ready to put her best foot forward, it is

Imprecative that Sarah adheres to the rules of professional conduct at all times.

#### 4. Duty to the Court.

Sarah also owes the court a duty not to waste the court's time. As an officer of the court, she also owes the court a duty not to mislead it. In prosecuting this case at all costs, Sarah stands the chance of misleading the court which will lead to a charge of contempt. Section 60 of the Advocates Act empowers the court to discipline advocates who commit misconduct in the course of proceedings. If Evans chooses to plead guilty, it is Sarah's duty to negotiate a plea bargain in order not to waste the court's time.

#### 5. Duty to Act independently.

Sarah also has a duty to act independently. Sarah is allowing undue influence from the members of the WhatsApp group, B which is a direct issue that affects her independence. This is professional misconduct that Sarah must avoid at all times.

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WAKILI SHUPA LTD & COMPANY ADVOCATES  
P.O. BOX 411-00100 NAIROBI, KENYA  
11TH FLOOR, ONE AFRICA PLACE, WESTLANDS.

OUR REF: CRM/1121  
DATE: 23/06/2021

YOUR REF: TBA

Director of Public Prosecutions  
Sheria House, 1st Floor.  
P.O. Box 40-00100 Nairobi

Dear Sir.

RE: USEFUL OPINION ON THE CONDUCT OF SARAH  
IN THE PROSECUTION OF ROBBERY CASE AGAINST  
EVANS.

We refer to the above matter. Having considered the  
matter, we now write to advise you as follows:

#### Background.

The background as we understand it is that you retained  
Sarah to prosecute a robbery charge against Evans.

Investigations are still ongoing and the case is set for  
hearing on 5th November 2021.

On 2nd June 2021, Sarah engaged in a discussion  
in a WhatsApp group with other State Counsel about the  
case and disclosed her strategy to convict Evans. Member  
of the WhatsApp group urged her to ensure success at  
all costs.

#### Law:

1. Advocates Act.
2. LSK Code of Standards of Professional Ethics and  
Conduct (SOPPEC.)

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3. Advocates Practice Rule:

4. Evidence Act:

Analysis:

Sarah has committed a misconduct which breached the following duties:

1. Duty of Confidentiality: This is provided for under section 134 of the Evidence Act and is a standard under the SOPPC.

2. Duty of Fidelity to the law: This is a standard under SOPPC and it directly impacts on the right to a fair trial for Evans under article 51 of the Constitution.

3. Duty to Act independently: This is ~~not~~ a standard under SOPPC. Sarah has ~~adversely~~ allowed her independence to be compromised.

4. Duty to the Court: Sarah intended or misleading the Court through her intention to secure a conviction at all costs.

Recommendations:

The following should be done to avoid such a miscarriage of justice in this case:

1. Remove Sarah from the Case:

~~Sarah must voluntary or mandatorily remove herself from the case because she is unable to act independently prosecute this case.~~

2. Report Sarah to the Advocates Complaints Commission:  
Sarah's conduct is an act of professional misconduct. A report must be made to the ~~complaints~~ Commission to commence disciplinary proceedings against her.

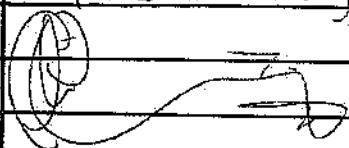
We hope that the foregoing is satisfactory. However if you require any clarification, please do not hesitate to contact us.

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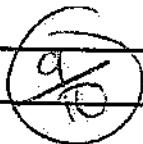
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Yours faithfully-



Wakil Shupani  
Partner

Wakil Shupani & Company Advocates.



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6.(a) Whether I would represent an Accused Person in a Case whose defense is Weak.

Yes I would. The right to a fair trial does not mean that an accused person must always win, but rather that an accused person is given a chance at the due process to either prove or disprove his guilt. I would do this because as an Advocate owes the following duties to Professional Ethics and Standards:

1. Duty towards Fidelity of the law: An advocate must fail to always advance the rule of law. Legal representation is an important aspect of the rule of law.

