

**KENYA SCHOOL OF LAW**

**ATP 105 PROFESSIONAL ETHICS 2014/2015 ACCADEMIC YEAR**

**COURSE OUTLINE**

**Expect an updated (2016) version in due course!**

**COURSE FACILITATORS**

- CHARLES B G OUMA

**COURSE SCHEDULE**

<b>CLASS</b>	<b>DAY</b>	<b>TIME</b>	<b>LECTURER</b>
<b>CLASS A</b>			
<b>CLASS B</b>			
<b>CLASS C</b>			
<b>CLASS D</b>			
<b>CLASS E</b>			
<b>CLASS F</b>			
<b>CLASS G</b>			

<b>CLASS H</b>			
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**THURSDAY 09.00 AM -011 AM**

**COURSE DURATION**

January to November

24 Topics

33 Weeks

LESSONS OF 2HRS EACH

**COURSE DESCRIPTION**

Legal ethics is the term given to the code that is set up by the legal professionals that details their moral and professional duties to clients. Professional responsibility is the area of legal practice that encompasses the duties of attorneys to act in a professional manner, obey the law, avoid conflicts of interest, and put the interests of clients ahead of their own interests.

The KSL ATP 105 is a course on professional ethics and responsibility. Participants will be taken through an overview of the subject of philosophy with a view to equipping them with theories and concepts in philosophy which can be used to discuss normative ethical propositions. Specific normative ethical propositions from statutes, codes of conduct and case law will be presented, discussed, analyzed and evaluated in detail.

Participants are expected to rationalize ethical propositions and to critically interrogate and challenge the conventional wisdom and assumptions. The regulatory framework will be explored, weaknesses exposed and reforms suggested. Using Case studies, the case method and a very practical problem solving approach, normative ethical issues will be presented for

discussion analysis and resolution. The normative propositions will be discussed using a comparative approach and evaluated using anecdotal and empirical evidence.

Participants will perform a broad array of actual practical tasks like identification of ethical issues in scenarios adapted from real cases and controversies. They will be required to investigate the violation, recommend a cause of action, frame charges, draft defences and write rulings. Using moot courts participants will prosecute, give evidence, defend and preside over disciplinary cases adapted from real life situations. A mastery of statutes, case law and ethical codes is the irreducible minimum. Ability to think critically and outside the box is a prerequisite, so is precision writing and analytical argumentation. Computer literacy and ability to use eLearning platforms is an indispensable skill.

## **COURSE AIMS**

Legal professionals will forever encounter situations of ethical dilemmas and the capacity to resolve the same correctly needs to be developed. This course seeks to produce the legal professional who will behave ethically in all situations. Participants must develop the capacity to identify ethical issues, correctly diagnose the problem , prescribe and take the correct responses

## **COURSE GOALS**

This course seeks to produce legal practitioners who will be faithful to the canons of ethics and responsibility. Such practitioner should be able to demonstrate the importance of professional ethics to a profession, show mastery of the provisions of the statutes impacting on advocates and

an excellent grasp of the local jurisprudence on normative ethical issues. Participants are expected to fill the gaps in local jurisprudence with comparable foreign jurisprudence from comparable jurisdictions, master normative ethical propositions and employ philosophical theories and concepts to analyze ,discuss and evaluate normative ethical propositions.. Above all every participant should develop a personal moral philosophy to be deployed whenever confronted with the myriad ethical and moral problems so prevalent in the practice of law

### **COURSE OBJECTIVES**

ATP 105, just like the other ATP courses is intended to be a very practical course. Emphasis will be placed on developing practical skills of immediate application. At the end of the course the participant should have perfected the ability to

1. Recognise ethical issues
2. Resolve ethical dilemmas
3. Render correct advice on ethical issues
4. Investigate a complaint under the CC
5. Determine a complaint under the CC
6. Prosecute a cause before the DT all the way to the Supreme Court
7. Defend a cause before the DT all the way to the Supreme Court
8. Preside over a cause before the DT and all the way to the Supreme Court
9. Write a ruling in a disciplinary cause from the Complaints Commission and all the way to the Supreme Court

