

ADVOCATES' EXAMINATION

PAPER 4

ETHICS, AND CONSTITUTIONAL LAW AND CUSTOMARY LAW Regulations 7(9)(f) and 7(9)(h)

7 APRIL 2022

14:00-15:15

Total: [50]

Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answerbook during this period. The examination of 1 hour then follows.

1. Candidates must answer all the questions.
2. Candidates must remember that marks are awarded for good draftsmanship.
3. Please write only in pen on the right-hand pages, the left side (underside) must only be used for your own notes.
4. Except if a special reason exists, a candidate will not be required to do an oral if 50% or more is attained. If a candidate achieves a score from 40% and below 50% he/she will be required to do an oral. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.
5. Admission papers 1 to 4 have orals for candidates who achieve a score from 40% and below 50%.
6. The legal writing and drafting paper (Paper 5) does not have any orals, candidates must achieve a minimum score of 50% to pass this paper.

**Ethics and Constitutional law & customary law
Regulations 7(9)(f) and 7(9)(h)**

For the purposes of this examination
a copy of the relevant parts of the Code of Conduct is provided

7 April 2022

**Read all the text below and answer all the relevant questions
[TOTAL MARKS 50]**

Ethics [32 marks]

1. Counsel is briefed by the State Attorney to represent South Africa at a conference on global warming. The task is to explain the Air Quality Act to conference attendees. Counsel is a specialist in this field. Counsel accepts the brief and agrees a fee with the State Attorney. The State Attorney also agrees to pay the costs of air travel to the venue in Europe. Counsel insists on flying first class. Reluctantly, the State Attorney agrees.

When Counsel arrives at the airport, Counsel cashes in the first class ticket and flies economy class. Counsel pockets the savings and does not pay the savings back to the State Attorney.

Comment on Counsel's conduct. [7]

2. Consider the following statements. If you agree with the statement, explain why. If you disagree with the statement, explain why. ('Yes' and 'no' as answers to the statements will not be sufficient.)
- 2.1. Like an attorney, advocates can refuse to accept any brief. [4]
 - 2.2. An advocate may not post bail for his/her client. [2]
 - 2.3. No advocate or pupil may subject any person to sexual harassment. [1]
 - 2.4. In giving any advice about the prospects of success in any matter, an advocate must give a true account of his or her opinion and must not pander to a client's whims or desires. [3]
 - 2.5. An advocate may share offices with a person who is not an advocate. [2]
 - 2.6. An advocate may accept a brief by email or WhatsApp or both. [4]
 - 2.7. An advocate may accept a more lucrative brief even if it clashes with a less lucrative brief which he or she has already accepted. [4]

3. In a case dealing with the custody of children and the right of a parent to take the child abroad, the judge requests heads of argument on the Hague Convention on the Civil Aspects of International Child Abduction Act 72 of 1996.

Defendant's advocate has no idea how to access that statute. So the advocate phones the judge to ask where to find the statute. Is the conduct of the advocate correct? Motivate your answer clearly. [5]

Constitutional law [10 marks]

4. South Africa is a constitutional state. Yet we retain a distinction between constitutional and non-constitutional issues. How would you explain to your client the difference between a constitutional issue and a non-constitutional issue? [10]

Customary law [8 marks]

5. "The Constitution acknowledges the originality and distinctiveness of indigenous law as an independent source of norms within the legal system." Explain how customary law fits into our legal system. [8]

TOTAL: 50 marks

FINAL EXAM INSTRUCTION TO CONSIDER:

Marks are not awarded in accordance with the length of your answer but in accordance with the insight you demonstrate in your answer.

- THE END -
