

# **A CRITIQUE OF THE ASSESSMENT METHODS USED AT THE KENYA SCHOOL OF LAW**

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## **ABSTRACT**

This paper will extensively explore the pros and cons of the assessment techniques used at bar school level.<sup>25</sup>

At the bar school level there are three modes of assessment which include: firm work, oral examinations and final bar written examinations.<sup>26</sup>

The three modes of assessment have been as not being in par with the current law academic structure. However some have argued that status quo needs to be maintained for all and without any changes being made with reference to the assessment techniques used at the bar school level.<sup>27</sup>

This paper will critically interrogate the issue surrounding assessments administered at the Kenya School of Law (KSL) with the aim of offering other alternatives which might be considered in the curriculum development at the KSL.

## **1.0. Introduction & Legal Framework Governing Education Law In Kenya**

Kenya School of Law (KSL) was established in Kenya in 1963.<sup>28</sup> As a department under the Attorney General's office.<sup>29</sup> Becoming semi – autonomous from the government in 2001<sup>30</sup>

Currently, KSL located in Karen area and the school usually has one intake every year. The school takes in students from all universities established in Kenya who have successfully completed their LLB studies and graduated on time.<sup>31</sup> Besides taking in students from the local universities, the school also admits students who have pursued their LLB studies in foreign universities subject to various conditions. One of the pre – requisites for admissions is that the student should have at least the core units which are required.

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25 In this article, bar school means Kenya School of Law. (Advocates Training Programme)

26 Firm work out of 15 Marks usually students are disoriented with oral examinations depending with the outcome.

27 *ibid*

28 <<https://www.ksl.ac.ke/about-ksl/> > accessed 23rd May 2023.

29 *ibid*

30 *ibid*

31 Currently in Kenya we have more than 10 law schools some of them are: Riara University, University of Nairobi School of Law, Kenyatta University, Catholic University of Eastern Africa (CUEA), Strathmore University, Moi University, Kisii University, JKUAT School of Law, Mount Kenya University, Nazarene University, Egerton University School of Law, Chuka University School of Law, University of Embu School of Law.

Upon a closer look at the second schedule of the KSL Act, it provides for the admission requirements as follows:

*“[A] person shall be admitted to the school if –*

*Having passed the relevant examination of any recognized university in Kenya, or of any university, university college or other institution prescribed by the Council, holds or becomes eligible for the conferment of the Bachelor of Laws (LLB) degree of that University, university college or institution; or*

*Having passed the relevant examinations of a university, university college or other institutions prescribed by the Council of Legal Education, holds or has become eligible for the conferment of the Bachelor of Laws Degree (LLB) in the grant of that university, university college or other institution, attained a minimum entry requirement for admission to a university in Kenya; and obtained a minimum grade B (plain) in English language or Kiswahili and mean grade C (plus) in the Kenya Certificate of Secondary Education or its equivalent; and has sat the pre – bar examination set by the school.”<sup>32</sup>*

On the issue of pre – bar examinations, currently students with foreign LLB degrees are the ones who are subjected to these examinations, but before the pre – bar examinations the students undertake PRE – KSL compliance courses at Riara University, before<sup>33</sup> proceeding to KSL after successful completion of the PRE – KSL compliance and passing the PRE – BAR examinations.<sup>34</sup> From the face of it, obviously the process is tedious for the foreign LLB students.

## **2.0. Current Status Of Legal Education In Kenya**

Legal education in Kenya has progressively advanced over the years, not only in terms of institutional numbers but also in terms of increased student population.

The increase in the number of students has been both at the university (LLB) level and also at the advocates training programme level. It is also clear that the pass rate at the Kenya School of Law has increased over the years.<sup>35</sup>

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<sup>32</sup> The Kenya School of Law Act 2012, Second Schedule.

<sup>33</sup> In Kenya, currently Riara University School of Law is the only university offering this programme, in the entire country.

<sup>34</sup> For the pre – bar examinations usually there are two categories, category A and category B. The category A are usually “graduates of foreign universities who were admitted to the LLB programme after 8th December 2014, whereas for category B are graduates of local or foreign universities who were admitted to the LLB programme before 8th December 2014, also see < <https://www.ksl.ac.ke/wp-content/uploads/2021/10/APPLICATION-FOR-PRE-BAR-EXAMINATIONS-%E2%80%93JANUARY-2022.pdf> > accessed 23rd May 2023. Category A students are usually subjected to one paper which has harmonized areas of legal systems, tort, contract, criminal law and general principles of constitutional law. Whereas, category B students are subjected to: six separate exams of: Law of Contract, Law of Torts, Land Law, Commercial Law, Legal Methods Systems and Constitutional Law and Family Law and Succession. The question whether category A and category B students should have one examinations will be revisited in another paper by the author.

