LJU4802

Professional Ethics

Duration: 2 Hours

EXAMINERS
FIRST: DR FD MNYONGANI
SECOND: PROF M SLABBERT

100 Marks

Closed book examination

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue.

This paper consists of 2 pages

1. ANSWER ALL THE QUESTIONS

2. READ THE QUESTIONS CAREFULLY BEFORE ANSWERING THEM

[TURN OVER]
Question 1

1 1 What is ethics? (3)
1 2 What according to you is the relation between ethics and a code of conduct? (7)

Question 2

2 1 The legal profession has no room for legal practitioners who do not have integrity. Discuss any three cases where legal practitioners found lacking in integrity were struck off the roll by the court (15)
2 2 Judges are appointed and removed from office in accordance with the provisions of the Constitution of South Africa, 1996. Discuss how judges are appointed to office, who qualifies for such an appointment and how they may be removed from office (15)

Question 3

Write notes in which you explain the following:

3 1 The role differentiated behaviour (5)
3 2 The duty of confidentiality owed by an attorney to his client (5)
3 3 The privilege of advocates and attorneys to make defamatory statements in court (5)
3 4 The post modern theory of ethics (5)
3 5 The duty owed by an advocate towards the court when he or she appears in an ex parte application (5)
3 6 Deontic ethics or ethics of duty (5)

Question 4

What has by now become clear to you through this module, is that an aspirant legal practitioner wishing to be admitted must not only have formal qualifications but must also be a fit and proper person. Discuss the requirement of being a fit and proper person to practice law in South Africa (30)

TOTAL: [100]
LJU4802
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1 ANSWER ALL THE QUESTIONS

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[TURN OVER]
QUESTION 1

1.1 Is 'ethics' the same as 'legal ethics'? Discuss  

1.2 An ethical lawyer is one who is honest, reliable and has integrity. Refer to any four cases to discuss how the courts have dealt with legal practitioners whose ethical conduct was found wanting in relation to these values  

[30]

QUESTION 2

2.1 Law is practised as a profession and not merely a job. Discuss  

2.2 The constitutionality of the powers of the court to screen lawyers has been challenged on two occasions. Discuss the two cases  

[20]

QUESTION 3

The case of Prince v President, Cape Law Society 2002 (2) SA 794 (CC) provides a good illustration of the tension between an approach that is rule-based and one that is post-modern in outlook. Discuss the merits and de-merits of each of the approaches in relation to the use of the law in the case of Prince. Your discussion should  

3.1 set out what the case is about,  

3.2 provide a brief outline of both the rule-based approach and the post-modern theory, and  

3.3 set out the merits and de-merits of each of the approaches in relation the case  

[30]

QUESTION 4

4.1 A number of reasons can be put forward to explain why there is a general loss of ethical direction in the legal profession. Discuss five such reasons  

4.2 Virtue according to Aristotle is not based on a rule to be obeyed but on excellence of character. Discuss the Aristotelian understanding of virtue  

[20]

TOTAL: [100]
LJU4802

PROFESSIONAL ETHICS

Duration 2 Hours 100 Marks

EXAMINERS:
FIRST MR FD MNYONGANI
SECOND MR J DE VILLIERS

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1 ANSWER ALL THE QUESTIONS

2 READ THE QUESTIONS CAREFULLY BEFORE ANSWERING THEM
QUESTION 1

It is important for legal practitioners to know the rules of the legal profession, but to conduct oneself ethically in the legal profession requires more than just adherence to the rules.

Discuss the above statement. Your discussion should in addition make reference to four other philosophical approaches to ethics. [25]

QUESTION 2

In the history of South Africa there have been legal practitioners whose political convictions brought them into conflict with their duty to uphold the law. Refer to any four of such cases to discuss how the courts dealt with the legal practitioners involved. [25]

QUESTION 3

3.1 Discuss the role differentiated behaviour in relation to legal ethics. [10]

3.2 You are an advocate of the High Court who is also passionate about the rights of women. During the Sixteen Days of Activism against the Abuse of Women and Children, an attorney approaches you with a brief requesting you to represent his client who is accused of bludgeoning his wife to death. Will you accept the brief or not? [5]

3.3 What are the factors which an advocate must consider in determining reasonable fees for services rendered? [5]

QUESTION 4

Write notes on the following.

