



Officer	Initials
Checker	
Data Entry	
1 <sup>st</sup> Verifier	
2 <sup>nd</sup> Verifier	

## COUNCIL OF LEGAL EDUCATION

### EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

REGISTRATION NUMBER:

--	--	--	--	--	--	--	--

VENUE: Co-operative University ☐ Kenya School of Law ☐ KNEC ☐

#### ATP105: PROFESSIONAL ETHICS

Examination Series: November 2024

Date: 15<sup>th</sup> November 2024

Time: 09:00AM-12:00PM

Duration: 3 hours

#### Instructions to Candidates:

- Enter your registration number and tick the exam venue in the space provided.
- Answer **FIVE (5)** questions, including question **ONE** which is **COMPULSORY**.
- Question **ONE** carries **20 Marks**. All other questions carry **10 Marks** each.
- Attempt each question in the space provided. Additional space is provided at the back of the booklet.
- Answers **MUST** be supported by relevant statutory provisions and case law where required.
- Do not write your name in the booklet.
- Ensure your handwriting is **LEGIBLE**.

#### FOR EXAMINER'S USE ONLY

Question Number	Examiner		Internal Moderator		External Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials	Mark	Initials
1.								
2.								
3.								
4.								
5.								
6.								
Total Marks								



## QUESTION ONE

You are an advocate of the High Court and have been approached with a “lucrative”, though highly convoluted brief by some Lebanese clients through your classmate, Joseph. In the brief, you have been offered a handshake of Kshs. 1,000,000 even before any assignment is undertaken. While the clients are willing to sign documents, they are not willing to meet or see you. They have indicated to Mr. Joseph that they are illegally working in Kenya and also have no plans of leaving the house they have been staying in for two years out of fear that they will be identified by law enforcement agencies and arrested.

Joseph has informed you that if you are to take up that brief, you will have to create a notary’s stamp for use so that it is shown that they signed the relevant affidavits from Singapore. They also have another strange demand. They want you to delay their matter so that a judgment in another country against them can be enforced first. That way, they will be declared bankrupt and will be unable to meet their financial obligations.

First, they want you to approach the judge privately to see if she can help, “sort out” the issue. If that fails or is not feasible, they want you to file an application for recusal of the judge who is handling their case in Kenya, alleging that she has been bribed to prompt her not to proceed with the case on the date when it is scheduled for highlighting of the final submissions.

In light of these set of facts:

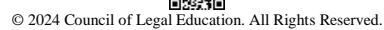
- (a) Examine the situations under which advocate-client relationships arise and whether you would consider an advocate-client relationship to exist between yourself and the Lebanese “clients”. (4 marks)
- (b) As an advocate who believes in conducting ethical practice, what alternative approaches would you use to help them achieve their objectives? (2 marks)
- (c) Discuss the duties that you, an advocate, owes to the Court. (4 marks)
- (d) Explain what professional responsibility is, highlighting aspects in the above scenario that would compromise your professional responsibility towards your clients. (4 marks)
- (e) Would the claim that the judge has been bribed be a valid ground for judicial recusal? Explain citing relevant case law. (6 marks)

REGISTRATION NUMBER										Do not write in either margin

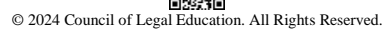


--	--	--	--	--	--	--	--

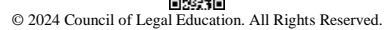
The seal of the Council of Legal Education is a circular emblem. At the top, a banner reads "Council of Legal Education". In the center is a scale of justice, with a book resting on its base. The entire central design is encircled by a laurel wreath. At the bottom, another banner reads "regulate • license • supervise".



