

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER 2007

<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) the manner in which you would take instructions in regard to a criminal matter ; (7)
- (b) the principles regarding a conflict of interests as arising in the case of *Spector v Agenda* [1973] 1 Ch 30; (5)
- (c) communication with another practitioner's client (the client is not a company); (6)
- (d) the duty of an attorney to uphold the law. (7)

QUESTION 2 (25 marks)

Discuss the notion of the lawyer as an instrument, thereby explaining in detail what you understand by neutral partisanship, zealous advocacy and client autonomy.

QUESTION 3 (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. (4)
 - (ii) Explain the consequences if the client terminates the contract. (2)
 - (iii) Explain the consequences if you terminate the contract. (8)
- [14]
- (b) Discuss fully the nature of an undertaking given by an attorney. (7)
 - (c) Explain the principle that underlies *pro bono* work. (4)

QUESTION 4 (25 marks)

- (a) In regard to costs, explain the following :
 - (i) the distinction between party and party costs, attorney and client costs, as well as attorney and own client costs; (6)
 - (ii) the lump sum bill of costs; (5)
 - (iii) rendering an interim account. (4)
- [15]

- (b) In *Botha NO v EM Mchunu* 1992 4 SA 740 (N) it was held that an attorney's lien over a client's documents is not restricted only to documents prepared by the attorney but covers every document in respect of which that attorney is entitled to charge his client a fee. Discuss this decision critically. (10)

QUESTION 5 (25 marks)

Dudu issues summons for divorce against Bongani. Zandile is acting for Dudu and Zweli is Bongani's attorney. Zandile writes a letter to Zweli wherein terms of settlement are set out. Zandile forgets to state the words "without prejudice" on the letter. Zweli responds to Zandile's letter by telephone by informing Zandile of the terms on which Bongani will settle.

With these facts in mind answer the following questions, giving brief reasons for each answer.

- (a) Is Zandile's letter to Zweli covered by the "without prejudice" rule? (4)
- (b) Is Zweli's responding telephone call to Zandile subject to the "without prejudice" rule? (3)
- (c) How would you advise Zandile to respond if Zweli's first words during his telephone conversation with Zandile were: "I would like to speak to you off the record about the content of your letter."? (5)
- (d) May evidence about the matters settled between Dudu and Bongani be disclosed in court? (2)
- (e) May evidence about the matters not settled between Dudu and Bongani be disclosed in court in subsequent proceedings? (2)
- (f) May Dudu and Bongani agree that certain aspects of their negotiations may be admitted in evidence? (2)
- (g) Is the effect of the "without prejudice" rule that correspondence relating to settlement negotiations is privileged? (3)
- (h) If Zandile's letter to Zweli was a letter of demand, would it be advisable that it should bear the words "without prejudice"? (4)

QUESTION 6 (25 marks)

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

- (a) An attorney charges a client who has suffered brain damage in a motor vehicle accident, three times the amount of the taxed attorney and client fee. In his defence during a hearing for striking that attorney off the roll, the

attorney contends that he entered into a valid fee agreement with the client that permitted him to charge this amount. (6)

- (b) Both father and son have been charged with illegal diamond buying. An attorney takes instructions from both accused. On technical grounds, a separation of trials is ordered. The attorney uses the evidence of the son to exonerate the father in the one trial and in the trial against the son, pleads in mitigation that the father played the main role? (7)
- (c) An attorney operated a trust account only, which was overdrawn and furthermore, without his clients' consent, personally borrowed monies from his clients' trust accounts and failed to secure these loans. (3)
- (d) 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. (4)
- (e) In the event of a certain attorney fleeing the country, the Law Society took control of his office, changing the locks. X, the fleeing attorney's partner, then requested that he be allowed to recover from the office certain files belonging to him. He was advised that no files would be released. Subsequently, the office was broken into and a filing cabinet containing files was stolen. Solid evidence established X as one of the perpetrators. At his trial, X denied involvement, but later admitted having removed the files. (5)