<sup>35</sup> This is evident cumulatively through the number of advocates being admitted to the Kenyan bar has been incremental.

### **3.0. Assessment Modes Used At Kenya School Of Law**

At the Kenya School of Law, there are two modes of assessment used throughout the academic programme namely: the legal firm work and the oral examinations which are administered in June (or halfway the academic year or before term three). The final examinations are administered by the Council of Legal Education.<sup>36</sup>

#### **3.1. The Advantages Of Oral Method Of Examination Of Students**

The oral examinations entail a system whereby the student is examined by usually two panelists and asked questions in any area of law. The oral style of examining bar school candidates stems from the idea that the student should be well vast with the areas of law which they interact with since their undergraduate studies. The oral system of examination also stems from the idea that the candidate should be self - confident in terms of articulation of thought and oral submissions before court of law. Furthermore, the oral system of examinations prepares one in terms of practice/ litigation before the courts of law.

Some of the advantages of the oral method of examination include: -

Preparing one for oral submissions sometimes required of advocates in courts of law within time constraints.

Another advantage of the oral system of examination is that it makes the candidate aware of the professional and modes of addressing court and the appropriate language to be used whilst litigating. These aspects are best learnt through practical oral submissions as one can easily forget the same if it is learnt through theory only.<sup>37</sup>

The other ethical advantage of the oral system is that it also exposes the candidate to appropriate dressing code.<sup>38</sup> In summary, the candidate is exposed to the world of early legal practice.

Another advantage of the oral system of examination is the ability to improve the candidates alertness in terms of quick response to the questions asked.<sup>39</sup>

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36 Council of Legal Education Act, under Section 8 (3) it provides that the council shall “organize, administer and invigilate the examinations, the council shall also organize the marking of examinations, the council shall also determine the examination calendar of the school, the council shall also. Previously the Kenya School of Law was in charged with setting/administering the bar school examinations.

37 At the Kenya School of Law, students learn a unit called Professional Ethics and the aspect of mode of address of court is often assumed by some conveners.

38 This is vital because at the undergraduate level, in some law school universities there is no dress code for students as it is implied; however, in a few law school universities there is dress code for students which makes them to easily adopt when there are in KSL.

39 Indeed, the question of alertness is vital consideration because of the time the candidate engages with the panelists is averagely 10 minutes. It enhances proper listening skills.

### **3.2. Exposing Some Of The Disadvantages Of The Oral Method Of Examination Of Students.**

Disadvantages of the oral system of examination suffice.

Firstly, there is the problem of the nature of inconsistency / irrelevance of questions asked by the panelists. Some of the panelists during oral examinations might ask irrelevant questions. In most instances when the candidate is preparing for the oral examinations they read about the law and developments around the law. When a student then faces panel where they are asked irrelevant questions, the likelihood of failing the oral examination is high. I suggest it would be useful for KSL to stick to. Legal questions alone.<sup>40</sup>

Besides, the number of questions a panelist should ask a candidate is important in some instances, a candidate might be asked more than ten questions, whilst another candidate might be asked only two questions defeating the principle of fairness.

Thirdly, some panelists might not be aware of the scope of the KSL curriculum for the concerned academic proved to ask candidates topics, outside the curriculum for the relevant academic year.

Forthly, the panelists attitude towards the candidate; suggest real or perceived bias an issue frequently raised by some. candidates.

Fifthly, is the lack coherent code of the oral examinations code of conduct which is problematic.

Furthermore, lack of an appeal procedure or grievance procedure for the student to challenge their oral examinations results. For the final exams while the CLE has an appeal avenue for students to remark, there is none for the oral examinations.

In conclusion, having highlighted some of the challenges experienced during the oral examinations it is worthwhile noting that still it remains a relevant measure of testing the modern - day lawyer; only if the panelists will be perhaps encouraged to stick to the rules and be aware of some of the issues as highlighted above.