--	--	--	--	--	--	--	--



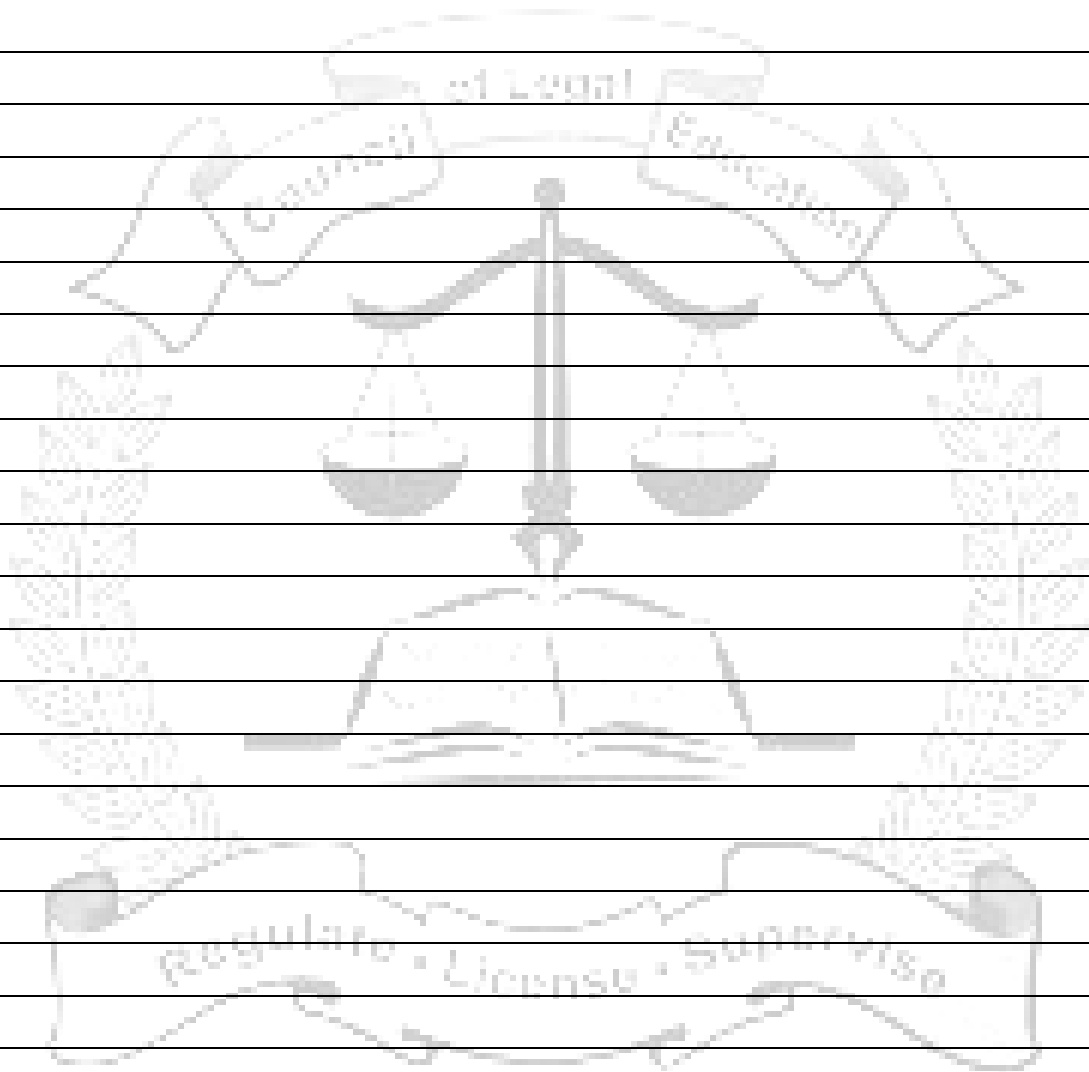
--	--	--	--	--	--	--	--



REGISTRATION NUMBER

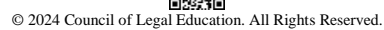
--	--	--	--	--	--	--	--

Do not  
write  
in  
either  
margin



--	--	--	--	--	--	--	--

The seal of the Council of Legal Education is a circular emblem. At the top, a banner reads "Council of Legal Education". In the center is a scale of justice, with a book resting on its base. The entire central design is encircled by a laurel wreath. At the bottom, another banner reads "Regulate • License • Supervise".



