

THE KENYA SCHOOL OF LAW



EXAMINATION FOR ADMISSION TO
THE ROLL OF ADVOCATES

PROFESSIONAL ETHICS – ATP 105

28TH NOVEMBER, 2014

DURATION: 3 HOURS

Instructions to Candidates

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

PLEASE TURN OVER

QUESTION ONE (1)

Brian, Hezbon, Dave & Associates is an upcoming law firm in Nairobi. The three partners are young energetic and intelligent advocates in their mid-twenties. On the 17th November, 2012, they put an advertisement in the firms 'wall' in Facebook for their "legal clinic," stating that they were offering "legal services at very reasonable fees," and listing their fees (a maximum of 20% of the value of the subject matter) for certain services, namely, uncontested divorces, uncontested adoptions, simple personal bankruptcies, and changes of name.

The advert was again posted in Twitter on the 17th of November, 2014. Shortly thereafter, the law firm engaged Alliance Media, an outdoor advertising giant, to erect a giant billboard measuring 16 square meters (4 by 4 meters) at the Uhuru Highway – Haile Selassie roundabout with a similar advert. In the billboard a very attractive and somewhat sensually dressed female model proclaims the virtues of the law firm declaring it the undisputed law firm of the moment, thanks to its spectacular successes in and out of the court room. The law firm then ran an advertising blitz on citizen TV from 18th November, to 25th November 2014. In an attention-reverting 90-second commercial some very pretty female models proclaim the firm as the law firm of the future. For good measure the adverts list the names of the firm members and their employees, highlight their areas of specialization, and give contact details of the firm.

The Law Society of Kenya reacted furiously accusing the law firm of violating the Advocates (Marketing and Advertising) Rules, 2014 LN No. 42 of 2014. The LSK instructs one of its advocates to institute disciplinary proceedings against the law firm. The law firm takes out judicial review proceedings to prohibit the Disciplinary Tribunal from proceeding action citing a violation of their 'constitutional freedom of commercial speech'.

Justice Helen, the judge before whom the judicial review application is argued, is a former partner of the firm. As a former partner of the firm, Justice Helen, like all former partners, enjoys a very comfortable monthly pension from a pension scheme administered by Alexander Forbes on behalf of the law firm. The Law firm, as part of its regular corporate social responsibility programme, recently paid tuition fees for Winnie, Justice Helen's granddaughter, who had graduated with a first class honours degree from the Catholic University of Eastern Africa and is proceeding to Oxford University. Winnie was competitively selected from a list of 50 eligible applicants.

The law firm is represented in the case by Leonora, one of its most promising associates who had scored over 90 in all units taken at the Kenya School of Law ATP Programme on first attempt. Dave acknowledges Leonora's extraordinary competencies as a lawyer and is satisfied that she is equal to the task of representing the firm. Dave nevertheless insists on drafting the application himself. Dave also prepares written submissions for Leonora. Leonora is uncomfortable with some aspects of the averments in the statement in support of the application for leave.

According to Leonora the averments, though verified by affidavit are not factual. Leonora would also prefer to draft the submissions differently and is unable to follow the gist the argumentation as presented in the submissions. She calls the attention of Dave to her concerns during a pretrial bringing but Dave dismisses the concerns with a smile saying no one will ever find out about the 'so-called factual inaccuracies'. As for the submissions Dave takes great exception to Leonora's presumptuous attitude and maintains the submissions must be presented as drafted. Leonora is far from persuaded but nevertheless chooses to prosecute the