### **CLASS ATTENDANCE**

Class attendance is very important in understanding and completing the course successfully. Whereas it is theoretically possible to pass the ATP exam without necessarily attending class, it is a mandatory requirement of the KSL Regulations. It is not enough to have all the written presentations. By their very nature power point presentations are heavily summarised and do not include the expected content in its entirety. From past experience, participants who do not attend class regularly miss out on important discussions that never find their way into the written presentations. Please ensure you achieve at least 70% attendance record

## **EVALUATION**

PROJECT 20% Terms 1 APRIL 2015

ORAL EXAMS 20% Term 2 JULY 2015

WRITTEN EXAM 60% Term 3 NOVEMBER –DECEMBER 2015

## **BASIC TEXTS**

There are no basic texts for this course. However, the following texts have been found to be useful

1. Compendium of Codes of Legal Practice, Conduct, Ethics and Etiquette in East Africa, EALS/LawAfrica (K) Ltd .2005
2. Gichure W Christine, Basic Concepts in Ethics. (1997). Focus publications ltd,
3. Luis G Franceschi F. Ritho & M. Ritho (Eds) Legal Ethics & Jurisprudence in Nation Building. 2005 Strathmore University Press and Law Africa
4. Tom Ojienda and Katerina Juma. Professional Ethics: A Kenyan Perspective. LawAfrica Publishing (K) Limited, 2011. ISBN, 9966031200
5. Noel Cox, Tom Odhiambo Ojienda , The Enforcement of Professional Ethics and Standards In the Kenyan Legal Profession Createspace 2013 ISBN: 1494245280 EAN:

9781494245283(The Enforcement of Professional Ethics in Kenya (with Prof Cox),  
Amazon publishers, 2014)

6. Rhode, D.L. (Ed.) Ethics in Practice. Lawyers Roles, Responsibilities, and Regulation.  
(2000) Oxford University Press, Inc. New York

## **BASIC STATUTES**

1. ABA Model Rules of Conduct
2. Advocates Act and any subsidiary legislation made thereunder
3. Anti-Corruption and Economic Crimes Act
4. Bangalore Principles of Judicial Conduct
5. Code of conduct for judges and magistrates
6. Constitution of Kenya 2010
7. Council of Legal Education Act Cap 16 Lok(Repealed)
8. Draft Law Society Bill, 2012
9. IBA code of Conduct and Ethics
10. Judicial Services Act, 2011
11. Kenya School of Law Act 2012
12. Leadership and Integrity Act
13. Legal Education Act 2012
14. Kenya School of Law Regulations, 2009 (Legal Notice No. 169 of 2009)
15. LSK Act
16. LSK Digest of Conduct and Ethics 2000 and the 2014 draft code of conduct and ethics

17. LSK Dress Code 2013
18. LSK Marketing Rules 2014
19. National Prosecution Code of Conduct and Ethics 2007
20. National Prosecution Policy 2007
21. Office of the Attorney General Act No 49 of 2012
22. Office of the Director of Public Prosecutions Act
23. Public Officer Ethics Act, 2003
24. Vetting of Judges and Magistrates Act, 2011

#### **USEFUL WEBSITES**

[www.aba.org](http://www.aba.org)

[www.barcouncil.org.uk](http://www.barcouncil.org.uk)

[www.hms0.gov.uk](http://www.hms0.gov.uk)

[www.iba.org](http://www.iba.org)

[www.ksl.ac.ke](http://www.ksl.ac.ke)

[www.lawsociety.org.uk](http://www.lawsociety.org.uk)

[www.lsk.or.ke](http://www.lsk.or.ke)

## **COURSE CONTENT**

### **Introductory class: Setting the agenda**

- Course schedules
- Course description
- Course objectives
- Course evaluation
- Presentation style
- Ground rules

### **Topic 1 Introduction to Philosophy**

- Definition of terms
- The relevance of philosophy to the ATP 105 course
- The philosophical method
- The branches of philosophy
- Leading philosophers
- Philosophical traditions

### **Reading**

### **Topic 2 Ethics a philosophical inquiry**

- Definition of terms
- Philosophy and ethics
- Ethics distinguished from related social phenomena
- Ethical theories



