DLTO6203 - LEGAL PRACTICE.

1st topic: PRACTICE.

Practice means physical or actual Involvement in doing something also mean doing something by action.

Legal practice.

Is a field of law through which various Legal matters are carried out in a due cause of & ensuring justice among the parties. It covers all what is done either in the court of law when various Legal matter are called upon to be determined.

Legal practice. Is all what is done by Judges or Magistrate and all advocates in the cases either Inside and outside the court of Law. It is not limited only in Litigation but it covers all matters of which Legal practicinize are Involved. Example preparing dfnt legal documents Including Legal opinion.

Who are the subjects (wakengwa) of legal practice

- Lawyers
- Judges
- Magistrates
- Justices
- Legal draftsmens
- Court registers (Court clerks)
- Police officers.

Are the subjects of Legal practice in Tanzania. The above mentions persons undertake various Laws in various circumstances while dealing with Legal matters.

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Rationale for studying Legal practice.

i. Makes law students become familiar with Legal practice within the field of Law.

ii. Enables students to be familiar with the procedures used in resolving dispute.

iii. It enables or helps to know the limits of different persons in practicing Law.

iv. It helps to know the enforcement mechanism of legal rights.

2nd topic:

ADVOCACY SKILLS DURING PRE-LITIGATION

An advocate upon receiving the information or facts from his or her client cannot jump into the colidoy of the court to file a law suit. There are various Important procedure to be Undertaken by advocate before going to court. These matters and procedure are essential as enable an advocate to familiarize well with his client case, study well the facts of his client case and connect them with the preveil Laws so as to come up with a strategically plan and arrangement and how to move with that matter to the court of law.

It may also enable an advocate to know whether the mater is triable before the court of law. Eg: Considering whether the client has the cause of action or act considering whether the matter has time out or not,

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considering the court jurisdiction, parties to the case, relief payable to his client, the bill to be changed, anticipated work to be done by advocate throught the matter.

MEETING WITH THE CLIENT.

An advocate should meet with the client in a suitable and conducive area with the client normally the meeting place should be in office of an advocate.

In the office of an advocate must make sure that he act in a humble and kindway to the client for example giving magazine or news paper to read, giving him or her a cup of tea while waiting for discussion within an advocate.

Necessary skills.

i. Listening skills.

An advocate must be very attentive while listening to a client this will enable advocate to understand clearly what has been narrated to a client, hence you become in a good position in order to assist the client accordingly. To know the story, then to be in a good posixn to assist your clients accordingly.

ii. Note taking.

An advocate must make sure that he or she reduces into writing all necessary parties points, all relevant facts from the statement provided by the client, this will enable an advocate to have a good memory of all important fact narrated by the client.

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iii. Interviewing skills.

An advocate must make sure that he applies good jurisprudence and conscience when asking various questions must aim at geting clarificaxn from the client with regard to various matter of facts. An advocate must reprain from asking questions which are aimed or Implied to challenge, embarassment or shaking credibility of the client.

iv. Counselling skills.

An advocate must make sure that he uses necessary skills in advicing a client as to whether there is cause of action or not, whether the client's matter is triable or not.

v. The ~~intrainership~~, and Billing.

When an advocate finds that there are matters to be researched in order to get cleary position relating to the client Inpormaxn, An advocate must make an agreement for payment in accordance with the service to be provided to the client.

RESEARCH.

Under research an advocate should consider 3 things;

i. Facts
ii. Law
iii. Case analysis and Legal opinion

FACTS

Under Facts an advocate must consider two Important things which are.

i. Availability of witnesses. Witnesses are very Important in proving a case especially in our adversarial system

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of dispute settlement mechanism where each party to the case must bring the necessary witnesses who shall testify for the party who brought them and assist that party in wining a case.

Therefore an advocate must consider whether the given facts are suppoted by witnesses. This is bcoz the good case is the one which is supported by the witnesses.

ii. Whether the facts are supported by exhibits.

Exhibits are very Important in proving a case becoz the contents of an exhibits speak by themselves as in relation to the dispute concerned. It is very easy to prove facts or corroborate evidence by using exhibits. One may simply loose a case if he or she dont have supporting documents.