2. Duty to Society: An advocate has a ~~public~~ duty to improve access to justice & especially to those of little means. This is through probono. The accused with a weak defence deserves representation regardless of the prospects to win.

3. Duty to Act Competently and Diligently: An advocate must put their best foot forward to ensure that the clients brief is properly handled. This means that, even if the case is weak, I must try to give the client the best outcome possible.

4. Duty to the Court: An advocate also owes the court a duty to not to waste the court's time. If the defence is weak, I have a duty to get into a plea bargaining that save the court time, and ensures that the client also gets a good deal.

5 Duty to the Profession: I also owe the profession a duty to uphold its dignity. Taking up a brief which no one else would improve how the public views the profession, and the profession will prosper.

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6 (b) Whether I would accept to represent a Plaintiff in a very weak claim - civil claim.

I would accept to act for the client, but would refuse to file a civil claim that has no reasonable chance of success.

This is because, if there is no cause of action, I will be wasting the court's time and resources. I would act in this manner because:

1. I owe a duty to the court. ☒

I owe a duty to the court not to waste its time and resources since I am an officer of the court. frivolous claims are a waste of the court's time and resources.

2. I owe a duty to the public and opposing side.

I owe a duty to the public, and the opposing side not to allow the court process to be abused at the detriment of the members of the public, and to the defendant. Costs, time and resources will be wasted by the defendant if I file a case with no cause of action.

3. I owe a duty to the profession.

I owe a duty to the legal profession to ensure that I do not bring the profession to disrepute. Accepting that to file the case is admitting that lawyers are hired guns, and this will tarnish the image of the profession in the eyes of the

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6(c) Relevant Why Advocates must Offer Pro Bono Services.

1. To Improve access to justice.

Advocates have a duty to provide free legal services under Article 48 of the Constitution of Kenya, and to advance the rule of law. Those with little means to must access the justice despite being unable to afford it because the legal profession is a learned art in pursuit of public service.

2. It is an ethical Duty for Every Advocate.

Pro bono services are not an act of charity. They are an ethical duty for every advocate and therefore it is a requirement for an advocate to take up pro bono briefs.

The legal profession is not a business where the focus is profit. It is a learned art in pursuit of public service.

Inability to afford legal fees should not be a hindrance to access legal services, and justice.

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**EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES**

UNIT CODE: **A T P 165** SUBJECT/UNIT ..... **PROFESSIONAL ETHICS** .....

REGISTRATION NUMBER:

DATE: **24<sup>th</sup> JUNE 2021**

**INSTRUCTIONS TO CANDIDATES**

1. Enter the Unit code, Subject of the Examination, Admission Number and Date in the spaces provided. The admission number should be as it appears on the Examination Card.
2. Do not write your name anywhere in this booklet.
3. Attempt each question on a fresh page of the booklet.
4. If an additional booklet is used, it MUST be fastened at the END of this booklet.
5. Insert in the column headed 'Question Number' the numbers of questions answered in the order in which you have attempted them.
6. Kindly ensure your handwriting is LEGIBLE.

Question Number	Examiner		Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials
6	34					
4	00					
1	05					
2	00					
3.5	00					
<b>TOTAL MARKS</b>	<b>09</b>					

An accused person has the right to be ~~heard~~ and represented despite the nature of his or her case.

The Cab-Rank rule provides that every advocate is entitled to take every case brought before them unless there are underlying issues. For example where the client cannot afford to pay for legal fees as charged by the advocate.

Refusing to take a case based on its strengths and weaknesses goes against the Advocates practice rules as well as the rights of an accused person in the Constitution of Kenya 2010.

On the other hand, if the case of the defence is weak then the advocate may or should take the case and advise the accused persons to either settle the matter out of court in order to avoid presenting cases that may waste the courts time.

An advocate can also fail to represent the accused person where representing him or her will interfere with his other cases or responsibilities in the office.

If the claim is considered weak an advocate may fail to represent the plaintiff if he has knowledge of the defendant's case.

He may also fail to represent the plaintiff if he was already approached by the defendants seeking him to represent them.