## **Reading**

1. Tom Namwamba: Ethics, a philosophical inquiry
2. Gichure.W.W.Christine Basic Concepts in Ethics (1997). Focus publications ltd, Nairobi

## **Topic 3 : The Legal Profession**

- Definition of terms
- Characteristics of a profession
- History of the legal profession
- Structure of the profession
- Who is an advocate?
- Unqualified persons acting
- Senior counsel
- Role of the lawyer
- Practice settings
- Regulation of the profession
- Professional associations
- Public perceptions of the legal profession
- Current issues in the legal profession

## **Topic 5: Regulation of the profession**

- Why regulation
- Public vs self-regulation
- UN Principles

- Madrid Declaration
- Independence of the Bar
- The regulatory organs
- Primacy of the court

**Topic 6: Legal Education**

- The philosophy of legal education
- The objectives of legal education
- Types and models of legal education
- The structure of legal education
- The provision of legal education
- The regulation of legal education
- The prerequisites of legal education
- The content of legal education
- The delivery modes
- The delivery methods
- The financing of legal education
- Harmonization and mutual recognition
- Current issues in legal education

**Readings**

- Harvey an introduction to the legal system in EA pp. 1-57
- Ojwang and Salter: Legal Education In Kenya 33 J. Afr. L. 78 1989
- Ghai and Mac Auslan Public Law and Political Change in Kenya

- MacCrate et al Legal Education and Professional Development-an Educational Continuum, ABA,sec.Legal Edu. & Admission To The Bar B.1003-104 (The MacCrate Report)
- The Denning report (1961 cmnd 1255 London HSMO 1962)
- Task Force On The Development of a Policy and Legal Framework for Legal Education in Kenya 2006 ( Situation Papers 2005)
- Report of the Task Force On The Development of a Policy and Legal Framework for Legal Education in Kenya 2006
- The Akiwumi report 1995
- The Kwach Report
- LSK Website
- Council of Legal Education / Kenya School of Law Website
- KSL Strategic Plan 2009-2012
- LSK Strategic Plan 2012-2017

### **Statutes**

1. The Advocates Act Cap 16 Laws of Kenya
2. The Law Society of Kenya Act Cap 18 LOK
3. The advocates(admission regulations ) 1997 LN 357/97
4. The Council of Legal Education Act Cap 16A LOK
5. S32 Advocates Act
6. LN 400 of 2007 ,
7. LN 169 170 and 171 of 2009
8. Proposed KSL Regulations 2011

9. The Advocates (Continuing Legal Education) Regulations, 2004 LN 58/2004
10. Advocates (Compulsory courses) Regulations 2005 LN 2618/05
11. Kenya School of Law Act 2012
12. Legal Education Act 2012
13. S 50 Legal Education Act
14. LSK Bill 2012
15. Proposed LSK CLPD Rules 2014

### **Cases**

1. In the matter of an application by Rita Biwott NRB HCC Misc. App 1122 of 1994  
(Justice A B Shah) C.A C.App 238 of 1994 (Cockar, Muli Akiwumi JJA)
2. Geoffrey Theuri vs AG NRB HCC Misc. 72 OF 1984
3. HCC Misc. Civ. App No 137 of 2004 Ex parte Njuguna
4. Mohammed Ashraf Sadique & Another vs. Matthew Oseko T/A Oseko and Company  
Advocates NRB HCCC 901, 933, 934, 935, 936, 937 & 938 of 2007 [2009] ECLR
5. Okenyo Omwansa George & another v Attorney General & 2 others [2012] eCLR. 1.
6. Susan Mungai v Council of Legal Education & 2 others [2012] eCLR
7. HCC PET 12 of 2012 Timothy Makokha et al vs CLE KSL et al
8. Republic v The Council of Legal Education Ex parte Keniz Otieno Agira & 23 others  
[2013] eCLR
9. Eunice Cecilia Mwikali Maema v Council of Legal Education & 2 others Civil Appeal  
No 121 of 2013
10. Maumar Nabeel Onyango Khan v Council of Legal Education & 2 others [2014] eCLR

