Drawing on his rich scholarly experience as a former academic in the UK and in Commonwealth Africa, and informed by his wide professional experience as an international attorney in the US, Dr. Kenneth K. Mwenda, provides a first-class treatment of important and salient policy issues underpinning the development of legal education systems in the US, the UK and Commonwealth Africa. The author has succeeded in answering vexing and elusive questions that have preoccupied several discussions by law students, law professors and other interested commentators, regarding such hot topics as the difference in standards between an undergraduate first professional law degree and a graduate first professional law degree.

Throughout the book, the author has been able to sustain his thesis intelligibly, arguing that although the UK and the US have fairly old and well established universities, a number of LLB programmes at Commonwealth African law schools are as good as similar programmes at leading British and American law schools—that is, the LLB degree in the UK and the JD degree in
the US. By contrast, as the author argues, the LLM and SJD/JSD programmes in the US, unlike their UK counterparts, the British LLM and the British PhD in law, do not have much to offer to Commonwealth African law schools (i.e., law schools in countries such as Botswana, Cameroon, Ghana, Kenya, Lesotho, Malawi, Namibia, Nigeria, Sierra Leone, South Africa, Swaziland, Uganda, Tanzania, Zambia and Zimbabwe).

In this book, the international and comparative analysis of various undergraduate and postgraduate law degree programmes in the UK, the US and Commonwealth Africa provides a novel and authoritative treatment of legal education systems in these parts of the world. Without doubt, the author has succeeded in raising challenging questions and offering solutions to such questions, regarding, for example, the troublesome duration of most postgraduate degree programmes at African universities. It should be added, however, that the criteria or methodology of ranking or judging academic degrees or law schools varies from context to context, and that the author is fully awake to such issues.

This book is certainly a valuable asset to a wide range of audiences, including prospective law students, current law students, law professors, many other academics and practising lawyers. The book provides a holistic and balanced treatment of an inherently contentious topic, setting out a strikingly frank and honest discussion of important policy issues in the development of legal education in the Anglo-Saxon world. The themes, issues and conclusions expressed by the author will, no doubt, give fruit to further debate on this topic. The author has succeeded in sowing seeds for critically insightful discussions from the readership.

All in all, the book is a well-written treatise, and the arguments advanced by the author are fully supported by extensive use of references. It will certainly be a valuable addition to the bookshelves and libraries of many universities and law schools, and everyone
interested in the development of higher education will, no doubt, find this book a valuable piece of research work.

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There is a dearth of literature for law schools in Commonwealth Africa to consider when developing law degree programmes to meet challenges of the new millennium. And there is insufficient evidence of documented international and comparative studies examining intricate aspects of legal education in the US and other common law jurisdictions, such as the UK and some parts of Commonwealth Africa. This book endeavours to fill that gap.

The book is a sequel to an earlier refereed and scholarly journal article that I wrote a few years back, and whose citation is as follows: K.K. Mwenda, ‘A new paradigm for Commonwealth African law schools: the decline of the LLB and PhD, and the ascent of the JD and SJD’, *Journal of Commonwealth Law and Legal Education*, (Volume 3, Number 1, November 2004).

As law schools in Commonwealth Africa begin to confront the challenges of developing their legal education systems, so as to address contemporary issues in the law and development discourse pertaining to globalisation, they will, inevitably, face many issues that can only be best understood by reflecting critically,
among other things, on how some developed jurisdictions have structured and grown their law degree programmes. To that end, should law schools in Commonwealth Africa simply imitate or transplant models of law degree programmes from abroad? And what lessons are there to follow? What should African students, based either on the African continent or in the diasporas, focus on when choosing law degree programmes at universities outside Africa? Are there any advantages in pursuing a postgraduate law degree programme in one country over the other or at one university over the other? What about league tables? How important are they? And what about the issue of accreditation of law schools and law degree programmes? Does that really matter? And are there any lessons to be learned?

