

# **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

## **Paper 4**

13 April 2023

2 Hours

14:00 – 16:15

***Candidates are allowed 15 minutes to read the paper before answering the questions. No candidate may start writing in the answer book during this period. The examination of 2 hours then follows.***

### **PLEASE NOTE:**

1. Please write the number allocated to you on the cover of your answer book.
2. Candidates **must** write legibly and neatly.

**ANSWERS MUST BE WRITTEN IN INK OR WITH A BALLPOINT PEN.**

3. Please use only **the front** side of each page.
4. Except if a special reason exists, a candidate will not be required to do an oral if a 50% aggregate or more is attained. If a candidate achieves an aggregate of between 40% and 49% he/she will be required to do an oral exam to convince the examiners that he/she does have sufficient knowledge to pass the exam. Candidates who attain less than 40% will have failed this examination.

**TOTAL MARKS: [50]**

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

**Ethics**

**[30 marks]**

1. Your client is an organ of state. It seeks an urgent search warrant against a company that has been in the news. In the news the company is lambasted as maladministered and its directors as crooks. Officials from the organ of state explain that the search warrant must be obtained *ex parte* to prevent vital evidence of malfeasance being destroyed. Set out the requirements for an *ex parte* application for a search warrant as you would explain to the officials, together with the rationale for the requirements. **[10]**
  
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. You believe your trial will be settled at the doors of the court. So you may accept another brief on trial for the same day. **[4]**
  
  - 2.2. Advocates may inflate their fees for clients like multinational corporations which are benefitting well from the exchange rate between the dollar (USD) and the rand (ZAR) during 2023. **[2]**
  
  - 2.3. Would your answer on inflating fees be different for an organ of state? **[1]**
  
  - 2.4. Your attorney and client are delighted with your service. The client wants to give you a fully paid long weekend in Mauritius (flight, accommodation and spending money of R 3,000.00 for three days). What must you do? **[3]**
  
  - 2.5. An advocate may mark a brief to negotiate a settlement as a brief on trial. **[2]**
  
3. You are cross-examining a witness. The witness is obnoxious, disrespectful to you, sneering at you, mocking you and pretending not to grasp your questions. What may you do, and what will you do, in those circumstances? **[8]**

## **Constitutional law**

**[15 marks]**

4. Section 167 (4) of the Constitution of the Republic of South Africa, 1996 reserves exclusive jurisdiction to the Constitutional Court on six matters. Name at least three of the categories of exclusive jurisdiction. **[3]**
5. In deciding whether or not to grant leave to appeal, the Constitutional Court has held that the interests of justice remain fundamental. What factors may be taken into account to determine the interests of justice? **[12]**

## **Customary law**

**[5 marks]**

6. In *Alexkor Ltd and Another v Richtersveld Community and Others* 2004 (5) SA 460 (CC) (2003 (12) BCLR 1301; [2003] ZACC 18) at para [51] the Constitutional Court held:

“While in the past indigenous law was seen through the common-law lens, it must now be seen as an integral part of our law.”

Explain how customary law is seen as an integral part of our law. **[5]**

**END OF QUESTIONS**

**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.