### **Topic 7: The advocate-client relationship**

- Who is an advocate?
- Who is a client?
- How does the relationship arise?
- Legal nature of the relationship
- Implications of the legal nature of the relationship
- The cab rank rule

### **Readings**

1. Lord Brougham in Trial of Queen Caroline 8 (1821),
2. Lord Cockburn's response to Lord Brougham

### **Statutes**

1. Section 2 Advocates Act
2. SS 15(4) & 55 Advocates Act KE : Preamble ABA Model Rules (2004)
3. Preamble Code of Conduct for Lawyers in the European Union [CCBE CODE], (2002).
4. UN Basic Principles on the Role of Lawyers Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1990

### **Case Law**

1. Gichuki King'ara and Co Advocates VS Mugoya Construction Co Ltd NRB HC Misc App No 625 of 2009 2010 EKLR Per Njagi J 29th April 2010
2. KPLC v Chris Mahinda t/a Nyeri Trade Centre HCCA 148/2004 (unreported)
3. NBK V Wilson Ndolo Ayah -2009 eKLR
4. Professor Huq v Islamic University [1995] LLR 44 (SCU)
5. Kajwang vs. LSK 2002 1 KLR 846
6. Geoffrey Obura v Martha Koome [2000] LLR 3251 (CAK)
7. Samaki v Samaki [1996] LLR 429 (CAK)

8. Mohammed Ashraf Sadique & another V Matthew Oseko T/A Oseko And Company Advocates [2009] EKLR
9. Okenyo Omwansa George vs AG of Kenya
10. Njagi v Kihara [2000] LLR 1698 (HCK)
11. Kingsway Tyres v Alson [1998] LLR 1074 (CCK)
12. Air Alfaraj Ltd VS Raytheon Aircraft Credit Corporation & anor 2000 KLR 315
13. Khanji v Khanji [1992] LLR 597 (HCK)
14. Kilimani Leasing v Morris Catering [1994] LLR 190 (HCK)
15. Malindi Air v Prestige Air [1997] LLR 842 (HCK)
16. Khalid Butt v Kanjabi [1992] LLR 975 (HCK)
17. Kazungu v K.P.A. [1998] LLR 993 (HCK)
18. Mwalia v KEBS [2000] LLR 993 (CCK)
19. Aaron Ringera and 2 Others vs. Paul Muite and Others (Unreported)
20. Ken Kiplagat vs LSK& Ors (Unreported)
21. Cannisius Kirugara vs. Evans Monari and Others. (Unreported)
22. KPLC v Chris Mahinda t/a Nyeri Trade Centre HCCA 148/2004 (unreported)
23. Obura v Koome HCCA 146 of 2000
24. Mohammed Ashraf Sadique & Another v Mathew Oseko t/a Oseko & Company Advocates [2009] eKLR

**Topic 8: Retainer**

- Definition of terms
- Types of Retainer
- Formalities
- Benefits of a Retainer
- Common Retainer Arrangements

- Termination
- Change of advocate
- Discharge by client
- Authority on documents on termination

#### Statutes

#### Case law

1. Nderitu and Co Advocates vs Mamuka Valuers
2. Ragot and Co Advocates vs West Kenya Wholesalers Ltd KSM HC Misc App No 244 of 2002 2006 EKLR 24th Jan 2006 Warsame J
3. Ochieng , Onyango Kibet and Ohaga Advocates vs Adopt A Light Ltd NRB HC Misc App No 654 of 2006 2010 EKLR Per Koome J
4. In the matter of Obaga & Co Advocates Kisii HC Misc App No 9 OF 2008 2009 EKLR 13th December 2009 Per Musinga J
5. Ahmednassir Abdikadir vs NBK NRB HCCC NO 532 of 2004 2007 EKLR per Khamoni J 26TH September 2007
6. KBS vs Susan Muteti CA 15 of 1992
7. Agnes Nzali Muthoka vs ICEA
8. Nderitu and Co Advocates vs Mamuka Valuers NRB HC Misc. App No 2006 EKLR 29TH February 2006 Per Waweru J
9. Re Storer (1884) 26 Ch D 189
10. Waugh v HB Clifford & Sons Ltd (1982) 1 All ER 1095 CA
11. Groom v Croker (1939) 1 KB 194 (1938) 2 All ER 394
12. Richmond v Branson & Son (1914) 1 Ch 968