By its very nature, the topic under investigation is unavoidably contentious, meaning that some arguments in the book may, understandably, strike a nerve or two. But it is not the aim of this book to cause trouble. That is far from it. Given the contentious nature of the topic, some arguments are likely to be misunderstood or may be met with some controversy or hostility. However, in dealing with a topic of this kind, the role of the author should not be understood as being confined merely to saying or writing only about things that are ‘acceptable’ in the eyes or ears of the public, or saying or writing about things for the sake of simply appeasing or pacifying the audience, but rather to tell the truth as it is, no matter how painful the truth may sound. In that sense, the book charts a new path that has not been trodden fully by published scholarship. An important caveat here is that the book explores a critical path that has, for some time now, occupied the minds of several educationists, and continues to dog several internet debates and discussions. Yet, most of these ideas have not been concretised into proper scientific and academic research. Many law students and prospective law students continue to debate and discuss the
merits of pursuing graduate law studies in one jurisdiction over the other. But there are still very few convincing answers out there. This book, therefore, is an attempt to provide some responses.

While the book is not an indictment of any particular jurisdiction or law school, it offers an objectively balanced discussion, covering weaknesses and strengths of legal education systems in Commonwealth Africa, the UK and the US. The book weaves through all these jurisdictions, highlighting what one jurisdiction can learn from the other(s). The book argues, for example, that a factor that has contributed to the shaping of the landscape of legal education in Commonwealth Africa is the interpretation of law by the early judges, the civil servants and the academics in the newly independent African States. The book also explains how some academic programmes were constructed on the basis of the view of the world, as held by some expatriates.

Chapter One provides an introduction, highlighting the context of the study. The chapter identifies Commonwealth African jurisdictions that follow the Roman-Dutch law system in addition to the common law. The role of expatriate academics in developing legal education systems in Commonwealth Africa is also spelt out. The chapter examines the coming on board of indigenous African academics, including some developments leading to years of pioneer professorships and when African universities began to suffer from poor funding.

Chapter Two examines the primary university-level qualification to become a lawyer in the USA, the UK and South Africa. The chapter looks at how the Juris Doctor (JD) degree was introduced in the US, highlighting how some universities in jurisdictions outside the US, such as Canada, China and Australia, are beginning to pick up and transplant models of law degrees from the USA. A related issue here is the academic rank of the American JD degree, in relation to comparable law degrees. The chapter answers question such
as, is a JD degree a Doctorate degree in the real sense, and how is the JD degree viewed by the legal community outside America?

Chapter Three examines post-JD qualifications in the US and the issue of their recognition. The chapter identifies the JD degree, instead, as the primary qualification to practice law and enter academia in the US. A question is then posed: what to do with the post-JD degrees from America? Disparities in academic standards on American LLM and SJD programmes are highlighted, raising serious concerns regarding the credibility of American LLM and SJD degrees.

Chapter Four examines the concept of accreditation of law schools and the accreditation of law degree programmes, highlighting, among other things, the issue of private and public universities and their accreditation. The chapter highlights also a notable shortcoming of the British PhD system, and proceeds to examine the concept of a PhD by submission of published work, the American PhD by coursework and dissertation and the concept of Higher Doctorates in the UK and the Commonwealth.

Chapter Five examines the role of university league tables, fleshing out pertinent issues that are often considered when formulating league tables. The chapter presents the Ivy League Universities and identifies some of the best ranked law schools in the US. Also, the Russell Group of Universities and some of the best ranked law schools in the UK are identified. Then, the chapter proceeds to discuss some financial dimensions of university league tables before culminating in a discussion of the ranking of universities in Commonwealth Africa. The chapter concludes with policy considerations surrounding the debate of whether or not to privatise university education in Africa.

Chapter Six is the concluding chapter. It sets out the main recommendations of the study to assist law schools in Commonwealth Africa in developing their law degree programmes.
Preface