LAW

Researching on law means looking at the relevant Legislaxns in order to know whether the matter is maintainable or not. These Includes looking whether there is a cause of action, whether the matter is ty time barred, looking on matters concerning jurisdixn, looking on the supportive provisions related on the matter at hands.

CASE ANALYSIS AND LEGAL OPINION

This means looking at the facts in general in connexn with the enabling provisions and narrowing down Important areas of considerations concerning the matter which is to be determined.

Eg; Making a conclusn as to whether the matter is maintainable by the court of law or by a tribunal.

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After case analysis is where an advocate finds that there are enough evidence/witnesses and/or exhibits supported by enabling provisions of the law, or the advocate finds that the matter is not triable for lack of evidence or jurisdiction etc then an advocate is called upon to provide legal opinion to the client in order to assist the client whether his matter is maintainable or not.

An advocate may provide legal opinion in writing or through words of mouth. In the legal opinion an advocate must ensure that he reveals all important facts which makes the case strong to be maintained and those facts which weaken the case on the party of his client.

In other words, an advocate must show to his client all good and bad facts in relation to the given case. At the end an advocate must show his possition and accordingly advise his client as to whether the matter is maintenable or not.

The advice must be supported by authorities. If an advocate finds that the matter is not maintenable according to law, he must alternatively advice his client on the other means of resolving dispute including by way of discussion or negotiation with the other party.

DRAFTING OF PLEADINGS.

Pleading is a document which initiates legal proceedings. eg. Plaint, WSD, chamber summons etc.

Drafting of pleadings is a task which is made much easier or which is simple if an advocate has properly carried out case analysis

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Pleadings aims at innitiating the suit before a court of law, In order for the said suit to be determined by the court and finally commeup with the decision concerning with the said suit. It Includes document submitted by a party who Innitiate a civil case and documents submitted by a party against whom a civil case is Initiated.

These documents Include; Plaint, WSD, counter-claim and setoff

PLAINT

Is a douiment which is used to Initiate civil proceedings before the court of law. ORDER VII CPC.

WSD

Is a document submitted by the court of law in reply to the claims presented in the plaint. ORDER VIII CPC.

COUNTER CLAIM

Is a separate claim which is presented by the defendant against the plaintiff where the defendant has suffered damage caused by the acts of the plaintiff arising from the same transaxn which has lead to the cause of action in question. ORDER VIII RULE 9. (Madai ya mdaiwa against mdai yanayotokana na same cause of action brought against him/ kutokana na madhara ambayo plaintiff kasababisha kwa defendant kwenye same transaxn).

SET-OFF

Is a claim on ascertainable ammount of money which the defendant claims that he is entitled from the plaintiff. The purpose is to reduce the amount of money claimed by the plaintiff against the defendant by

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deducting the amount owed by the plaintiff to the defendant. ORDER VIII RULE 6 CPC. (To find the dfnc between amount claimed by the plaintiff to the defendant). (Inadeal na viwango vya hela peke ake).

DEMAND NOTE/ LETTER

Demand Note:

It is a formal demand of the claims by the claimant against the respondent. It is a written command written by the claimant to wards the respondent aimed at settling the claims in which the respondent is owed by the claimant.

It is normally written and communicated before the claimant file his suit to the court of law.

Importance of demand note

i. It enables settlement of the dispute btn the two parties amicably.

ii. It saves time and cost for litigation before the court of Law. This is because it may enable settlement of the dispute before it reaches at the court level.

iii. It enables the claimant to settle his claims timely for economic development.

QUALITIES OF A GOOD DEMAND NOTE

i Time in which the respondent must settle the claimes.
ii. The name and adress of claimant and the respondent.
iii Ammount claimed.
iv. Cause of action (briefly stated).
v. Command language or threatening Language.

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vi. Signed and dated.

3rd topic: STAGES OF CIVIL AND CRIMINAL TRIAL.

A: Civil Trials.

- Pre-trial stage.

This stage consist of;

i: ADR

In civil trials, dispute starts with puting parties together in order to assist them in trying to reach amicable settlement. This is normally done through mediation.