### **4.0. FIRM WORK / PROJECT**

Besides the oral method of examination, the other assessment used at the bar school is the firm work. In firm work projects, the candidates are placed in firms of at least 10 students and given similar project work for the nine units which they undertake at the bar school. Currently, there are some rules on the issue of meetings amongst students whereby each and every firm needs to have at least a record of minutes showing the contribution of

<sup>40</sup> In some instances you might find a candidate being asked the president of a particular country which mainly falls within the real of international relations and they fail because of the scope.

group members. The firms are headed by the firm leader and the firm leader can choose to have a secretary who will undertake to help them in terms of group work co-ordination of the members.<sup>41</sup> The firm work usually commences during term one when the lecturers begin administering the project work.

#### **4.0. Advantages Of Firm Work**

Firm work encourages a sense of firm togetherness amongst the candidates. Firms are usually created randomly as the student does not choose the firm which they want to be in. Students find themselves in firm with other candidates who were in other universities as such fostering good working relations as students learn from each other.

Also, team work is encouraged through firm work this is a value which is created through students continuous engagement when they work on the projects; furthermore, also besides the firm projects there are lecturers who give out other assignments to the respective firms even before they start the project work and this prepares the firm members in terms of co-operation.

#### **4.0. Disadvantages Of Firm Work**

Lack of input amongst all firm members, evident by the fact that it is not in all instances where you will find firm members contributing in terms of work to be done.<sup>42</sup> Lack of proper accountability from KSL on the issue of firm attendance can be frustrating and timelines of the project and firm work conflict with oral examinations.<sup>43</sup>

Finally, there is lack of proper mechanism of auditing the group works leads to general complacency amongst firm members.

#### **5.0. SUGGESTIONS ON NEW MODES OF ASSESSMENTS**

This paper suggests the introduction of the following modes of assessment at KSL.

First the school can consider adopting the moot court element as a mode of assessing students at the bar school. The justification for the use of moot court stems from the idea that it is a good practical approach since the candidates litigation skills are tested. The second justification for the adoption of moot court assessment is that it prepares candidates well and the practical realities associated with litigations in courts of law. Also, moot assessments ultimately builds the candidates confidence. The adoption of the moot assessments also will save time of both the lecturer and student in terms exam administration.

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<sup>41</sup> Some firms operate without secretary, as in some firms one might experience the firm leader playing the role of both firm leader and secretary at the same time.

<sup>42</sup> Firm members missing out on meetings without accountability.

<sup>43</sup> Indeed, this is the usual behaviour.

Besides the adoption of the moot as a mode of assessment the school can make the firm work not to be mandatory, especially for the candidates who find it difficult to coordinate properly with group members they can be given the alternative individual research assessments.<sup>44</sup>

Technological advancements has its place in legal practice in Kenya today. The school can adopt practical methods of assessing students through embracing information technology. For instance, candidates can be asked to practically register a company through the e-citizen portal, or even file pleadings and other procedural matters.<sup>45</sup> This will indeed help the candidate to appreciate the hands on approach in terms of practice. The main advantage of these two practical modes of assessments is that they tend to minimize the biases which are associated with other exams like the oral assessments.

## **6.0. WAY FORWARD IF KSL IS TO MAINTAIN THE TWO MODES OF ASSESSMENT**

Having dealt with some of the problems experienced in oral and firm work projects, in the event KSL decides to continuously maintain the two modes of assessment, then perhaps the following recommendations can be made on the two.

First is to create proper learner and lecturer sensitization on the oral mode of examinations. Essentially, the school can decide to hold proper stakeholder engagement with students on what they are required to do during the oral examinations, likewise the school should also engage the lecturers properly on what they are required to do and not to do.

On the issue of firm work the school can decide to conduct regular audits on the firms as opposed to one time audit. Indeed, this will make firm members obviously participate and continuously be present during the firm meetings.

## **7.0. CONCLUSION**

We have discussed the advantages and disadvantages of the assessments at the bar school and also the suggested reforms we continue to appreciate the great achievements the school has been making in terms of overall performance of students at the school and hope the school will consider adjusting or implementing some of the recommendations suggested in this paper.

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<sup>44</sup> This will also minimize the possibility of there being conflicts amongst group members.

<sup>45</sup> IT currently has its place in legal practice in Kenya and it is important for students to understand some of the practical technicalities of IT in terms of legal practice.

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