If the advocate is not well conversant or knowledgeable in that particular area of ~~the~~ practice he not agree to represent.

Q3

Where taking the advocate has a lot of pending cases to attend to and feels like he may not give the plaintiff full attention as the case may require, then he can refuse to take the case.

However the advocate is entitled to take the case where the exceptions of the sub-ranking rule do not apply and advise the plaintiff accordingly as maybe best for him.

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REGISTRATION NUMBER:

Questions ..... Q. ....

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either margin

i) This acts as a form or way of giving back  
to the society.

02/10

ii) Inorder to assist those in need of legal aid  
or services but cannot afford to pay for  
it.

Various people in the society are in need of  
legal services but due to their economic  
short comings, they cannot afford advocates  
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serve justice to those who cannot afford  
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because a party has no advocate

04/10

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02

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04/10

Disclosure and privilege is provided for under Rule 20 of the Law Society of Kenya (LSK) Digest.

The concept of privilege is also brought out in the case of Piercy Versus Piercy.

Disclosure and privilege are crucial in circumstances where the

→ The advocate has information that some sort of misconduct has been carried out during the continuance of the case or during proceedings. This includes fraud or bribery in order to alter the determination of the case.

Sec 134 - 137 of the Advocates Act also outlines the position of advocate-client privilege in court proceedings.

Advocate-client privilege enables the clients to be able to trust the advocate as well as have confidence in him or her.

It allows the advocate to keep the information he or she has received from his client from going public.

Privilege also stops the advocate from testifying or giving evidence against his or client on the matter.

However, certain instances may require the advocate to break privilege.

As in the case of Piercy Vs Piercy, an advocate

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Questions ..... \_\_\_\_\_

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can break privilege if the information in his possession can help in his defence in a case of disciplinary.

In the case above, the defendant complainant filed a complaint against his advocate during his case. The advocate was handling his divorce case. In the advocate's defense, he had to break privilege in order to defend his actions. (Piercy vs. Piercy).

An advocate may or is bound to disclose any facts that may hinder fairness and justice from being achieved and served by the court. If during the proceedings the advocate receives any information either from his or her client that will help serve justice, he is bound to disclose the information even if it will hurt his case.

However, if the information that could the position of the court in the matter is obtained after the case has been heard and determined, then it is not a must for the information to be disclosed.

An advocate is an officer of the court first before he is of his client. He is therefore bound by the rules of the court to ensure he is completely transparent with the court in all the cases as permitted by the law.

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Questions .....

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See the case of

An advocate's duty to the legal profession is the promise of an advocate to his or her fellow colleagues, the court as well as the client.

In the case of Tiwi Beach Hotel, an advocate has the legal duty and responsibility to ensure he or she handles all the cases brought to him with utmost diligence.

It is also the duty of the advocate to the legal profession to ensure he or she upholds the rules and regulations that govern the legal fraternity. In handling his cases the advocate has a duty to ensure he handles all matters as per the regulations requirements.

Duty to - Duty and responsibilities of advocates to the profession are also brought out in the case of Uhuru Highway & Another.

An advocate has a duty to uphold the dress code of the legal profession. The Advocates practice rules state that advocate should dress and the appropriate colours to be worn, not only when going to court but also when carrying out legal undertakings.

An advocate has a duty to carry out his obligations to the court being that he or she is considered an officer of the court. He or she is supposed to represent the legal profession as appropriately as possible.

It is the duty of an advocate to ~~keep~~) change clients according to the Advocates Remuneration Order. This in turn stops all in the legal profession from under cutting or over charging clients which is an offence under the advocates Act.

02  
10 Duty to perform all his undertakings with utmost good faith. He or she is expected to fulfil all his undertakings as stated in the undertaking ~~and~~ agreement between himself and his colleague.

The Law Society of Kenya enhances professional ethics for lawyers by upholding Sec 32 of the Advocates Complaints Commission.

The Law Society of Kenya ensures that all advocates practicing in Kenya have attained the necessary requirements to inorder for them to practice for example passing the bar exam, attending an accredited law school, among others.