However while the matter is under mediation, other forms of ADR can be applied. Example parties may seek an adjournment in court the sit outside the court and negotiate the matter or Canciliate the matter and Comeup with a certain solution to be reported to the Magistrate or Judge who mediate the matter and finally come up with the position as to whether the dispute is sucessiful mediated or the mediation failed.

ii: First Pre-Trial Conference (1st PTC).

Under this part, the parties while assisted by the preceding Judge or Magistrate speed track of a case that is determination for howlong should a particular case in over Law process from ~~to~~ mediation to final judgement.

It is provided under Order VIII Rule 22 (3). (a-d) CPC.

- Speed track one fast case within period not ~~set~~ exceed 10 months

- Speed track two normal within period not ~~set~~ Exceed 12months

- Speed track three within period not exceed 14 months.

- Speed track four special cases within period not exceed 24 months.

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The dependant may also rise counter claim or sett-off through his opening statement. Thereafter, the Magistrate or judge shall consider the proceedings together with opening statement provided by parties in a narrowing down disputable issues.

What happens after the speedtruck of the case lapse is provided under Order VIII Rule 41 of CPC.

ii. Second Pre-trial conference (2nd PTC)

Framing Issues.

The case must be held in accordance to answer the frame Issues and not otherwise, and the decision it goes with the issues has its own decision. It is provided under Order VIII Rule 40 (1) CPC. Also Order XIV Rule 1 CPC.

Issues arises where one part alleges the fact and the other part refuse or denies the fact.

KINDS OF ISSUES.

Under Order XIV Rule 1 (4) there are two kinds of Issues.

i. Issues of fact

ii. Issues of Law.

The court may not frame issues where the dependants does not dispute facts alleged by the plaintiff. Or Order XIV Rule 5 CPC.

Examination of Witness.

It takes three forms which are;

i. Examination in chief

ii. Cross examination

iii. Re-examination.

Each form has its own significance.

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Examination in chief.

Section 146(1) of the Evidence Act.

It is the type of examination which is done by a party who called the witness. Examination in chief is the most difficult task for an advocate because the witness may speak out with own ideas hence affected of Law of idea of the case.

Examination in chief ~~is the most~~ therefore, ~~be~~ leading question is not allowed. Leading question is a question which suggests a certain answer or conclusion.

In examination in chief the best witness should be put first before others because the best witness are very good impression to a judge or Magistrate.

Every witness must prove a certain facts in succession when a witness is giving his evidence in examination in chief dont ~~interpate~~ interupt him unnecessary because a witness has a story to tell.

When examing your witness in chief a witness sometime may become stupid the more you have to be calm you should control your temper you must ask your witness seriously from the point the cause of action allows to the end. Don't cross examination to your witness eg. - Are your sure?

- It is possible?

Try to make sure that your witness is giving possible story.

Never call a witness who may also be called by your opposite side. This witness may easly turn hostile. s. 163 of Evidence Act.

In examination in chief Leading question are not allowed. Provided under Section 151 and the definition of leading question is provided under section 150 of Evidence Act.

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CROSS EXAMINATION

It is a most dangerous type of examination to both a witness and advocate for the other party.

It is a dangerous from a witness because a witness may provide answers which distruct the testmony provided during examination in chief.

It is dangerous from an advocate because when your done to ask questions there is no more chance to question that a witness again.

~~Exa~~ Cross examination is an examination which ~~wh~~ witness is crossed up by an opposite party.

PURPOSE OF CROSS-EXAMINATION

i. To build your case through obtaining facts relevant to your ~~ka~~ case

ii. To weaken the evidence of a witness.

iii. To shake the credibility of the witness.

TECHNIQUES IN CROSS EXAMINATION.

i. Don't cross examine, cross examine only where necessary. Do not cross examine if a witness has said nothing about your trial

ii. Don't ask questions broadly. Ask short questions to get short answers and ~~that~~ those short questions should be specific.

Limitaxn or scope OF cross examination

i. Leading questions are allowed. One is allowed to put question in any way of his or her choice. S. 152 TEA

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ii You are not restricted in cross examination to put question other than those put in examination in chief. Thus in cross examination SKY IS A LIMIT.

However, ~~skandals~~ scandalous questions or questions intended to insult or to annoy are not allowed.

The exception is; if a witness is claiming to be of good character you may put scandalous questions to oppose claiming to be of good character. In cross examinaxn a witness must answer questions passed to him.