## QUESTION TWO

Sweezy, Advocate, is a sole proprietor who runs the firm Sweezy and Co. Advocates. One of his most esteemed clients is Ms. Rich Aunt Vibes. She is in the real estate business. She pays him Ksh 250,000 on a monthly basis just in case she needs some legal work done. This is being paid to date. Sweezy has been instructed by Ms. Rich Aunt vibes to purchase a property on her behalf. In the meantime, Sweezy has been getting massive amounts of work. He has found it prudent to take on a partner, Advocate Snoopy. He has even changed his law firm name to reflect this status. The law firm is now Sweezy and Snoopy Co. Advocates. Being quite busy, he has forgotten to inform Ms. Rich Aunt Vibes that he has changed the name of his law firm. However, he introduces Snoopy to Ms. Rich Aunt vibes. He informs her that henceforth, Snoopy will take over all the matters pending in the law firm. Ms. Rich Aunt vibes does not object. Snoopy takes over the purchase of the property that Sweezy had commenced on behalf of Ms. Rich Aunt Vibes with aplomb. He drafts all the requisite conveyancing documents, communicates daily with Ms. Rich Aunt Vibes on the status of the transaction. He even attends court for mediation on the property at some point. Finally, hurrah, success! The land is transferred and the title deed issued to Ms. Rich Aunt vibes. Sweezy and Snoopy Co. Advocates have filed a Bill of Costs. As they await ruling on this, Ms. Rich Aunt Vibes has made an application that she is a stranger to the Bill of Costs filed by Sweezy and Snoopy Co. Advocates. She claims she instructed Sweezy and Co. Advocates. She is emphatic that she never had any agreement with Sweezy and Snoopy Co. Advocates for them to do any legal work on her behalf. She is adamant that she cannot and will not pay the fees.

With the aid of relevant case law, discuss the ethical issues arising from this scenario.

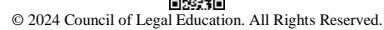
(10 Marks)

[illegible]



--	--	--	--	--	--	--	--

The seal of the Council of Legal Education is a circular emblem. At the top, a banner reads "Council of Legal Education". In the center is a scale of justice, with a book resting on its base. The entire central design is encircled by a laurel wreath. At the bottom, another banner reads "Regulate • License • Supervise".



--	--	--	--	--	--	--	--

The seal of the Council of Legal Education is a circular emblem. At the top, a banner reads "Council of Legal Education". The center features a pair of scales of justice, with a book resting on a pedestal below them. The entire central design is encircled by a laurel wreath. At the bottom, another banner reads "regulate • license • supervise".

### QUESTION THREE

- (a) Having completed the Advocates Training Programme and subsequently been admitted to the Kenyan Bar, you are keen on setting up legal practice. You are aware that one of the regulatory requirements is maintaining a clients' bank account, which you proceed to open upon the registration of the Firm. Making reference to the source of the regulatory requirement, highlight the type of funds that you must deposit or keep in the clients' bank account. (5 Marks)
- (b) Having set up the Firm and commenced legal practice, you encounter a problematic client, one Nana Kombe, who refuses to pay legal fees and expenses for disbursements. You had already instituted a suit in court on his behalf. You are keen on ceasing legal representation of the client. Citing any applicable regulatory requirement, explain how you will cease from representing the client in the court matter. (2 Marks)
- (c) Based on regulatory requirements, highlight the specific requirements that have to be satisfied for you to be considered to have effectively ceased legal representation of client Kombe in the subject suit. (3 Marks)

[illegible]

--	--	--	--	--	--	--	--

--	--	--	--	--	--	--	--

The seal of the Council of Legal Education is a circular emblem. At the top, a banner reads "Council of Legal Education". The center features a pair of scales of justice, with a book resting on a pedestal below them. The entire central design is encircled by a laurel wreath. At the bottom, another banner reads "Regulate • License • Supervise".

QUESTION FOUR

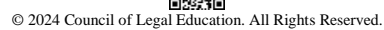
Richard, an advocate, was instructed by Octopas Ltd. to institute certain proceedings against the Council for Higher Education in relation to three examination security apparatus that were supplied but not paid for. It was agreed between Mr. Richard and the managing director of Octopas Ltd. that the instruction fees would be paid upon issuance of an instruction letter. Later, the Managing director of Octopas Ltd. wrote to Mr. Richard informing him that one Mr. Daud, who is not related to the company, had agreed to pay the instruction fees and the overheads in the litigation. The managing director of Octopas Ltd told Mr. Richard that at the conclusion of the case, Mr. Richard would be required to pay the decretal sum to Mr. Daud to enable him to deduct the instruction fees and any other overheads incurred during the litigation.

