

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

SUPPLEMENTARY 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

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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 3 pages.

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**QUESTION 1 (25 marks)**

Write concise notes on ALL of the following -

- (a) the impact of both the adversarial system and the principle of client autonomy on the professional conduct of a lawyer; (8)
- (b) special points to remember when taking instructions in regard to criminal matters; (8)
- (c) the manner in which an attorney must conduct his/her trust account, referring specifically to decided cases and the provisions of sections 24-24quin of the Legal Practitioners Act 15 of 1964. (9)

**QUESTION 2 (25 marks)**

- (a) Discuss the conflict of interests that may arise when a practitioner acts for both parties in regard to a non-litigious matter. (13)
- (b) With specific reference to case law, discuss the conflict of interests that may arise when a practitioner represents two accused in the same criminal trial. (12)

**QUESTION 3 (25 marks)**

- (a) By specific reference to decided cases, 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 4 (25 marks)**

Discuss the precautions that should be taken to avoid a claim based on professional negligence in regard to

- (a) litigious matters; (12)
- (b) property transactions; (8)
- (c) commercial transactions. (5)

**QUESTION 5 (25 marks)**

- (a) Your client is Z who is the plaintiff in a civil action. L is the defendant and her attorney is D. S is a witness who has been subpoenaed by D. With these facts in mind, answer the following questions giving full reasons for your answer in each instance.
- (i) You realise that L might have information that could support your client's case. Could you conduct an interview with L in order to establish her potential as a witness? (5)
  - (ii) Could D claim that S is his witness? (2)
  - (iii) Could you interview S once the civil action has commenced and S has already given evidence for D in the matter? (4)
  - (iv) If S was your witness, how would you conduct the pretrial consultation with him? (7)
- [18]
- (b) 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)

**QUESTION 6 (25 marks)**

On the basis of direct reference to case law, determine whether the conduct of the legal practitioner described below is unprofessional. Give full reasons for each answer.

- (a) An attorney gives an undertaking to a retailer that his client is creditworthy, knowing that his client is in debt and cannot fulfill his financial obligations (5)
- (b) An attorney represented a plaintiff in a divorce action. The client's husband's attorneys 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 attorneys had been notified that the matter was proceeding on an unopposed basis – in fact the said party was unaware of the same. The court granted a divorce order. (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) 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. (7)
- (e) An attorney debits a client's trust account for fees not due but anticipated in the near future. (3)