

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 105: PROFESSIONAL ETHICS & PRACTICE

MONDAY 19TH NOVEMBER, 2012

DURATION: 3 HOURS

Instructions to Candidates

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

PLEASE TURN OVER

1. A new year that held great promise has suddenly gone awry for Viva. She is the senior of three partners in the limited liability partnership of Viva, Beta & Gilbert Advocates. Gilbert has limited liability and only joined the firm last year after admission as an advocate.

Unknown to Viva, Beta diverted some of the client's funds totaling Kshs.5 Million into his family business and it was not until the client, Jason, burst into her office threatening to bring in Police that Viva learnt about the matter. In fact the confrontation was so violent that Viva got into a fistfight with the client. Jason has threatened to sue the firm for damages for 'assault' following the incident.

Meanwhile, Gilbert, who has been ailing for about a year has suddenly succumbed to illness and there are ongoing funeral arrangements with financial implications for Viva and the firm. Viva is ever grateful for the small team of pupils and clerks who are virtually running the office, including advising clients as Viva finds her footing.

Viva is so distraught that she suffers a near mental breakdown. Her boson friend, Justice Sada, advises Viva to ensure that a suit scheduled for hearing before Justice Bongo the following week, in which Viva is seeking damages defamation against some local daily is heard. The Judge advises her that with the real possibility of an award of a couple millions, she could reduce her stress levels considerably. Viva is all weepy and distressed and the judge, who is currently on leave, promises to sit in the courtroom to give her moral support during the hearing of the case. The judge also reminds Viva that Gilbert's family is extremely wealthy and Viva's firm could prevail upon them to settle the partnership debts. All that Viva needs to do, adds the Judge, is to get Okul Advocate to file a long no-nonsense plaint against Gilbert's estate and have the suit 'fast tracked'.

Viva visibly brightens up and the Judge in a bid to keep Viva's spirits up invites Viva to the 'Prison Reform Fund' dinner dance scheduled for the weekend. The Judge is a trustee of the Fund and sometimes officiates over its fundraisers.

Judge Sada is a no-nonsense judge. Viva remembers with a smile how, not so long ago, the judge bombarded the haughty Mario, a Plaintiff in a much touted multi-billion shilling suit, with such difficult questions that Mario literally caved in when the Defence Counsel shot him a few more questions.

Viva admires the judge's ability to weather all manner of storms. The most recent which the judge seems to have laid to rest is an alleged impropriety complaint by a former client of the judge, when the Judge was in private practice 10 years earlier. Judge Sada has dismissed the claim as a non-starter, granted the rigorous vetting and interview process she underwent before the Judicial Service Commission culminating in her nomination for appointment as judge. Judge Sada has since bragged that it shall not take long before the 'noisy' Law Society of Kenya (LSK) members, who are in the habit of nosing into matters that do not concern them, are vetted and their clients' accounts opened to scrutiny. As for the review of the Advocates Remuneration Order, sought by LSK, the 'Common Mwananchi' will have a significant role in determining the Advocates remuneration, says Judge Sada.

Viva increasingly brightens up. She even remembers the recent resolution she reached with one of the firm's clients, Jack. Jack had complained that the firm had overcharged him and upon