In the meanwhile, before any disbursement is made, Mr. Daud intimates to Mr. Richard that he would also wish that were any disputes to occur in respect of the agreed arrangement, Mr. Richard would also represent Mr. Daud. Moreover, the Council for Higher Education has approached Mr. Richard seeking to give him a retainer for a year to act as its advocate.

- (a) Initially, the managing director of Octopas ltd. had requested Mr. Richard to file an application seeking to allow it to sue as a pauper. Why would you advise against such an initiative? (3 marks)
- (b) Before any disbursement is made, Mr. Richard seeks your opinion whether he is conflicted in this matter. Explain to him how conflict of interest arises and whether there is an existing conflict of interest arising at this stage. (3 marks)
- (c) Examine the obligation that Mr. Richard has towards Octopas Ltd and Mr. Daud, given the principles set out in the case of *Sobeth Developers Ltd v South Nyanza Sugar Co. Ltd.* (2 marks)
- (d) Between Octopas Ltd. and Mr. Daud, to which entity will Mr. Richard owe a professional duty as an advocate? Explain. (2 marks)

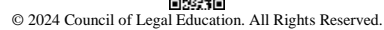
	REGISTRATION NUMBER	<div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div></div>	Do not write in either margin

--	--	--	--	--	--	--	--



--	--	--	--	--	--	--	--

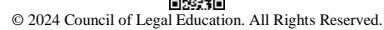
The seal of the Council of Legal Education is a circular emblem. At the top, a banner reads "Council of Legal Education". In the center is a scale of justice, with a book resting on its base. The entire central design is encircled by a laurel wreath. At the bottom, another banner reads "regulate • license • supervise".





--	--	--	--	--	--	--	--

The seal of the Council of Legal Education is a circular emblem. At the top, a banner reads "Council of Legal Education". The center features a pair of scales of justice, with a book resting on a base below them. The entire central design is encircled by a laurel wreath. At the bottom, another banner reads "Regulate • License • Supervise".



