

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

FINAL PAPER 2006

<u>TITLE OF PAPER</u>	LEGAL ETHICS
<u>COURSE CODE</u>	L601
<u>TIME ALLOWED</u>	THREE (3) HOURS
<u>TOTAL MARKS</u>	100

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.

PLEASE COMPLY WITH THE FOLLOWING INSTRUCTIONS WHEN ANSWERING THIS EXAMINATION PAPER.

Answer ONLY FOUR questions.

- (a) Ensure that you give reasons for each answer when instructed to do so.
- (b) Please ensure that the time you devote to each answer is proportionate to the marks allotted.
- (c) Where appropriate, **reference must be made to relevant case law.**

This paper consists of 4 pages.

QUESTION 1 (25 marks)

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

- (a) adhering to a client's instructions; (6)
- (b) the nature of an attorney's lien; (7)
- (c) the nature of an undertaking; (5)
- (d) the considerations you would take into account when drafting the terms of agreement following a negotiated settlement. (7)

QUESTION 2 (25 marks)

Write a critical essay on the role differentiated morality of legal practitioners, with special attention being given to the aspects of neutral partisanship, zealous advocacy and client autonomy.

QUESTION 3 (25 marks)

Explain the first interview with a client by indicating -

- (a) the structure of the consultation, including the the basic purpose of each stage; (15)
- (c) the different methods of listening to a client; (6)
- (d) the different perceptions of a client that should be avoided. (4)

QUESTION 4 (25 marks)

- (a) Explain the meaning of party and party costs, attorney and client costs as well as attorney and own client costs. Ensure that you also give an example in figures of the manner in which these costs are calculated. (15)
- (b) 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). (10)

QUESTION 5 (25 marks)

Your client is Z who is the plaintiff in a civil action. L is the defendant and her attorney is D. D has subpoenaed S as a witness. With these facts in mind, answer the following questions giving full reasons for your answer in each instance.

- (a) D refuses to respond to your correspondence. The delay is causing substantial prejudice to your client, Z. May you contact L directly and if so, under what circumstances? (7)
- (b) Could D claim that S is his witness? (2)
- (c) Could you interview S once the civil action has commenced and S has already given evidence for D in the matter? (5)
- (d) If S was your witness, how would you conduct the pretrial consultation with him? (6)
- (e) May you conduct an interview with the media in regard to your client's case? (5)

QUESTION 6 (25 marks)

On the basis of 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)
- (b) On account of the mismanagement of his personal finances, sequestration proceedings are commenced against an attorney. Being aware that he is under a statutory duty to disclose the sequestration proceedings against him, the attorney fails to do so and a bank loan of E500 000 is granted in his favour. (5)
- (c) In an application by the Law Society to have the 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)
- (d) An attorney debits a client's trust account for fees not due but anticipated in the near future. (5)

- (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)

TOTAL: 100 marks