The Law Society of Kenya also plays the role of enhancing the rules of practice. This is to ensure no persons who is not admitted as an advocate does no represent clients in court or carry out any responsibilities of an admitted advocate.

The Society also plays the role of ensuring no firm or individual advocate goes against the rules of advertising.

In the case of Omwansa and another Versus The A.G The plaintiff stated that the rules of advertisement were too strict and went against the rule rights of consumers as brought out by the constitution of Kenya 2010.

The Society also has a role ensuring discipline in the profession. It has in turn established the Advocates complaints commission where aggrieved clients can forge their complaints against

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Questions ..... b>

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advocates and action can be taken against  
them.

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REGISTRATION NUMBER:

Questions ... 2 (a) .....

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I would consider putting forward the fact that Mr. Newton has been a part of the legal profession for more than five years (10 years) and the Advocates rules of practice state that after an advocate has practiced for 5 or more years after being admitted to the bar. Hence making him a pillar in the profession.

Despite the disciplinary ~~on misconduct by~~ Mr. Newton, he was able to take responsibility of his actions (Pleading guilty) and bear the consequences as well.

02/05

I would consider the fact that Mr. Newton is an advocate of the High Court who's name is still in the Advocates Roll and has a valid practicing certificate.

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Questions ..... 2 b.

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Being that Mr Newton still has his name in the Advocates Roll, I would urge him to go ahead and apply for the position of Senior Counsel.

However, I would advise him to first go to the Disciplinary Tribunal and ask them to write a letter to the Law Society of Kenya stating the outcome of the complaint lodged against him. He may use this to my appeal to the Law Society of Kenya to consider his application.

I would also advise him to get testimonials from the various clients he has helped over his practicing years to present to the Law Society of Kenya.

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REGISTRATION NUMBER

Questions ..... 35(a) .....

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OKELLO & CO-ADVOCATES  
WAIKARI KATES BUILDING ALONG WAIKARI WAY  
FOURTH FLOOR  
P.O.BOX 6609 - NAIROBI  
DT02037774 / 0139912908 / TELEPHONE NUMBER

OUR REF -- - TOUR REF -- - DATE -- -

MUONEEN  
~~OKELLO~~ & CO. ADVOCATES  
MULINDI MBINGU STREET  
NAIROBI  
P.O.BOX 349.

DEAR SIR | MADAM  
REF : PROFESSIONAL UNDERTAKINGS

We the firm of Okello and company advocates  
acting for the Mr. Karimi, the vendor do state  
the terms of our professional undertakings as :-

- 1) The advocate of the vendor will uphold his end  
of the agreement
- 2) The completion documents shall be released  
within 7 days upon payment of the purchase  
price in full.
- 3) The purchaser shall complete payment within  
the next 7 days as agreed.

The above terms are upon agreement by Muoneen  
& Company Advocates and Okello & Company

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Questions .....

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Advocates.

Drawn at — day on — 20 —

09/6  
V

REGISTRATION NUMBER:

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Questions ..... 5 (b) .....

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Ms Maureen advocate failed to uphold the Today timeline as agreed from the day of registration of the transfer ~~too~~ in favor of the purchaser.

Ms Maureen failed to reach out to the vendor's advocate to inform him that they will not be able to make the remaining payment during the timelines they had agreed upon.

50/50

Professional Undertakings is mapped out in the case of Rondell Versus Worsley.

Ms Maureen failed to encourage her client to uphold her end of the ~~date~~ agreement.

0/10

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REGISTRATION NUMBER:

Questions 5(6)

Do not write in  
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Ms Maureen advocate failed to uphold the 7 day timeline as agreed from the day of registration of the transfer ~~too~~ in favor of the purchaser.

Ms Maureen failed to reach out to the vendor's advocate to inform him that they will not be able to make the remaining payment during the timelines they had agreed upon.

60/65

Professional undertakings is mapped out in the case of Rondell Versus Worsley.

Ms Maureen failed to encourage her client to uphold her end of the ~~the~~ agreement.

50/50

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either margin.**

## Questions .....

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