13. Selangor United Rubber Estates Ltd v Cradock (No 4) (1969) 3 All ER 965 at 975
14. Sheffield Corp v Barclay (1905) AC 392 at 397
15. Key v Boulter (1971) 1 All ER 289
16. Danish Mercantile Co Ltd v Beaumont (1951) 1 All ER 925 at 930 per Jenkins LJ
17. Prince v Haworth (1905) 2 KB 768
18. Yonge v Toynbee (1910) 1 KB 215
19. Daimler Co Ltd v Continental Tyre and Rubber co (Great Britain) (1916) 2 AC 307
20. Watts v Official Solicitor (1936) 1 All ER 249 CA
21. Krakauer v Katz (1954) 1 All ER 244

## **Topic 9      Duties of the advocate**

- The multiple duties and their implication
- Hierarchy of duties
- Fiduciary duties
- Contractual duties
- Duties imposed by statute
- Duties imposed by professionalism

## **Readings**

- Robert W Gordon: Why lawyers can just be 'hired guns'
- Lawyer Role, Agency Law, and the Characterization "Officer of the Court" Spring, 2000  
48 Buffalo L. Rev. 349
- Michael Asimow : When the Lawyer Knows the Client is Guilty: David Mellinkoff's 'The Conscience of a Lawyer', Legal Ethics, Literature, and Popular Culture [UCLA School of Law Research Paper No. 06-44](#)

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=948291&download=yes](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=948291&download=yes)



- David Westerfield From Wikipedia, the free encyclopedia

### **Cases**

1. Polk County v. Dodson, 454 U.S. 312 (1981) 454 U.S. 312
2. Arthur JS Hall & Co (a firm) v Simons (2000 ) 3 ALL ER 673
3. Rondel v Worsley (1969) 1 AC 191
4. Myers Elman (1940) AC 282
5. Ross v. Caunters [1970] 3 AER 580
6. White v Jones [1995] 1 AER 691
7. Caparo Industries plc v Dickman [1990] 1 AER 568

### **Topic 10      Rights of the advocate**

- Right to bow
- Right of audience in court
- Right to administer oaths
- Right to remuneration
- Right to a lien
- Right to withdraw from acting
- Right to indemnity from client

### **Statutes**

### **Cases**

- Sheffield Corp v Barclay (1905) AC 392 at 397

### **Topic 11:      Prohibited Acts/ Disabilities of an advocate**

- Champerty
- Undercutting
- Touting
- Conflict of interest
- Advertising
- Sharing of profits
- Sharing of offices
- Self-dealing
- Deviling
- Dress code
- Acting as an agent of unqualified persons
- Employment of unqualified persons
- Persons under disability and the advocate
- Advocates and subject matter of suit
- Secret Commissions
- Affidavits, sureties, bail, receivership, trusteeship

## **Section 46 Advocates Act**

### **Rule 9 practice rules**

#### **Topic 12 Remedies for Breach**

- Statutory remedies
- Remedies in contract
- Remedies in tort
- ‘Remedies imposed by the profession

- Other remedies

#### Advertising

- Definition of terms
- The economics of advertising
- Social effects of advertising
- Constitutional issues
- Regulation of advertising

#### **Topic 13      Conflict of interest**

- Definition of terms
- Two approaches to conflict of interest
- The implications of the fiduciary nature of the advocate client relationship
- Prohibited acts/Disabilities of an advocate
- Permutations of conflict of interest
- Exceptions
- Remedial measures
- Remedies for breach
- Judicial recusals

#### **Statutes**

- Rule 9 Advocates Practice Rules
- Rule 47 LSK Digest
- Sections 11 12 and 13 Public Officer Ethics Act
- Section 9 13 16 and 22 Leadership and Integrity Act

