

**UNIVERSITY OF SWAZILAND**

**DEPARTMENT OF LAW**

**FINAL EXAMINATION PAPER 2008**

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

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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) 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.**

This paper consists of 4 pages.

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**QUESTION 1 (25 marks)**

Answer the following questions.

- (a) Discuss the lawyer as the client's instrument with particular emphasis on the principle of party autonomy. (9)
- (b) Set out the special points to remember when taking instructions in regard to criminal matters. (8)
- (c) Discuss the liability of an attorney on his undertaking; (8)

**QUESTION 2 (25 marks)**

- (a) Discuss the first interview with a client in regard to -
  - (i) taking complete instructions; (6)
  - (ii) not giving hurried advice. (3)

[9]
- (b) 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. (3)
  - (iii) With reference to case law, explain the consequences if you terminate the contract, indicating when it would not be appropriate to withdraw from the case. (9)

[16]

**QUESTION 3 (25 marks)**

- (a) With specific reference to case law, discuss the conflict of interests that may arise when a practitioner acts for both parties in regard to a non-litigious matter. (5)
- (b) Discuss the rule that a lawyer should not act contrary to the interests of a prior client. (5)
- (c) 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, and supply an example in this regard; (10)

- (ii) rendering an interim account. (5)  
[15]

**QUESTION 4 (25 marks)**

- (a) 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. (7)
- (b) Discuss the precautions that should be taken to avoid a claim based on professional negligence in regard to -
- (i) property transactions; (8)  
(ii) commercial transactions. (5)  
[13]
- (c) Explain the meaning of the phrase "*pro bono publico*" and its application in modern practice. (5)

**QUESTION 5 (25 marks)**

- (a) Discuss the considerations to be taken into account in deciding which witnesses to call and in what order; (7)
- (b) Discuss the meaning of the "without prejudice" rule, indicating which communications are and which are not protected by this rule. (8)
- (c) Discuss contempt of court *in facie curiae*. (10)

**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. (3)

- (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 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) 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. (6)
- (e) 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)