Much of the book is informed by material available up to and including January 1, 2007. However, the interpretations expressed in the book, including any omissions or conclusions, are entirely mine and should not be attributed to any third-party or institution.
Now that the writing of the book is complete, I am faced with a task which is by no means easy to fulfil. I would like to thank my dear wife, Dr. Judith M. Mvula-Mwenda, and my admirable son, Joseph T.K. Mwenda II (to whom I have dedicated this book), for their unfailing love and support. I would also like to acknowledge the inspiration that I continue to draw from my dear parents, the late Mr. Joseph T. Mwenda and Mrs. Esther M. Mwenda. They both hold a very special place in my heart. And I cannot stop without thanking my many good friends, family members and professional colleagues whose names, if I were to list them all, would occupy a whole chapter in this book. I thank them all for their support and friendship over the years. I am also grateful to Cambria Press and to the peer reviewers for the excellent work leading to the publication of this book.
This book examines the extent to which Commonwealth African law schools should or could learn from experiences of American and British law schools in developing their own academic programmes. It examines degree programmes at American and British law schools with a view of determining whether Commonwealth African law schools should simply transplant models of university degrees from the US or the UK to Africa. Analogies are drawn from developments in Canada and Australia where some universities have now started to follow the US, abandoning the traditional undergraduate law degree programme, the Bachelor of Laws (LLB) degree, in preference to offering a post-Bachelors degree, the US-style Juris Doctor (JD) degree.

An underlying thesis of the book is that although the UK and the US have fairly old and well-established universities, a number of LLB programmes at Commonwealth African law schools are
as good as similar programmes at leading British and American law schools—that is, the LLB degree in the UK and the JD degree in the US. The book argues that, by contrast, the Master of Laws (LLM) and Doctor of Juridical Science (SJD) programmes in the US, unlike their UK counterparts, the British LLM and the British PhD in law, do not have much to offer to Commonwealth African law schools. If anything, a number of American law schools are constructing unaccredited post-JD degree programmes, such as the LLM and SJD degrees, which Americans themselves often shun and do not even attach much value to, as a way of making easy money out of desperate foreign-trained lawyers who either want to break into the US job market or have limited knowledge and information on the US system of legal education and law practice. That said, the trend in the UK of permitting some LLB graduates to proceed directly to PhD programmes has limited attraction in Africa.

1.1 The Context of the Study

The book stands back from classroom pedagogy and avoids the polemics associated with the elaborate process of curriculum design. Neither does the book engage in pedantic issues of various syllabi of courses on university law programmes nor does it indulge in intricacies of teaching methods, such as the Socratic method of teaching law at most US law schools. What the book seeks to do, instead, is to provide, first, an international and comparative study of academic programmes at American and British law schools. Secondly, the book examines the issue of whether or not African law schools should adopt a particular Western model of academic programmes.

While the book focuses on prospects for the development of effective law degree programmes at law schools in Commonwealth Africa, it does not concern itself with similar or parallel
issues in law schools of African countries that exist outside the Commonwealth. Reasons for this delineation are several. First, like the case of legal systems of Commonwealth African States that are based on the common law of England, the legal systems of African countries outside the Commonwealth are based on civil law systems of their colonial masters. Secondly, while the legal systems of Britain and most Commonwealth African States are common law based, the legal systems of other States in Africa and elsewhere outside the Commonwealth are civil law based. We are concerned with university degree programmes at law schools that follow the common law.

1.2 **COMMONWEALTH AFRICAN JURISDICTIONS THAT OFFER EXCEPTIONS TO THE COMMON LAW**

Within the Commonwealth, there are a few African countries, such as Botswana, Lesotho, Namibia, Swaziland, South Africa and Zimbabwe,\(^1\) whose legal systems and jurisprudence are influenced primarily by the Roman Dutch Law system.\(^2\) While the jurisprudence of most Commonwealth African countries follows the English common law, with some country specific adaptations to domestic legislation and judicial decisions, the jurisprudence of Botswana, Lesotho, Namibia, Swaziland, South Africa and Zimbabwe offer different variations. In these six countries, the influence of English common law is not as dominant as that of Roman-Dutch law. Although there are traces of English common law, say, in the company laws of these countries, Roman-Dutch law continues to play a significant part in the development of the legal systems of Botswana, Lesotho, Namibia, Swaziland, South Africa and Zimbabwe.\(^3\) As Professor Iya observes:

> In the case of South Africa, the significant road marks in the historical path started unfolding in 1652 when Jan
van Riebeeck arrived at the Cape and introduced Roman-Dutch Law, a European or Western legal system. At that stage, there were already black people present in South Africa who lived according to their own African legal system now popularly referred to as African Customary Law or Indigenous Law. In the early 1800s, the British took over the administration of the Cape from the Dutch and introduced and applied English law. This led to the influence of English law, although Roman-Dutch law continued to develop. That there would be a greater move towards English legal institutions is hardly surprising in view of the fact that the Cape became a British colony. Contact with and sympathy towards English institutions could only lead logically to greater contact with the English common law. Then arrived the Arabs, Indians, Christian missionaries, Jews etc., who introduced various religious laws: namely, Islamic, Hindu, Christian and Jewish law respectively. A fuller history of South African law provides dynamic intricacies of the development of the law, details of which need no further analysis here.

According to Professor Iya,

One often hears a statement like: the legal system in South Africa is Roman-Dutch law. This is not absolutely correct because as observed above, Roman-Dutch law forms only a part of the legal system of the country. English law also exercises its influence in its application especially to public law issues including legal institutions and the legal profession, just as much as customary law continues to influence the conduct of the majority blacks in South Africa. Therefore, it is more correct, when referring to the current legal system of the country as a whole that is applied, simply to speak of ‘South African Law’, a conglomeration of all the above different laws.

While it is evident that the white South Africans inherited Roman-Dutch law from their ancestors in the Netherlands, Botswana, Lesotho, Zimbabwe and Swaziland have almost no ancestral ties
with the Netherlands and neither were they colonized by the Dutch. One can, however, understand easily that since Zimbabwe was under a racist white minority government prior to attaining political independence, Zimbabwe, like its neighbour, South Africa, embraced a type of jurisprudence that favoured the oppression of a black majority by white minorities. As a consequence, South Africa’s legal system was a natural attraction to Zimbabwe. The racist Zimbabwe, as it was then, developed its legal system imitating developments in the legal system of the then apartheid South Africa.

In the case of Swaziland and Lesotho, these two countries have been geographical and economic enclaves of South Africa. Therefore, the transmission of legal values from South Africa to these two weaker neighbouring countries has progressed over a long period of time due, in part, to the sharing of some legal institutions and to the geographical proximity of the countries. But more intriguing is the case of Botswana. Botswana lies further north of South Africa and is neighbours with Zambia. Yet, Botswana embraced Roman-Dutch law, although it lies further north from South Africa. Equally interesting is Namibia’s case since, for the most part, Namibia was under German colonial rule. Yet, we see that from the time South Africa’s Afrikaner-led National Party gained political power in 1948,

...Namibia exchanged one colonial experience for another. South Africa saw Namibia as, potentially, a fifth province for their country... In the late1950s and early 1960s, as in South Africa, the living quarters of black and coloured Namibians in towns were torn down. These residents, according to the principles of Apartheid, now had to be moved out of Windhoek city which was reserved for whites only or ‘Slegs blankes’ (a term that was to be used often in the years that followed). So-called ‘coloured’ Namibians were also to be divided
from black Namibians. The task proved very difficult as the gene pool had been thoroughly mixed between all Namibians (white and black) since the time of the arrival of Europeans in the country in the early 19th century. Eventually, though, most ‘coloured’ Namibians in Windhoek where settled in ‘Khomasdal’, five kilometres outside of Windhoek, and the black population divided from ‘Khomasdal’ by a five hundred meter ‘buffer zone’ in what is known as ‘Katatura’—which means ‘a place where we don’t want to stay’. These so-called townships now form parts of Windhoek, and the buffer zones have been filled to connect these apartheid creations with the canter of Windhoek.  

A common denominator, however, linking Botswana to Swaziland and Lesotho, is that they all shared one regional university at some point, the multi-campus University of Basutoland, Bechuanaland and Swaziland. And the development of legal education at this regional university could have been influenced by the more developed legal education system of the neighbouring South Africa.