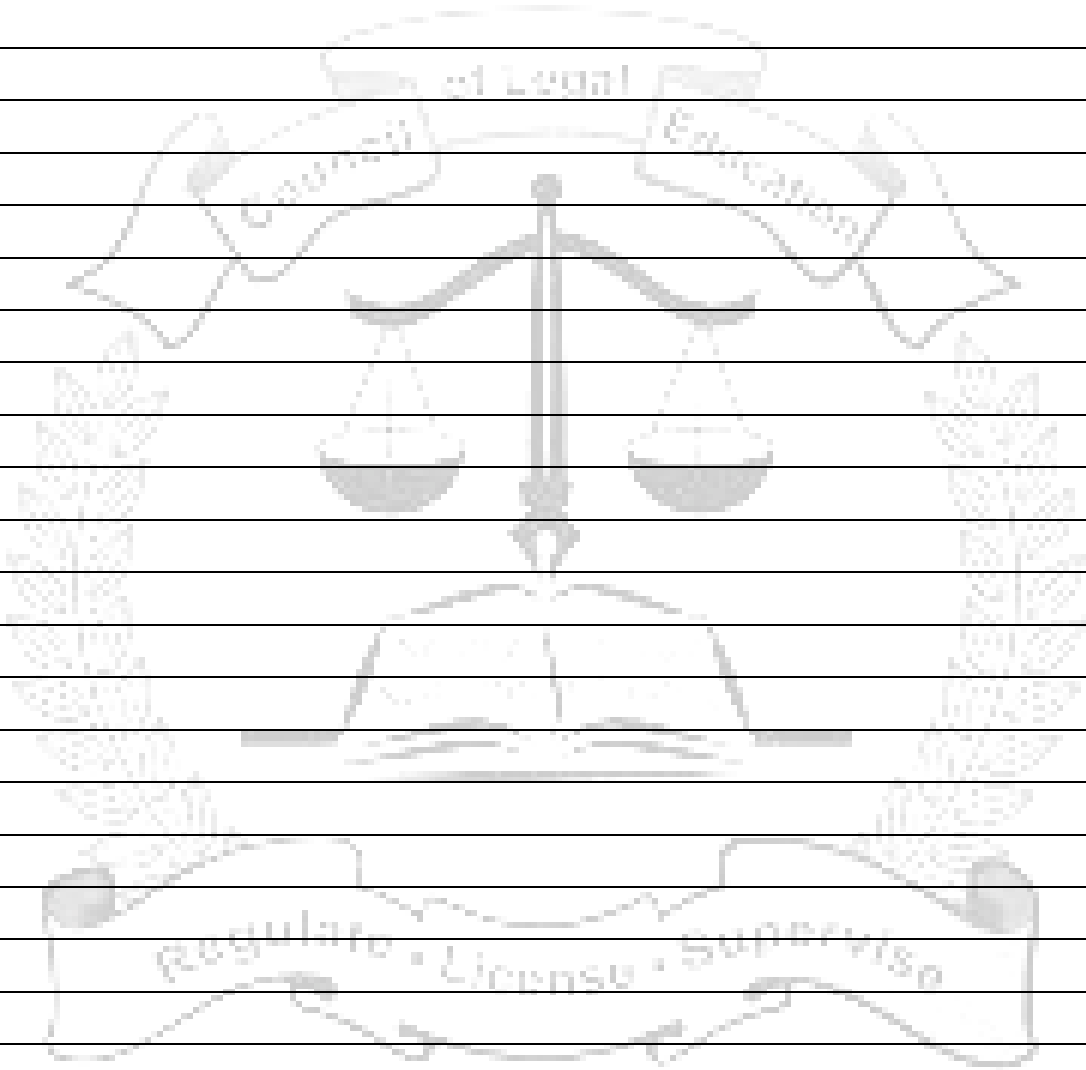
QUESTION FIVE

Wamala is a newly admitted advocate. He had a disagreement with his landlady because she was demanding an increment in rent in what he considers to be an unforgiving economy. When he refused to accede to her demands, she kicked him out rather unceremoniously. He came home, tired as a dog from a tedious day of litigation and found all his belongings at the curb of the gate. He was livid. He sued her the next day. He decided to represent himself. Surely all his hard work at the Kenya School of Law should count for something, he reasoned to himself. Indeed, it did, because he won his case. The bill of costs is currently in court for taxation. However, the landlady is contesting the bill on item of instruction fees claimed by Wamala. In the meantime, it has emerged that the landlady, who is also a caterer, did not pay her own advocate’s fees because it had been agreed between them that she would either pay if she was successful or if not, pay in kind by rendering her catering services to her advocate for a week.

- (a) From your vast knowledge of Professional Ethics & Practice, advise Wamala on the item claim of instruction fees. (3 Marks)
- (b) What is the ethical rationale of having a Bill of Costs taxed in court? (2 Marks)
- (c) What are the ethical issues arising from the agreements between the landlady and her advocate? (5 Marks)

REGISTRATION NUMBER										<div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div></div>	Do not write in either margin