- S 52 & 55 Anti-Corruption and Economic Crimes Act
- Article 75 (1)(a) and (b) and 232(1)(a) CoK 2010
- ABA Rule 1.7 Conflict Of Interest: Current Clients
- ABA Rule 1.8 Conflict Of Interest: Current Clients: Specific Rules
- ABA Rule 1.10 Imputation Of Conflicts Of Interest: General Rule
- ABA Rule 1.11 Special Conflicts Of Interest For Former And Current Government Officers And Employees
- Client-Lawyer Relationship
- ABA Rule 1.12 Former Judge, Arbitrator, Mediator Or Other Third-Party Neutral

#### Cases

- Trusted Society of Human Rights vs AG & 2 ors exp Mumo Matemu HC Petition 229/2012
- King Woolen Mills Ltd vs Kaplan & Stratton CA 55 1999
- UHDL Ltd vs CBK DPF George Oraro & Joseph Kittony
- Imena vs. Ethuro 2005 1 KLR 417
- Delphis Bank vs. Chatthe 2005 1 KLR 766
- Kamlesh D Pattni & Others v George Oraro & Others HCCA 286 of 2001 (unreported)
- National Bank Ltd v Peter Korat & Anor HCCC 77 of 1997 (unreported)
- East African Foundry Works (K) Ltd vs. KCB 2002 (2) KLR 443
- In R. v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No.1) [2000] 1 A.C. 6,
- Perry v. Schwarzenegger, 671 F. 3d 1052 (9th Circ. February 7, 2012)

- Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others [2013] eKLR
- Kaplan & Stratton vs LZ Engineering CA CA 115 OF 2000
- South African Defence Force and Others v. Monnig and Others (1992) (3) SA 482 (A), p.491:
- McLaren v Legal Practitioners Disciplinary Tribunal & Anor [2010] NTSC 02 Available in Box
- Nocton v Lord Ashburton [1914] AC 932
- Maguire and Tansey v Makaronis and Makaronis Judgment of the Supreme Court of Victoria (Appeal Division), 17 August 1995
- Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 884 (2009) <[http://www.oyez.org/cases/2000-2009/2008/2008\\_08\\_22](http://www.oyez.org/cases/2000-2009/2008/2008_08_22)>.
- R vs Gough[1993] 2 All E. R 724, [1993] AC 646
- In Sellar vs Highland Rly Co
- Metropolitan Properties Co. (FGC) Ltd. vs Lannon [1969] 1 QB 577
- R vs Liverpool City Justices, ex parte Topping [1983] 1 WLR 119
- Porter –V- Magill (2002) 2 AC 357).
- In Laird vs Tatum 409 U.S. 824 (1972
- Kays & anor vs. Boutler & ors 1971 1 ALL ER 289
- Rakusen vs. Ellis Munday 1912 1 Ch 831
- Re A firm of Solicitors 1992 1 ALL ER 353
- Dimes vs Proprietors of Grand Junction Canal
- Key v Boulter (1971) 1 All ER 289

## Articles

- James J. Sample Supreme Court Recusal: From Marbury to the Modern Day The Georgetown Journal Of Legal Ethics [Vol. 26:95
- Michele Hangley ; Fees Disgorgement in Attorney-Breach-of-Fiduciary-Duty Cases
- Breach of fiduciary duties by a solicitor - what is an appropriate equitable remedy? An analysis of Maguire and Tansey v Makaronis and Makaronis Judgment of the Supreme Court of Victoria (Appeal Division), 17 August 1995 By K L Liew

## **Topic 14      Advocates Remuneration**

- Models of remuneration
- Theoretical basis for different models of remuneration
- Control of remuneration
- Principles of remuneration
- Key stages in the remuneration process
- Types of costs
- Billing methods
- The advocates remuneration order
- Recovery of fees
- Current issues on advocates' remuneration
- Costs improperly incurred
- Unqualified person acting
- Fee agreements
- Service level agreements
- Undercutting