RE- EXAMINATION

This is the examination of the same witness for the second time after cross examination. The purpose is to clear gaps which were raised during the cross examinaxn.

During re-examinaxn one must confer himself on matters raised during cross examination only. Except with the permission of the court you may produce new evidence and if you produce new evidence the other party will be allowed to cross examine again against ~~that~~ those new evidence.

During re-examinaxn leading questions are not allowed.

HOSTILE WITNESS.

The TEA, does not provide for hostile witness. Section 163 TEA provides that a person is allowed to cross ~~the~~ examine his own witness ~~and~~ only if his witness has turn hostile.

This is through the leave of the court under s. 163 TEA.

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Hostile witness.

Is a person who is giving unfavourable evidence to the person who called him.

- Procedures to be followed in order to declare a person to be hostile.

These procedure were developed by case laws which are;

i. Make an official application either in writing or orally but usually orally, the applicaxn is to treat a witness hostile.

ii. The righ to be heard, the court is required to hear the other party is about the applicaxn.

iii. The court is required to compare the previous statement made before the witness before the police officer and that made before the court of law.

iv. The court shall provide ruling having compared statements. If the applicaxn is granted, then the applicant may be allowed to cross examine his witness, this leave is granted during examination in chief.

- The value of evidence of a hostile witness

Once he is proved to be hostile, all his evidence wont form party of the evidence in making judgement.

Finally you may ~~be~~ charge a witness for ~~per~~ perjury under section 102 Penal code.

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FINAL SUBMISSION.

Is a summaxn of facts, any and evidence with a view to Influence the decision maker to decide in your favour.

It Involves critical analysis of the evidence in relaxn to the relevant provisions of the Laws and the available precedents.

TYPES OF SUBMISSION.

i. Oral submission
ii. Written submission

- Reasons for preparing final submission.

Final submissions are meni to assist the court to arrive at fair decision.

Contens of Final submission

i. In civil cases first content is brief explaxnaxn of the course of action

ii. Brief explanaxn of the reliefs claimed by the ~~claimant~~ Plaintiff

iii. ~~Summary~~ Summary of evidence by both parties.

iv. Issues framed during hearing of the case.

v. Analysis of evidence that is looking on the Law and facts on a due cause of discussing each and every issue.

vi. Prayers. That is what do you ask the court to do for you in general.

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JUDGEMENT

Is an official authentic decision of the court upon respective rights and towards an action or suit litigated or submitted for decision.

Is any decision given by a court on a question or questions or issues btn the parties in a proceeding or case. The court must be competent and having jurisdiction for it to pronounce judgement.

Elements of judgement.

i. A judgement must communicate a decision of the court and must be accompanied with reasons and authorities.

ii. It should resolve the issues in controversy. bishaniwa

iii. It must be final and settle the dispute.

iv. It must be written.

Reasons for judgement.

i. Is a legal requirement of the law

ii. To determine the rights of the parties

iii. To settle matters in controversy

iv. To communicate reasons to the parties for the decision made.

v. To provide accountability to the judicial officers. uwajibikaji

vi. To serve as precedent.

vii. To develop jurisprudence uzio wa upahamu wa kisheria.

viii. To promote checks and balance as the Rule of Law requires.

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B. CRIMINAL TRIALS.

CHARGE

Is a kind of formal acquisaxn by the state against an accused person. It is a charge that Initiates criminal proceeding in a court of law. The purpose is to Inform the accused person the kind of offence (s) he is charged ab with. And also to Inform the accused person the circumstances from which the offence was commited.

It enables the accused person to prepare his defence as he become of a knowledge of the offence he is charged with.

Forms and contents of a charge.

The general forms and contents of charge are provided under s. 131 - 136 CPA. However the provisions are not exhaustive as there are some matters not provided in the sections but if not Included the charge would not be admited.

i. Name of the court with competent jurisdiction.
Eg. In the DC of Kyela at Kyela.

ii. Case No.
Eg. Criminal Case No---- of 2020

iii. Parties
Eg. Republic v. Tomas Xloyce.

iv. Title
eg. ~~Char~~ CHARGE

v. Statement of offence.
Here you must Include a specific offence that is

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alleged to be comitted, specific section which has been violated and the section providing punishment for that ~~provides for~~ comitted offence.