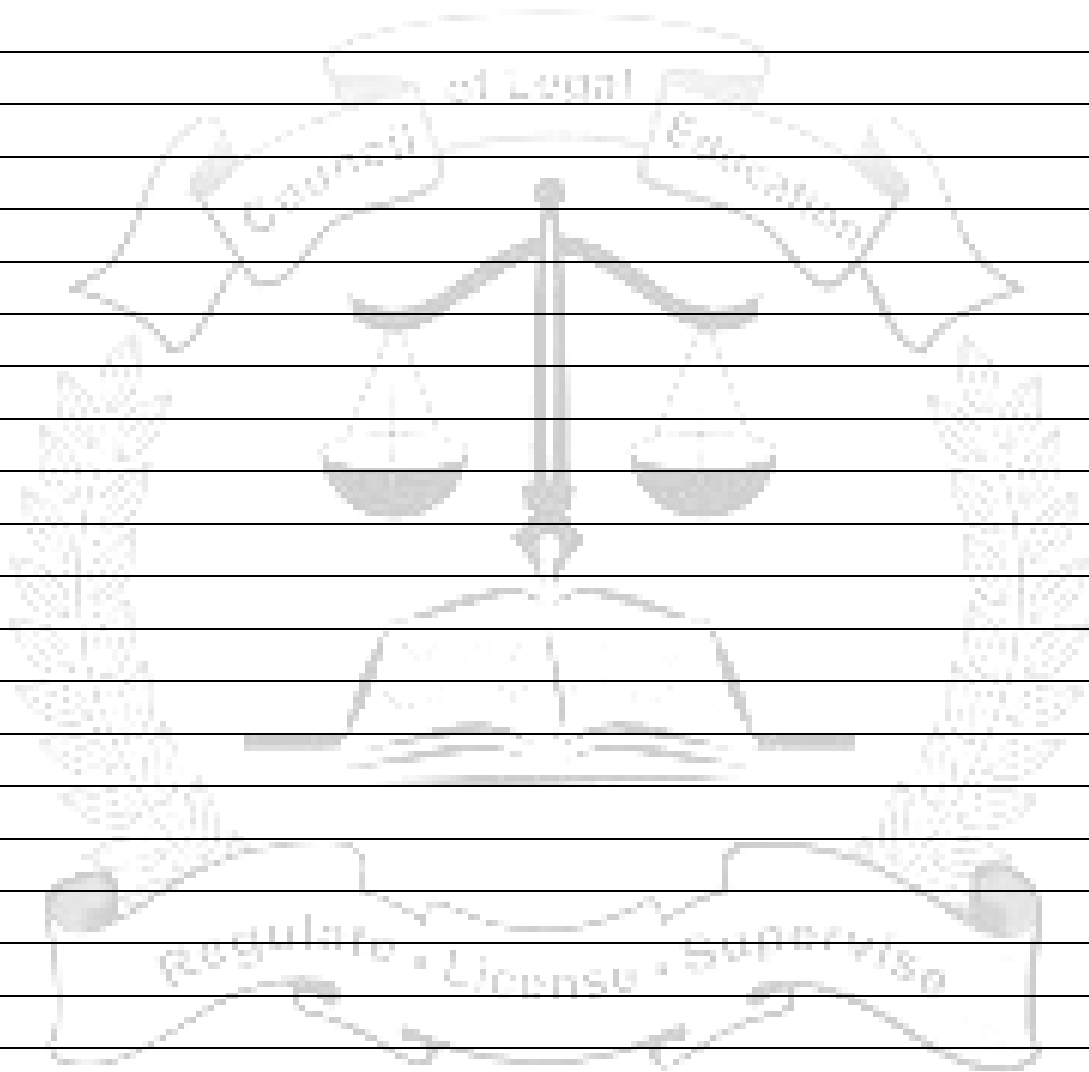
	REGISTRATION NUMBER	<div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>	Do not write in either margin



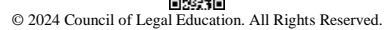
REGISTRATION NUMBER

--	--	--	--	--	--	--	--

Do not  
write  
in  
either  
margin



--	--	--	--	--	--	--	--



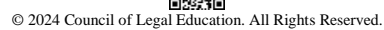
## QUESTION SIX

- (a) Despite categorizing the legal career as a ‘profession’ rather than merely a ‘business’, Tom Ojienda and Katarina Juma nonetheless emphasize that ‘[T]he advocate-client relationship is based on contract’, which is also the case with other business ventures (Tom Ojienda and Katarina Juma, *Professional Ethics: A Kenyan Perspective* (Law Africa, Nairobi, 2019) p 13).
- I. Discuss the context in which the legal career amounts to contractual obligations, similar to other business ventures. (3 marks)
  - II. Analyze the extent to which legal practice departs from the principle of ‘freedom of contract’ through its concept of ‘invalid agreements’, and thus corresponds to the professional calling aspect rather than the business venture model. (4 marks)
- (b) Among the foremost professional honors that Kenyan legal practitioners aspire for is to have their name entered into the Roll of Senior Counsels. Explain the professional practice norms or privileges of being designated a Senior Counsel in the context of litigation in the courts. (3 marks)

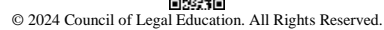
[illegible]

--	--	--	--	--	--	--	--

The seal of the Council of Legal Education is a circular emblem. At the top, a banner reads "Council of Legal Education". The center features a pair of scales of justice, with a book resting on a pedestal below them. The entire central design is encircled by a laurel wreath. At the bottom, another banner reads "Regulate • License • Supervise".



