

KENYA SCHOOL OF LAW



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 105: PROFESSIONAL ETHICS & PRACTICE

MONDAY 25TH NOVEMBER, 2013

DURATION: 3 HOURS

Instructions to Candidates

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

Note:

A liberal use of statutory provisions (Including the LSK Digest) in identifying prohibited acts and case law to illustrate the interpretation of ethical issues by the courts is expected and will be rewarded.

PLEASE TURN OVER

1. Sophia is the general partner of three partners in the limited liability partnership of Sophia, Wendy & Sheila Advocates. Sheila and Wendy have limited liability and only joined the firm in January 2011, some two months after admission as advocates.

Unknown to Sophia, Wendy diverted some of the client's funds totalling Kshs.5 Million into her family business and it was not until the client, Caxton, burst into her office threatening to bring in police that Sophia knew about the matter. In fact the confrontation was so violent that Sophia got into a fistfight with the Caxton. Caxton has filed a civil suit against the partners jointly and severally for damages for 'assault' following the incident. He has also lodged a complaint with the complaints commission seeking disciplinary action against the three partners.

Alarmed by Wendy's conduct, Sheila decides to resign. She writes a letter of resignation from the partnership citing irreconcilable differences with her partners. ~~Wendy~~ ^{Sheila} delivers the letters of resignation to both partners. She packs her belongings, leaves the firm and sets up a one-woman law firm in the immediate neighbourhood. She takes no further part in the activities of the firm. Wendy, for her part has proceeded on a holiday in the Caribbean and is out of the office for some 12 months. She makes no contact whatsoever with the firm and is unconcerned about what is happening at the firm. To fill the gap left by Sheila and Wendy the Sophia resorts to using her pupils and clerks. The pupils and clerks get to work with zeal and do a fantastic job exceeding the expectations of the firm's clients. They also go out of their way to look for clients for the firm. To encourage clients to come they offer them up to 50% discount on the fees prescribed by the remuneration order. They also organise several radio and television talk shows in which they extol the capabilities of the firm. One of the firm's senior clerks is Hezbon who has had over 30 years' experience as a legal clerk and who joined the firm upon its inception. Banking on Hezbon's expertise and vast experience, Sophia leaves Hezbon to run the law firm and on many occasions Hezbon and the pupils perform the following tasks:

- i. Taking instructions from clients
- ii. Drawing and preparing documents/ instruments of conveyancing of property, formation of limited liability companies, whether private or public; agreements for partnerships formation and their dissolution, filing or opposing a grant of probate or letters of administration, other documents for which a fee is prescribed by any order made by the Chief Justice under section 44, and documents relating to any other legal proceedings;

Hezbon and the pupils are so thorough in their work that Sophia has exercised virtually no supervision over their work at all. Sophia pays substantial commissions and bonuses to Hezbon and the pupils for their excellent services. Last month, Doreen, an advocate with an office in the same floor, complained that she will report Sophia for misconduct after having discovered that Hezbon is not a qualified advocate. To remedy the situation Hezbon has approached Bokayo, a newly admitted advocate with an offer of employment in the firm to execute documents and instruments prepared by Hezbon and the pupils and, where necessary, appear in court on behalf of the firm.

- a. What ethical and professional responsibility issues arise from the above scenario?
(10 marks)
- b. Should Bokayo take up the offer of employment by Hezbon? Explain your answer.
(3marks)