Eg: Murder Contrary to section 197 to 196 PC

vi Particulars of an offence.

You must prepare it based on the evidence you have and make sure they disclose the offence charged. It Includes name of accused person, the act or ommission that constitute an offence, the date when the alleged act was done, the place where the alleged act took place, time of comiting offence, the manner in which offence was comited, the state of mind of acused person during the comission of offence.

N:B

The ingredients of an offence are derived (obtained) from the section that create an offence and there of the Ingredients difers from one offence and another.

vii Date and place where it has been filed.

Eg: Dated at Mbeya this 17th Day of May 2022.

PLEA TAKING.

Once a charge is dully prepared, and filed before the relevant court of law and the acused person is brought before the court, the charge shall be read over followed by accused person's plea of either guilt or plea of not guilt

If an acused person pleads that it is true that he commited an offence, the court shall not proceed to convict him but he shall conduct a

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atatakiwa kupijibu
ambayo accused person
Muundo wa Manwali yanayoulizwa na mahakama
Preliminary hearing(PH). Similary If an accused person pleads not guilt as to the offence is charged with, the court shall conduct pre PH.

The purpose of taking plea, is to ascertain matters which are agreed and those which are denied or it simply to ascertain as to whether an accused person agreed to the offence charged with or denies the offence.

Plea is nommary to read by prosecuxn side by reading the offence, the section or provision of the Law which has been violated, circumstance under which the offence is commited as well as time and place where the offence was comited.

Preliminary Hearing (PH).

S. 192 CPA, provides for PH. It is a practice which is Intended to speedup the proposo disposal or trial of criminal justice. If the accused person is willing to admit the contents of the evidence by the prosecuxn side, and becoz those facts are the summary of evidence, where an accused person accepts, then the court will proceed to proposo judgement without calling witnesses from both sides to prove the case.

Where an accused person denies few facts, then the hearing of the suit shall proceed in respect to only facts which has been denied by the accused person.

During PH, the prosecutor will after the is complete, & read the summary of evidence. The prosecutor will type the facts and give the copy to the opposite & side. Then the prosecutor will read the Fact and the accused will agreed to each.

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then the court will prepare a memorandom of agreed facts. Then the court say these are only facts which are not disputed and the following & are the facts which disputed by an accused person.

Then the sign of the Magistrate or Judge, Accused person, the prosecutor and the accused Advocate if any.

This is to the effect that, anything which has been admited, will not require the procecuxn side to bring evidence to prove it. Only disputed facts will be subjected to evidence. If there are facts which has been disputed then the main trial will start. If the accused has admited every facts and those facts prove the offence, then the court shall proceed to enter conviction.

But, if those facts do not prove the offence even if he has agreed to all facts then the court shall require adixnal evidence.

Committal Proceedings (CPs)

According to S. 2CPA means proceedings held by subordinate Courts with the view to comit an accused person to the HC for trial. A person who is alleged to have comited an offence triable by the HC, shall be sent to subordinate court first. CPs it also known as Preliminary Inquiry (PI)

S. 178 CPA, provides for the reasons for CPs. S. 243 to 246 CPA, covers all matters for CPs including procedures for CPs.

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The procedures ar as follows

i. The charge will be read by an accused person and after that the accused person will be told not to respond bcoz the court has no Jurisdxn

ii. An accused person will be sent back to the custody until Investigaxn is complete.

iii. After Investigaxn is complete, the Magistrate will then Commit an accused person to the near court with 3 document which are;

- 1 for the accused person
- 1 for Prosecutor
- 1 for the HC.

The Comittal paper Includes;

a; charge
b; statement for all witnesses
c; All other documents which are Inteded to be used as evidence.

The purpose of CPS is to Fasten trial. After the Committal order has been served to the DPP then the notice of trial will be issued as ~~to~~ Per section 251 of CPA.

After the accused person is sent to the HC, Informaxn will be read, the offence will be read, and he will be required to enter plea.

- Essence Conducted in HC are;

i. Plea - Inapanyika pale ambapo kesi Imepelekwa mahakamani For the 1st time
Cpia wanangalia whether matter lendelee na murder or Manslaughter.
ii. Trial

The law provides that, if an accused person enters plea of guilt he will be Convicted as per section of CPA.