- Champerty

## **Statutes**

## **Cases**

- Premchand Raichand Ltd & Ano. V Quarry Services of EA Ltd & Others (1972)EA 162
- Owino Okeyo and Co Advocates vs Fuelex Kenya Ltd NRB HC Misc App No 382 of 2004 ( 2005 EKLK) 13th October 2005 Per Fred Ochieng J
- Gichuki King'ara and Co Advocates VS Mugoya Construction Co Ltd NRB HC Misc App No 625 of 2009 2010 EKLK Per Njagi J 29th April 2010
- Ahmednassir Abdikadir and Co Advocates vs NBK NRB HC Misc App NO 752 of 2004 2006 EKLK 28th March 2006 Per Azangalala J
- Ragot and Co Advocates vs West Kenya Wholesalers Ltd KSM HC Misc App No 244 of 2002 2006 EKLK 24th Jan 2006 Warsame J
- Ochieng , Onyango Kibet and Ohaga Advocates vs Adopt A Light Ltd NRB HC Misc App No 654 of 2006 2010 EKLK Per Koome J
- Shamma v UHDL 2001 2 EA 558 CA
- In the matter of Obaga & Co Advocates Kisii HC Misc App No 9 OF 2008 2009 EKLK 13th December 2009 Per Musinga J
- Ahmednassir Abdikadir vs NBK NRB HCCC NO 532 of 2004 2007 EKLK per Khamoni J 26TH September 2007
- KBS vs Susan Muteti CA 15 of 1992 Two cheque system
- Agnes Nzali Muthoka vs ICEA
- Equity Bank Limited V Capital Construction Limited & 3 others [2012] EKLK
- In the matter of Ababu P.T. Namwamba Misc No DCC 207/2004

## **Articles**

### **Topic 15 The advocates Lien**

- The term lien

- The nature of the advocates lien
- Nature of right conferred by Lien,
- The different types of lien
- Explain when the advocates lien arises
- The subject matter of an advocates lien
- The limitations on a lawyers lien
- How an advocates lien is discharged
- The arguments for and against the advocates lien
- Approaches in different jurisdictions
- Some relevant statutory provisions
- The procedures for enforcement and discharge of liens
- Costs secured by liens

### **Statutes**

### **Cases**

- Barrat v Gough-Thomas (1951) 2 All ER 1048 at 1048 Per Evershed MR
- Re Birmingham, Savage v Stannard (1959) Ch 523, (1958) 2 All ER 397

### **Articles**

#### **Topic 16 Special practice settings**

- Ethics for in-house advocates
- Ethics for judicial officers
- Ethics for State Counsel
- Ethics for public officers

#### **Topic 17 Advocates accounts**



- Types of accounts
- The clients account
- The advocates (accounts rules)
- The advocates (accountants certificate) rules

## **Topic 18 Professional negligence**

- Definition of terms
- Negligence distinguished from mere mistake
- Immunity of advocates
- The advocates ( professional indemnity rules)
- Mistakes by advocates

### Statutes

### Case law

- Halliwells LLP v NES Solicitors –v- Quinn Insurance Limited [2011] EWHC 947 QB
- Flavio Rodriguez vs Apollo Insurance Company Ltd
- Momanyi v Hatimy & Another, (2003) 2 EA 600
- Munster v Lamb. said ([1881–85] All ER Rep
- Fletcher & Son -v- Jubb, Booth & Helliwel [1920] 1 KB 275
- Myers -v- Elman [1940] AC 282; [1939] 4 All ER 484 1939 HL
- Allen -v- Alfred MacAlpine and Sons Ltd [1968] 2 QB 259; [1968] 1 All ER 543 1968 CA
- Rondel vs Worsely 1969 HL)
- Polk County v. Dodson, 454 U.S. 312 (1981)
- 454 U.S. 312
- Arthur J.S Hall and Co. v Simons (2000) 3 AER 673

