

Course Code: L601 (M) 2005

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATION PAPER, MAY 2005**

**TITLE OF PAPER** : **LEGAL ETHICS**

**COURSE CODE** : **L601**

**TIME ALLOWED** : **THREE (3) HOURS**

**TOTAL MARKS** : **100**

**INSTRUCTIONS** : **1. ANSWER ONLY FOUR (4) QUESTIONS.**

(a) Please ensure that the time you devote to each answer is proportionate to the marks allotted.

(b) Where appropriate, reference must be made to relevant case law.

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**QUESTION 1** (25 marks)

Write concise notes on **FIVE** of the following -

- (a) the various methods of listening for the purposes of client consultation; (5 marks)
- (b) the legal position with regard to the extent to which the former attorney can claim a lien over the client's documents; (5 marks)
- (c) the liability of an attorney on his personal undertaking; (5 marks)
- (d) the requirements that must be met when an attorney wishes to interview a witness called by the opposite attorney; (5 marks)
- (e) the various forms of conduct outside the court that amount to contempt of court; (5 marks)
- (f) communications that are not protected under the "without prejudice" rule; (5 marks)
- (g) the manner in which an attorney must conduct his trust accounts in terms of Sections 24 of the Legal Practitioners Act of 1966. (5 marks)

**QUESTION 2** (25 marks)

Write a critical essay on the differentiated role morality of legal practitioners.

**QUESTION 3** (25 marks)

Answer the following questions relating to client consultation -

- (a) taking instructions in regard to criminal matters; (10 marks)
- (b) the structure of the first consultation as well as the purpose of and the type of questions that should be asked during each stage. (15 marks)

**QUESTION 4** (25 marks)

With reference to case law, discuss critically the ethical issues relating to a conflict of interests arising out of the situations set out below.

- (a) You represent both husband and wife who have been charged with fraud. On technical grounds, a separation of trials is ordered. May you use the evidence of the wife to exonerate the husband in the one trial and in the trial against the wife, plead in mitigation that the husband had played the main role? (10 marks)
- (b) Both the seller and purchaser of immovable property are your clients. The purchaser is one of your long-standing clients. Without fully explaining the implications to the seller, you alter the wording of the contract of sale to the effect that the purchase price need not to be paid on registration, clearly favouring the purchaser. After registration of the property in the purchaser's name, the purchaser fails to pay the seller despite demand. Moreover, after registration, without notifying the seller, your partner passes a bond in favour of the purchaser over the property in question.
- (c) Your client instructs you to sell a valuable commercial property. Being in certain financial difficulty, you register a private company of which you are the sole shareholder. Through the company, you purchase your client's property. Before registration takes place, you sell the property for a massive profit. Your client has no knowledge of these transactions. (7 marks)

**QUESTION 5** (25 marks)

- (a) As an attorney, you are retained by a client to conduct litigation on the client's behalf. In this regard answer the following questions.
- (i) Describe the nature of the contract between yourself and the client. [3 marks]
- (ii) Explain the consequences if you terminate the contract, indicating when it would not be appropriate to withdraw from the case. [7 marks]
- (b) In regard to costs, explain the following the distinction between party and party costs, attorney and client costs as well as attorney and own client costs; [6 marks]
- (c) Explain and discuss "overreaching" with specific reference to *Law Society of the Cape of Good Hope v Tobias 1991 1 SA 430(C)* and *Mnweba v Maharaj [2001] All SA 265 (C)*. [9 marks]

**QUESTION 6** (25 marks)

On the basis of direct reference to case law, comment on the conduct of the legal practitioner described below.

- (a) In an instance where a client's whereabouts are unknown to his attorney and the attorney is out of funds, the attorney does not timeously lodge a notice of withdrawal and further fails to represent the client in a civil appeal. [5 marks]
- (b) An attorney debits a client's trust account for fees not due but anticipated in the near future. [5 marks]
- (c) In an application by the Law Society to have an attorney struck off the roll for the mismanagement of trust funds, the attorney raises the defence that he was ignorant of the statute regulating the keeping of trust funds. [5 marks]
- (d) An attorney gives an undertaking to a retailer that his client is creditworthy, knowing that his client is in debt and cannot fulfil his financial obligations. [5 marks]
- (e) An attorney represented a plaintiff in a divorce action. The defendant's attorney indicated that he intended to defend the matter. However, the plaintiff's attorney set the action down for hearing on the unopposed roll and misled the court to believe that the defendant's attorney had been notified that the matter was proceeding on an unopposed basis - in fact the defendant's was unaware of the same. The court granted a divorce order. [5 marks]

**TOTAL: 100 Marks**