4.1 The duty owed by an advocate towards the court when he or she appears in an 
ex parte application. [5]

4.2 The factors that characterize an adversarial legal system. [5]

4.3 Factors that distinguish the legal profession from any other job. [5]

4.4 Civil disobedience and when it may be justified. [5]

4.5 The responsibility of a legal practitioner towards his or her colleagues. [5]

4.6 The duty of confidentiality owed to a client by an attorney. [5]

TOTAL: [100]
LJU4802

PROFESSIONAL ETHICS

Duration 2 Hours

100 Marks

EXAMINERS
FIRST
SECOND
MR FO MNYONGANI
MRS SR SMITH

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1  ANSWER ALL THE QUESTIONS

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QUESTION 1

The residents of Gauteng are upset about the e-Toll system introduced on the major highways of the Province and the fact that they have to pay each time they use the highways of the Province. The residents have without success raised their objections at various mass meetings called to address this issue. They in addition have had several marches to highlight their concerns and these too drew a blank. You are a leading attorney in the Gauteng Province and the residents approach you to take up the matter on their behalf. They want you to be the face of the campaign for civil disobedience in which they will deliberately drive on the freeways and still refuse to pay for the use of the freeways. You are keen to accede to their request but are uncertain whether you, as a legal representative, should get involved in a civil disobedience campaign at all. The residents are quick to remind you of the role that lawyers like Nelson Mandela and Mahatma Gandhi played in other campaigns of civil disobedience in the history of South Africa.

Write a memorandum to the residents in which you explain the following

(1) The duty of the lawyer to uphold the law of the Republic,
(2) The meaning of civil disobedience, and
(3) Why you are inclined or not inclined, as the case may be, to rely on the examples of Mandela and Gandhi in this regard

[30]

[TURN OVER]
QUESTION 2

Write notes on the following

(a) Characteristics of the postmodern theory of ethics (5)
(b) The duty of confidentiality owed by an attorney to his client (5)
(c) The privilege of advocates and attorneys to make defamatory statements in court (5)
(d) The role differentiated behaviour in relation to legal ethics (10)
(e) Appointment of judges and their independence (5)

QUESTION 3

Write notes in which you distinguish between Anstotle’s virtue and Bentham’s utilitarianism as philosophical bases for assessing ethical conduct. Your discussion should also include the challenges or difficulties attendant to each of the approaches [15]

QUESTION 4

Discuss the inherent common law power of the court to regulate the legal profession. Your discussion should make reference to case law in relation to the power of the court to

4.1 Admit prospective legal practitioners, (10)
4.2 Strike errant legal practitioners off the roll, and (10)
4.3 Reinstatle legal practitioners who have been struck off the roll (5)

TOTAL: [100]
LJU4802
PROFESSIONAL ETHICS
May/June 2014

Duration : 2 Hours
100 Marks

EXAMINERS
FIRST : MR FD MNYONGANI
SECOND : PROF M SLABBERT

Closed book examination.

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This paper consists of 2 pages

1 ANSWER ALL THE QUESTIONS

2 READ THE QUESTIONS CAREFULLY BEFORE ANSWERING THEM

QUESTION 1

Discuss the requirement of being a fit and proper person to practice as a lawyer in South Africa

(30)

QUESTION 2

Write notes on the following:

2.1 The referral rule by referring to the case of Society of Advocates v De Freitas & Another 1997 (4) SA 1134 NPD.

(12)

2.2 Acceptance of briefs by an advocate

(5)

2.3 The challenge in Rosemann v General Council of the Bar of South Africa 2004 (1) SA 588 (SCA).

(5)