--	--	--	--	--	--	--	--

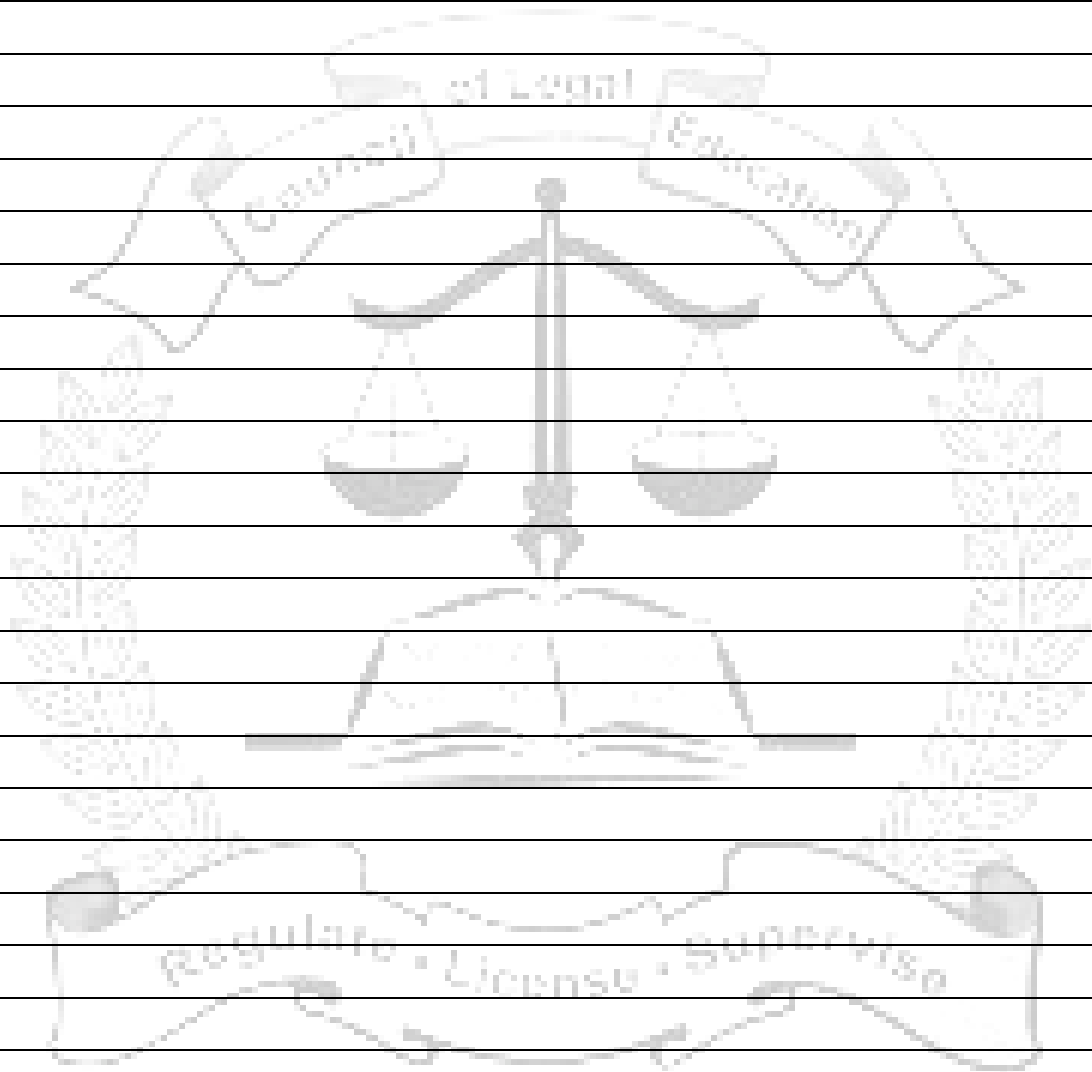




REGISTRATION NUMBER

--	--	--	--	--	--	--	--

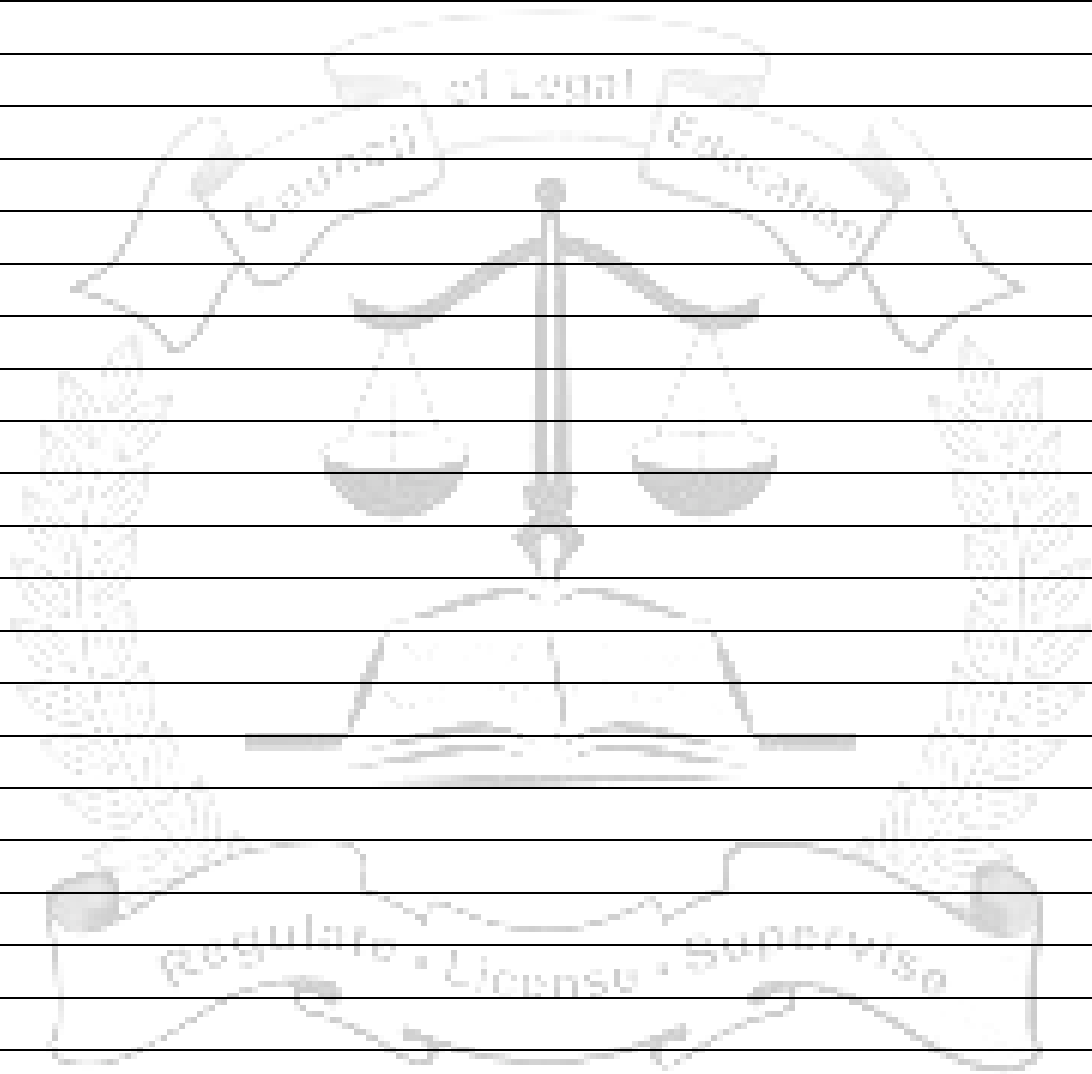
Do not  
write  
in  
either  
margin



REGISTRATION NUMBER

--	--	--	--	--	--	--	--

Do not  
write  
in  
either  
margin



REGISTRATION NUMBER

--	--	--	--	--	--	--	--

Do not  
write  
in  
either  
margin

