

ADVOCATES' EXAMINATION

PAPER 4

ETHICS, AND CONSTITUTIONAL LAW AND CUSTOMARY LAW

Regulations 7(9)(b) and 7(9)(i)

OPEN-BOOK

7 SEPTEMBER 2023

14:00 – 15:15

Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answer book during this period. This is a one hour exam.

1. Candidates must answer all the questions.
2. Candidates must remember that marks are not awarded in accordance with the length of your answer but in accordance with the insight you demonstrate in your answer.
3. Please write only in pen on the right-hand pages, the left-hand pages must only be used for your own notes.
4. A pass for this paper is 50%. Candidates will be required to do an oral if a candidate achieves from 40% to 49%.
5. The legal writing and drafting paper (paper 5) does not have any orals.

Read all the text below and answer all the relevant questions.

Total marks [50]

ETHICS

QUESTION 1

[5]

Under what circumstances is a referral Advocate entitled to refuse a brief despite the cab rank rule.

QUESTION 2

[15]

Comment on the correctness or otherwise of the following statements.

- 1.1 An Advocate may settle a matter at trial without a mandate to do so from his or her Attorney. (4)
- 1.2 Advocates must always consult with their Attorneys and clients in the Advocates Chambers. (6)
- 1.3 An Advocate must notify Counsel for the other party when he or she is going to take a point of law that is not evident from the papers. If correct, what is the rationale for the rule? If incorrect, motivate your answer. (5)

QUESTION 3

[10]

You have read the impressive Heads of Argument of your Opponent. The case law cited in the Heads of Argument will end your client's prospects in your matter. You are nonplussed. You have never heard of the cases before. You search diligently in the South African Law Reports, the All-SA law reports and you even search SAFLII (Southern African Legal Information Institute) to no avail.

You have heard of Open AI's ChatGPT. So you log into the free version of ChatGPT and search the first point made in your Opponent's Heads of Argument. To your astonishment, all the case law is cited there: yet it does not exist in the official authorities.

What on earth do you do now?

Consider your position from all perspectives, for example, like:

- Ethical duty to the Court;

- Collegial duty to your Opponent;
- Duty to advance the cause of your client;
- Practical manner to resolve the problem of the AI generated false case references.

CONSTITUTIONAL LAW

QUESTION 4

[3]

A High Court has declared a Regulation to a statute unconstitutional. Must that declaration of invalidity be confirmed by the Constitutional Court?

Motivate your answer.

QUESTION 5

[12]

Under what circumstances will the Constitutional Court grant a party direct access?

CUSTOMARY LAW

QUESTION 6

[5]

If there is a dispute over the legal position under customary law, how must a Court consider both the traditions and the present practice of the community?