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If a plea of not guilt is entered the full trial will take place with the aid of assessors as per section 282 of CPA, s. 266 and 267 of CPA, provides for categories of assessors. The witnesses who are to testify before the HC, are only those whose statement were read over during CPs.

The excepxn is that with the leave of the court, addixnal witnesses may be added and the opposite side will be informed. Then, bringing witnesses to the HC for examinaxn followed.

FINAL SUBMISSION

TYPES

i. Oral submission
ii. Written submission.

Final submission is done either by an accused person himself or his advocate and the prosecution. Aro ment to assist the court to arive the final decixn.

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Contents of final submission.

i. Explanaxn of the charge against an accused person.

ii. Summary of facts by both sides.

iii. Summary of testmony by both sides.

iv. Analysis and evaluaxn of evidence adduced in court.

v. Applicaxn of the relevant laws.

vi. Authority in support of your arguments (both persuasive and per binding decixns)

vii. Show whether prosecuxn has proved the case to the required standard.

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vii. Prayer

VERDICT

Is a statement by a Magistrate or judge as to whether the accused person is found guilty or not.

JUDGEMENT

In criminal cases, are the same as in civil cases.

MITIGATION.

Kuomba mahakama Ikupunguzie adhabu kulingana na kosa alilofanya.

- Grounds for mitigation.

i. Pleading guilty. Because he has saved the time of the court.
ii. Assisting Investigation. If a person plead guilty he can assist Investigation to the prosecution and he can plead that he help to the reason of judgement.
iii. That an accused person has been in custody for a longtime.
iv. That an accused person may be a minor or old age.
v. Age
vi. Physical permanent/ illness
vii. Dependence.
viii. It is first offender.

SETENCING

Section 25 of PC provides types of sentence

a) Death
b) Corpral punishment
c) Fines

At a sentence a Judge/ Magistrate should be Impartial that he should not be bias and should avoid personal anger.

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PURPOSE OF A SENTENCE.

i. To protect the state
ii. Preservation of security and protection
iii. protection of
iv. Promotion and protection of public and social morality.
v. Literacy and Lesson to others.
vi. Compensation.

Things to Consider on Sentencing.

i. what the Law says
ii. Conduct of the accused
iii. The way an accused person committed an offence.
iv. The victim. (Madhara alopata victim)
v. Nature of the offence (Amefanya Kosa mara ngapi?)
vi. The mitigating factors.

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TOPIC 4

ALTERNATIVE DISPUTE RESOLUTION (ADR).

It is a mode of resolving dispute in alternative way as the name depict without using court procedures.

The conduct of Conciliation.

It involves the third party meets with the part separately then meets together. It is ADR method in which a neutral third part meet with the persons who are in conflict normally in dfnt sessions of one by another in an attempt to Lower down their tempers and after Lowering their temper the concilliatior bring themtogether so as to finalize the solution of their disputed.

The Conduct of Negotiation.

It is ADR method in which two parties sit together and discuss over the matter in order to have a common and/or uniporm decision over particular matter.

Negotiation can be done as the very to resolve dispute or to negotiate terms of organization.

The conduct of Mediation.

It is an ADR in which the disputant meets with the neutral 3rd party who try to assist them in reaching amicable settlement. Normally mediator assist them in suggessive the manner of resolving their dispute.

The Conduct of Arbitration.

It is ADR method which uses a third part who is an arbitrator who receives evidence from both sides and finally makes decision regarding the disputeed issues as to who wins the case and who Looses.