QUESTION 3

The fit and proper person test was constitutionally challenged on two occasions. Refer to case law and indicate the Constitutional Court's verdict in both cases

(8)
QUESTION 4

Discuss the lawyer's relationship with:

4.1 clients ............................................. (10)
4.2 courts ............................................. (5)
4.3 the public ....................................... (5)

QUESTION 5

Refer to the case of The Pretoria Society of Advocates v Sentsho Case No 71717/11 (Unreported case, North Gauteng High Court)

Is what the defendant did in accordance with actions of a virtuous practitioner or not? Motivate your answer by indicating the difference between the rule-based approach and virtue ethics when assessing ethical conduct. .................................................. (20)

TOTAL: [100]
This paper consists of 2 pages.

1. **ANSWER ALL THE QUESTIONS**

2. **READ THE QUESTIONS CAREFULLY BEFORE ANSWERING THEM**

**QUESTION 1**

1.1 Discuss the abuse of the 'fit and proper person' test during Apartheid. 

1.2 Is *Prince v President, Cape Law Society 2000 (3) SA 845 (SCA)* an example of continued abuse of this test? 

1.3 In 2013 at the launch of the Liberty Party banners were displayed that read, 'A revolutionary must become a cold killing machine motivated by pure hatred'. If the leader of the Liberty Party, Mr Amandla, decided to quit politics and applied to be an attorney would he be considered to be a, 'fit and proper person'? Mr Amandla does have an LLB degree.

**QUESTION 2**

2.1 Discuss the criticism of professional codes of ethics for legal practitioners. 

2.2 Good judgment is said to be one of the core values of a good lawyer. Discuss
QUESTION 3

Discuss the following

3.1 A lawyer’s responsibility towards their colleagues. (5)
3.2 A lawyer’s duty to not mislead the court (5)
3.3 A lawyer’s responsibility to uphold the public trust. (5)
3.4 S v Mamabolo 2001 (3) SA 409 (CC) (5)
3.5 The reasons for which a judge can be removed from office (5)

[25]

QUESTION 4

Discuss the ethical crisis in the SA legal profession. Students must include a discussion of the rule-based approach and the role-based approach to legal ethics in their answer. Finally, discuss how this crisis might be resolved [25]

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1. **ANSWER ALL THE QUESTIONS**

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**Question 1**

1.1 What according to you are the reasons for the loss of ethical direction within the legal profession? (5)

1.2 What is ethics? (3)

1.3 What according to you is the relation between ethics and a code of conduct? (3)

1.4 What is the purpose of a code of conduct? (3)

1.5 Ethical responsibility involves more than a strict compliance with rules. Discuss (7)

1.6 Morally good lawyers argue that they only play a role as legal practitioners. Discuss (10)

1.7 Explain how post modern ethics differs from the traditional approach to legal ethics (4)

1.8 Which philosophical approach to ethics could according to you solve the ethical problems in the profession? (3)
Question 2

Clients are the basis of the legal profession. There is a difference between advocates and attorneys where clients are concerned. Discuss the lawyer’s relationship with clients and refer to:

2.1 The acceptance of a mandate from clients
2.2 A trust banking account
2.3 Confidentiality and
2.4 Recourse for clients who are not satisfied with a lawyer’s work [25]

Question 3

The court has an inherent common law power to regulate the legal profession. Refer to case law in your discussion of the power of the court to:

3.1 Admit prospective legal practitioners
3.2 Strike errant legal practitioners off the roll, and
3.3 Reinstat[e legal practitioners who have been struck off the roll [25]

Question 4

“More difficult to enforce, though not less worthy of pursuit, is the maintenance of impeccable court manners – even under the most provocative circumstances” (Du Plessis “The Ideal legal practitioner (from academic angle)” Sept 1981 De Rebus at 425)

Discuss [5]

