



KENYATTA UNIVERSITY

EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

LPL 204: PROFESSIONAL ETHICS AND RESPONSIBILITY

2nd SEMESTER 2020/2021

TIME: 2 Hours

INSTRUCTIONS:

1. Answer **ALL** questions.
2. Support your answer with relevant illustrations from case law, statutory provisions and any other references.
3. Your writing must be **NEAT** and **LEGIBLE**.
4. Your answer booklet must bear your assigned **REGISTRATION NUMBER**, both on the cover and every written page therein.
5. Do not scribble or draft answers on the inner or outer cover pages or your answer booklet.
6. Do not write anything except your **REGISTRATION NUMBER** on this question paper.
7. **ALL** Kenyatta university Examinations rules apply as if they were contained herein.

QUESTION 1

Jamnazi, a freshly admitted advocate of the High Court of Kenya, arrives at the offices of Wakili Mjanja & Co. Advocates on his first day at work. He finds a note on his desk from Onyalo Biro, the Managing Partner.

“Welcome to our firm Jamnazi. I am sorry I could not be there this morning to show you around and brief you on the pending urgent matters. Jane, my secretary, will explain to you around and explain to you how we carry out client interviews. At 10.00 a.m you will interview some possible clients with respect to a proposed environmental pollution suit against Rose Farm Limited. They are worried about the costs of litigation but assure them that they will not have to pay a coin if we take the case. We will bear all the costs, including medical examination fees. By the way, we will pay their rent and school fees, if necessary. Do not turn them into clients yet because our finances are low at present and there are far too many other briefs to deal with right now. Be friendly and supportive but do not seal the deal yet. That interview should take no more than one

hour. You will next have to go and speak to more employees of Elimu Bora Company who were forced to work overtime without pay. We already represent three employees, but we need to get more. Take along the fees agreement which sets the fee at 40% of the sum recovered and instruction letter for the new clients to sign. Jane will explain everything to you. This could be a huge case for us in terms of a precedent and not to mention the advocates costs we are likely to earn. Be persuasive and persistent. There is also the case of Lumumba vs Ayieko. I finally convinced the clients' mother to pay the hourly legal fees, but we need to get the mother to execute the fee agreement. Have her sign the form that Jane will avail you in this regard. Finally, I need your urgent advice over the matter of the estate of Kamau (the deceased). You will note that I am one of the executors and trustees of the Estate of the deceased. One of the beneficiaries is now challenging the appointment of our firm as lawyers for the estate of the deceased and demanding a refund of the fees of Kshs. 500,000/- paid to our firm. The Law Society of Kenya has issued us a notice to show cause why disciplinary proceedings should not be commenced. I will be back at about 6.00 pm and I will treat you to a welcome to the job at Quiver Lounge. Justice Dibala will join us for a drink, and it will be interesting to hear his advice with respect to the Kamau matter."

Identify and analyze ethical issues that arise from these instructions.

(30 marks)

QUESTION 2

One of your former classmates Musoma has just been appointed a prosecuting counsel at the Office of the Director of Public Prosecutions. With zeal to succeed and ambition for a promotion, he takes up a case in which Juliet is accused of planning terrorist activities in the country. Investigations by the police are not yet concluded. Musoma decides to conduct his own investigations and prosecute the accused. Justice Otile Mblack is the presiding judge in the case. In order to gain favour with Justice Otile Mblack, Musoma invites Justice Otile to his home for a party the day before the case is heard. Justice Otile Mblack advises Musoma about how to present his case the next day and how to coach his witnesses.

The judge informs Musoma that for his other cases, he will speak to his fellow judges handling the same for Musoma to get favourable decisions in all of them. Musoma then gives the judge a gift of a Range Rover Sports worth Kshs. 10 million in the full glare of all the attendants of the party. In his speech he says that he is rewarding the judge in recognition of the judge's sterling contribution to the course of justice but also for the support the judge has given the prosecution service in the country.

a) Discuss six ethical issues arising from the conduct of Musoma and Justice Otile Mblack.

(12 marks)

b) Describe the procedure that can be used to discipline Justice Otile Mblack. (8 marks)

QUESTION 3

"An Advocate; by the sacred duty of his connection with his client; knows in the discharge of his office but one person in the world; that is the client and none other. To save that client by all expedient means, to protect him at all hazards and costs to all others and among others to himself- is the highest and most unquestioned of his duties; and he must not regard the alarm; the suffering, the torment, the destruction which he may bring upon any other, nay, separating; even the duties of a patriot from those of an advocate, he must reckless of the consequences, if his fate it should unhappily be, to involve his country in confusion for his client" Quoted from Lord Brougham's defence of Queen Caroline(Hansard New Series, iii, Oct 3 1820)

Discuss the accuracy and relevance of this statement in relation to the conflicting duties of an Advocate in the practice of law in Kenya today. (20 marks)