1.3 Expatriates and the Development of Legal Education in Commonwealth Africa

Some factors that helped to shape the landscape of legal education in Commonwealth Africa included the intellectual interpretation of the law by the early judges, the civil servants and academics in the newly independent African States. At independence, most African States had very strong economies and these economies attracted professionals and academics from Europe, Asia and the US. Most of these professionals migrated to Africa not because they wanted to help Africans. A number of expatriates, especially the younger ones that did not have much work experience and decent qualifications, migrated to Africa partly because in their home countries they would not have found the right kind of jobs and
they would not have earned themselves the respect that they quickly acquired in Africa. In the eyes of some of these expatriates, Africa was a breeding ground on which to gain valuable experience before returning home to Europe, Asia or America.

Also, the newly independent African States provided an opportunity for some of these expatriates to see the outside world for the first time in their lives. In Africa, the white expatriates enjoyed a good standard of living that they would never have dreamt of in their home countries. And today, we see that many academic programmes at African universities resulted from the input of some of these expatriate academics. Of course, it is not surprising that some academic programmes were developed on the basis of the expatriates’ own view of the world and on the curriculum at the universities were these expatriates studied. That is not to say there were no credible and well-meaning expatriates in Africa. It is just that the category of credible and well-meaning expatriates consisted of a few individuals. In part, this is the history of the system of higher education in many parts of the Third World today.

1.4 The Coming on Board of Indigenous African Academics

As the economies of the newly independent African States began to crumble, expatriate academics started to leave. And the weakening of the post-colonial African economies gave reason for some expatriates to return to their home countries. Other expatriates were, however, not deterred by the deteriorating economic climate. They simply moved over to more prosperous African economies. However, as more expatriates left, a few indigenous African academics rose quickly to the ranks of associate and full professor, replacing the expatriates. This sudden ‘professorial milestone’ by some indigenous African academics was, in essence, a superficial way in which African universities tried to deal with the exodus
of foreign academics while at the same time attempting to please the host government that African universities had succeeded in empowering blacks to senior academic positions.

Generally, unlike today, universities in many Commonwealth African countries enjoyed excellent government funding in the early years after political independence. And many African universities had in place well-funded staff development programmes on which they would send their junior academics abroad to undertake further studies. But, with the emergence of an elite group of indigenous African intellectuals, there was sudden urge for most African countries to Africanise academic positions in universities. It was, therefore, not uncommon to find senior academic titles of professor or dean being awarded dubiously to freshly graduated African PhDs who had not even served the academic community long enough and were far from being considered authorities in their fields. It must be observed that in many Commonwealth countries, unlike the US generally, the title of professor does not apply to any university or college teacher. 10 By contrast, the title applies only to those members of the academic community who have reached the pinnacle of academia and have gained wide recognition and respect amongst professional peers. 11 Other academicians are simply referred to as Lecturer, Senior Lecturer or Reader, as the case may be. As one instructive note points out:

The meaning of the word professor (Latin: ‘one who claims publicly to be an expert’) varies. In most English-speaking countries, it refers to a senior academic who holds a departmental chair, generally as head of the department, or a personal chair awarded specifically to that individual. 12

According to Wikipedia, in the US and Canada, ‘unenlightened individuals use the term professor as simply a polite form of address
for any teacher, lecturer, or researcher employed by a college or university, regardless of rank.’ However, it is important to recognize that in many other countries, to gain the title of professor, there is a huge milestone that very few people ever achieve. In essence,

The basic difference between levels of professor according to the national academic system is that in North America, the designation is based on career, whereas in Europe it is based on position. That means that if a North American Assistant Professor is performing particularly well, he or she can be promoted to Associate Professor, and if this is the case again, on to (full) Professor. In the European system, the different fields and sub-fields of teaching and research are allotted certain (professorial) chairs, and one can only become a professor if one is appointed to such a chair (which then has to be free, i.e., unoccupied). Therefore, the different professorial ranks are not necessarily comparable.