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TOPIC 5

PRIVATE PRACTITIONERS PROFESSIONAL MISCONDUCT.

i. Advertising
This makes one service known to the public society. Rule 4 of the Rules of Professional Conduct and Etiquette of TLS provides for prohibition of advertising. It requires every advocate that the Control Lawyers violate the rule of advertising through magazines, Callender, newspaper.

ii. The rule against touting.
Is use of Intermediates to attract client. It is provides under Rule 5 of the ~~AD~~ RPCETLS. This Includes using a third party to advertise also telling your client that you are sure you are going to wine the case or telling him that your the best in the ~~&~~ own or telling the client that you know well the judge. section ~~47~~ of cap 341 provides a punishment of a fine not exceeding ~~1000~~= and Imprisonment not exceeding 6 months to anyone who act ~~on~~ of the touting himself or act as an advocate

iii. The rule against champerty/ contigency fees.
This prohibit an advocate so make any agreement by which advocate is retained to prosecure the case for payment only in the event the part wins the case.
An advocate under this category will do everything to ensure that he win the case Including driving it also Impare the Intergrity and Competence of an advocate.

iv. The principle against undercuting.
This principle prohibits an advocate to charge client before • required amont as fees. It is provided under Rule 5 of RPCETLS and Rule 12 of Advocates Remuneration at Tax Rules.

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vi. ~~Exploits~~ Exclussion

Rule 5 A (3) RPCETLs. It prohibit an advocate to share the office with another person who is not an advocate and an advocate who have different qualification in one office.

vii. Misappropriation of client's funds.

An advocate must or required to keep client's account and he must account for any ammount of money he with view from the client's fund account.

viii. Contempt to court.

An advocate must make sure that he act respectively by the Magistrate/Judge that, he must respect them in all the Time he appears before them apart from being profession Misconduct, Contempt to court in criminal offence, under section 114 of the Penal code.

viii. Negligence.

An advocate is prohibited from acting negligence because he is entrusted to save the Interest of his client and since prays for the services that the enters of his client are protected.

ix. Breach Etiquette.

The rule of professional Conduct and Etiquette of TLs provides various matters governing the over rule Conduct of an advocate. There fore an advocate is allowes required to respect the rules and act in accordance with required of the rules.

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TOPIC 6:

CONFLICT OF INTEREST AND THE LEGAL PROFESSION.

Conflict of Interest.
Is a stuation in which an Individual or corporaxn is in a position to exploit a professional or official capacity in some way for their personal or corporate benefit.

OR:

Is a stuaxn in which some one cannot make a fair decision bcoz he will be affected by the result.

Lawyers conflict of Interest.
It occurs when there is a substantial risk that the Lawyer's representaxn of the client would be materially and adviely affected by the lawyers Interest or duties to another client current, a former client or any party to the case.

Conflict of current stuaxn.
The stuaxns of conflicts for lawyers are so many and valid as life it solf. The change in economic enfluences much the rise of conflict of Interest to the lawyers in Tz. Example conflict of Interest relating to provide legal opinion to the client, Conflict of Interest relating to shares or Interest in a particular business.

Types of Conflict of Interest.

i. There are four major types of lawyers conflict of Interest which are;
   i. Conflicts btn Lawyers personal ~~and~~ Interest, and the Interest of the client.
   ii. Conflicts between the Interest of the two or more clients that the lawyer is concurrently representing.

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iii. Conflicts between the client's Interest and those of 3rd parties to whom the Lawyer owes obligations. Eg. When a thirdparty pays the Lawyer's fee, like the Lawyer for the Insurer representing the Insured or a CUCOM Legal officer representing an employee.

iv. Conflicts btn the Lawyers duties to a present client and the Lawyers continuing duties to a former client.

• Rationale for protecting conflict of Interest

i. Independence.

Lawyers must not allow themselves to be restricted in their acting on behalf of or in act giving advice to the client. X Lawyer must ~~act~~ Independently.

ii. Confidentiality.

This means professional secrecy on the party of the Lawyer. The basis of confidentiality on the party of the Lawyer, is a need for the client to have total confidence in his Lawyer and to ~~rel~~ rely on him to handle the matter, he is charged with.

iii. ~~Royalty~~ Loyality.

A Lawyer owes ~~fid~~ fiduciary relaxnship to his client. He has an obligaxn to defend and advance the Interests of the person to whom he owes the fiduciary relaxnship. A Lawyer is required to be Impartial

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TOPIC 7

CHALLENGES FACING LEGAL PRACTICES AND LEGAL PRACTITIONERS.

- Corruption.
- Economic hardship.
- Ignorance of the clients on legal practice. Mitiko ya kiuwakili/mitego ya kiuwakili.
- Breach of etiquete. eg: Undercutting
- Moral decay amongst Advocates.
- Conflict of Interest.

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