- *Giannrelli v Wraith* (1988) 165 CLR 543
- *Kettlemen vs. Hansal Properties Ltd* 1988 1 ALLER 38
- *Heaven v Pender* (1883) 11 QBD 503
- *Derry v Peek* (1889) LR 14 App Cas 337
- *Nocton v Lord Ashburton* [1914] AC 932
- *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465
- *Henderson v Merrett Syndicates Ltd* [1994] 2 AC 145
- *Mbogo V Shah* (1967)EA 116
- *White v Jones* [1995] 2 AC 207
- *Trust bank V Portway Stores* (1997)LLR 1197(CCK)
- *Air Alfaraj Ltd VS Raytheon Aircraft Credit Corporation & anor* 2000 KLR 315
- *Champion Auto Spares vs Phadke & ors* 1969 EA 42
- *East African Foundry Works (K) Ltd vs. KCB* 2002 (2) KLR 443
- *Omwoyo vs. AH & P Co Ltd* 2002 1 KLR 68
- *Kogo vs Nyamogo & Nyamogo* CA CA 53 OF 2003 2003 EKLR
- *Flavio Rodriguez vs Apollo Insurance Co Ltd*
- *Rankine v Garton Sons &Co Ltd* (1979) 2 All ER 471
- *Apollo Insurance Co Ltd v Flavia Rodrigues* HCCC 431 of 2002 (unreported)
- *Hedley Byrne & co Ltd v Heller& Partners Ltd* (1964) AC 465
- *Midland Bank Trust Co Ltd v Hett, Stubbs& Kemp* (1979) 3 All ER 571
- *Edwards v Porter* (1923) 2 KB 538
- *Tai Hing Cotton Mill Ltd v Liyu Chong Hing Bank Ltd* (1986) 2 All ER 947 PC
- *Fletcher &Son v Jubb, Booth and Helliwell* (1920) 1 KB 275 at 280
- *Halliwells LLP v NES Solicitors –v- Quinn Insurance Limited* [2011] EWHC 947 QB

## Articles

### **Topic 19 Professional undertakings**

- Definition of terms
- Types of undertakings
- Formal requirements
- Solicitorial Capacity
- The obligation created
- Definition of terms and concepts
- Basic character of an undertaking
- 13 Basic principles
- Types of undertaking
- Capacity to give undertaking
- Rationale, purpose and value
- Obligations created
- Consequences of breach
- Indemnity issues
- Best Practice
- Sample Forms
- Procedure on enforcement

### **Statutes**

- Order 52 Rule 7 Civil procedure rules 2010
- Rule 46 LSK Digest

## Cases

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### Topic 20 Legal practice management

- The advocates' firm
- Partnerships
- Multi-disciplinary practice
- Starting the law firm
- Business models
- The sole practitioner
- Partnerships

- The Mega Law Firm
- Administration of law firms
- Limited liability partnerships
- Certification of law practice
- The administration of advocates firm

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### **Topic 21 Dress code**

- The philosophy of dress codes
- Constitutional issues
- The LSK Dress code
- The KSL Dress code

### **Topic 22 Court etiquette**

- Duty to court
- Duty to the profession

- Duty to litigants
- Duty to witnesses
- Duty to opposing counsel
- Mode of address
- Court etiquette
- Dress code
- Submissions
- Authorities
- Precedence
- Seniority
- Control of pleading and arguments
- Overriding objective

### **Topic 23      Discipline**

- Self-regulation vs public regulation
- Role of the Law Society
- The role of the court
- The Advocates Disciplinary Tribunal
- The Advocate Complaints Commission
- Procedure on discipline
- Disciplinary offenses
- Professional misconduct, unprofessional conduct and lack of professionalism
- An evaluation of the disciplinary system

## **Topic 24      The Law Society of Kenya**

- Membership in the Law Society
- Objects of the Law Society
- History of the Law Society
- Structure of the Law Society
- Powers of the Law Society
- Elections
- Precedence
- Senior counsels
- CLE/CLPD
- Pro bono
- The lawyer as a citizen
- Public defence briefs
- Public interest litigation

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#### **Project Adaptation of James Harvey Tippler**

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#### **Letter by CC**

#### **Response by Advocate**

#### **Determination by CC**

#### **Reference to DT**



**Charges**

**Prosecution**

**Defence**

**Hearing**

**Ruling**

**Appeal to HC**

**Judicial Review by HC**

**Ruling by HC**

**Judgment by HC**

**Appeal to CA**

**Notice of Appeal**

**Memorandum of Appeal**

**Record of Appeal**

**Submissions on Appeal**

**Judgement on Appeal**

**Appeal to Supreme Court**

**Bill of costs**

**Notice of Taxation**

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