1.5 FROM YEARS OF PIONEER PROFESSORSHIPS TO YEARS OF UNDER-FUNDED UNIVERSITIES

The historical epoch in which freshly graduated African PhD holders began to ascend quickly to senior academic ranks of associate and full professor is what is referred to here as ‘the years of pioneer professorships in Africa’. Parallel developments were taking place in the national economies of post-colonial African States. Their governments were busy nationalising strategic industries and placing the nationalised industries under the management of indigenous African technocrats and political appointees. Indeed, the years of ‘pioneer professorships’, like the years of nationalisations, were often a time riddled with notorious political overtones, especially where managerial, administrative or academic appointments were made solely on political grounds and consideration. Politics started entering academia.
Some indigenous African scholars that benefited from these ‘pioneer professorships’ were later able to work hard and publish enough peer-reviewed and respected work, thus attaining scholarly recognition internationally, while others failed to acquit themselves from the dubious ‘professorships’. The latter group often ended up either as politicians or political appointees of some sort. Whichever way the pendulum swung, the university title of ‘professor’ was never abandoned even where the titleholder was no longer in academia and had since been appointed to government, or was serving as an elected member of parliament, or was pursuing other interests outside academia. It was hardly ever the case that such individuals were conferred the title of emeritus professor or any other unique professorial standing that would justify their continued use of the title professor even when they had already left academia. Even today, the university title of ‘professor’ is taken by many as a ‘personal to holder’ title, with its holders masquerading outside the realm of academia as ‘the ever all-knowing and the ever all-wise’. However, unlike the period just after political independence, today’s era is different and the title of ‘professor’ has to be earned genuinely and justifiably. It is certainly much more difficult now to earn the academic title and rank of professor in many decent African universities than it was during the years of pioneer professorships. A number of African pioneer professors would not have qualified as professors had they been evaluated using the standards that prevail today for professorial appointment at most decent African universities. Yet it is these same pioneer professors who are often the architects of strenuous and demanding standards to appoint others to the senior rank of professor. In some cases, the difficulties associated with earning the academic title of professor at some African universities are compounded by the Old School mentality of some pioneer professors not being willing to open up professorial doors to new and younger entrants.
in the academy. Instead, the Old School continue to devise different self-serving rules to protect and perpetuate the status quo in their favour. And the younger and dynamic academics have to wait until they too grow grey hairs before they can be considered for a professorial appointment.

That said, we are mindful also that, due to the harshness of the African economies, many academics in Africa hardly engage in active scholarly writing and have been reduced by economic hardship to serving merely as part-time petty traders, farmers, contractors, poultry organisers, pirate taxi operators, private tutors and so forth, just to make ends meet. This unfortunate development keeps robbing many bright African academics of the opportunity to become Africa’s coveted professors. As Mukwena observes, regarding parallel developments at a leading African university:

Due to the economic crisis, some of the academics in privileged positions such as some Heads of Departments have at times disregarded professional considerations in their exploitation of certain work related survival opportunities such as seminars, workshops, conferences, research and consultancy. Some Heads of Departments...are known to nominate themselves to attend seminars and conferences abroad, even when such seminars and conferences are not exactly in the area of their specialisation and there are other colleagues who are well qualified and experienced in those areas. The over-riding consideration is usually how much money they will make from attending such conferences and seminars and not whether they are more suitable than others to attend the same.

Mukwena continues:

“Some academics who are well connected to donor agencies and international organisations have in some cases formed networks and hijacked a number of lucrative projects even those in which they are not well qualified
and experienced to undertake, usually leaving out of such projects other academics who may be well qualified and experienced to undertake them.”

These are some of the politics surrounding academia in Africa, and such politics continue to shape the landscape for developing legal education in Africa today. There have been notorious cases, for example, especially in the natural sciences, the medical field and engineering sciences (involving research conducted in laboratory teams or project teams), where Heads of Departments (HOD) at some African universities are said to have issued instructions or given subtle hints to their subordinates that each and every research paper that will be published by any research or academic staff member in that department should carry the name of the HOD as the co-author. This would be the case even if the HOD did not contribute anything to the research paper. As a result, the position of HOD is seen by many academics as an attractive position because it not only guarantees the titleholder of higher perks and incentives, such as travelling to attend conferences, including earning some lucrative per diems, but it also assures the titleholder that he or she will be listed on every publication that will come out of the department. Consequently, it is often the case that when the HOD notices his name appearing on several publications, he can then nominate himself for a promotion and present his credentials before the university’s promotions committee. Much of this is done based primarily on the so-called co-authored publications that the HOD was not even a part of.