

COUNCIL OF LEGAL EDUCATION



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

ATP 105: PROFESSIONAL ETHICS & PRACTICE

THURSDAY 18TH JULY, 2019.

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **FOUR (4) printed pages** including the cover page, with a total of **Six questions**.
- (b) Candidates **MUST** answer **FIVE** questions.
- (c) **Question ONE** is compulsory and carries **20 marks**.
- (d) **All other questions** carry **10 marks each**.
- (e) Answers **MUST** be supported by relevant case law and statutory provisions where required.

PLEASE TURN OVER

QUESTION ONE

The Judiciary of Kenya has recently signed a Memorandum of Understanding (MOU) with the Council of Elders of Kenya, a body bringing together elders from all the ethnic communities in Kenya. Under the said MOU, the Judiciary and the Council of Elders have pledged to explore ways of bringing to life the constitutional provisions regarding the use of alternative justice system as a means for recognizing the reality that over 90% of Kenyans access justice through these informal forums. As a preliminary to the implementation of the MOU, the Judiciary has requested for your services as a lead expert in Professional Ethics and Practice to prepare a handbook containing the essence of professional ethics and practice in the formal legal arena as well as a code of practice that could be customized for use by elders in their alternative forums.

- (a) Explain to the Council of Elders the importance of professional ethics and practice to the legal profession and why it is necessary that aspects of the same should be applicable in the alternative justice system. (4 marks)
- (b) Prepare the code of conduct for use by the elders in the alternative justice system with relevant parts borrowed from the elements comprising professional ethics and practice as exists in Kenya's legal profession today. Ensure that your code of conduct is well explained with reasons for the choice of each element. (16 marks)

QUESTION TWO

Gladstone, an Advocate practicing in the firm of Dellington Associates is approached by Ludwel to advise her whether she can proceed to dispose of her fifty titles and to provide her with the legal requirements to conclude the transactions. Gladstone instructs her junior associate to prepare a comprehensive opinion which results in Gladstone getting a brief.

Gladstone conducts a search at the Ministry of Lands office and is issued with a search certificate indicating that the properties belong to Ludwel. Ludwel secures purchasers and takes them to Gladstone to prepare and release the conveyance documents upon payment of the purchase price in terms of the Agreements for sale. Ludwel is later arrested when five purchasers lodge a complaint with the police that they have been defrauded as the title documents availed to them were not genuine.

Ludwel, being in police custody, requests her husband to contact you to visit her in Remand Prison to give advice on the effect of the correspondence and communication between her and her conveyance lawyer, Gladstone.

What cause of action is available to Ludwel in the circumstances? Justify your answer with statutory provisions and at least two authorities which distinguish the set principles. (10 marks)

QUESTION THREE

In their June 2018 office meeting, the partners, associates and staff of Thaddeus & Merrill Company Advocates decided that as part of giving back to society, they would have a monthly legal aid clinic dubbed "bringing law closer to the client".

As at January 2019, the office meeting bringing together the same persons as the June 2018 meeting reviews the progress and impact of the legal aid clinics that have so far been conducted in various parts of the country. In fact, the meeting notes the sharp increment in business for the law firm and resolves to invest more towards the programme. The law firm decides to engage the services of graphic designers, media specialists, web designers among others in order to publicize the law firm's legal aid activities in all available media. A decision is also made during the meeting to target communities in Kenya for the