TOTAL [100]
LJU4802

PROFESSIONAL ETHICS

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EXAMINERS
FIRST MR FD MNYONGANI
SECOND PROF M SLABBERT

100 Marks

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1 ANSWER ALL THE QUESTIONS

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QUESTION 1

Discuss the role of rules, consequences and virtue as philosophical approaches to assessing ethical conduct [15]

QUESTION 2

Discuss the following

2.1 The factors an advocate should consider in determining reasonable fees for services rendered (5)

2.2 The characteristics of a post-modern theory of ethics (5)

2.3 When and how may a judge be removed from office? (5)

2.4 The duty owed by an advocate towards the court when he or she appears in an ex parte application (5)

2.5 Characteristics of an adversarial legal system (5) [25]
QUESTION 3

Ethical responsibility involves more than a strict compliance with rules. Discuss. [10]

QUESTION 4

"What sets such a lawyer apart and makes him a model for the profession as a whole is not how much law he knows or how cleverly he speaks, but how wisely he makes the judgments that his professional tasks require." Kronman, "Living in the law" 1987 University of Chicago Law Review Vol 54 at 861-2

According to Kronman, good judgment is not logical deduction nor is it an intuitive grasp of what is right and wrong.

Write an essay in which you explain the role of good judgment in the lives of different legal practitioners. Distinguish, for example, between attorneys, advocates and judges. Also explain what a good judgment entails if it is not based on logic or intuition. [20]

QUESTION 5

Should one make a distinction between a legal practitioner’s private and professional life? [10]

QUESTION 6

The "fit and proper" test has been constitutionally challenged on two occasions. Refer to case law and indicate the Constitutional Court’s verdict in both cases. [8]

QUESTION 7

It seems as if the duty test and not the character test, is applied by the courts in the new South Africa. Illustrate this view by referring to case law where an applicant’s religious commitments brought him into conflict with the law. [12]

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1. ANSWER ALL THE QUESTIONS
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QUESTION 1

It is important for aspirant legal practitioners and those already in practice to know the rules of the legal profession, but to be an ethical professional requires more than adherence to the rules

Discuss the above statement. Your discussion should in addition make reference to the four other philosophical approaches to ethics [25]
QUESTION 2

Clients form a constant feature in the professional life of a legal practitioner. The legal profession has put in place systems and processes that are aimed at protecting clients. Bearing in mind the division of the legal profession into both attorneys and advocates, discuss the lawyers' relationship with clients. In your discussion you should consider among others:

1. Acceptance of a mandate from clients
2. The referral rule and its rationale
3. The need for a trust banking account
4. The duty of confidentiality owed to a client
5. Recourse for clients who are not satisfied with a legal practitioner's work

[25]

QUESTION 3

In the history of South Africa, there have been legal practitioners whose political or religious commitments brought them into conflict with their duty to uphold the law of the state. Referring to case law, discuss the influence of such commitments on them as fit and proper persons to practice law or not.

[20]

QUESTION 4

The role played by legal practitioners in court is not any different from the one played by actors on stage. Discuss the role differentiated approach to legal ethics.

(10)

QUESTION 5

Section 165(4) of the Constitution of South Africa 1996 states that organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts. Write notes on

1. the need to maintain the dignity of the court and the legal process;
2. the role played in this regard by legal practitioners and judges;
3. the legal remedies which ensure that the dignity of the court is maintained

(5)  (10)  (5)  [20]

TOTAL: [100]
This paper consists of 2 pages

1. **ANSWER ALL THE QUESTIONS**
2. **READ THE QUESTIONS CAREFULLY BEFORE ANSWERING THEM**

**QUESTION 1**

Write notes in which you explain the following:

1.1 The factors an advocate should consider in determining reasonable fees for services rendered (5)

1.2 The characteristics of a postmodern theory of ethics (5)

1.3 Factors that characterise an adversarial legal system (5)

1.4 Deontic ethics or the ethics of duty (5)

1.5 The duty owed by an advocate towards the court when he or she appears in an ex parte application (5)

[25]
QUESTION 2

Clients form a constant feature in the professional life of a legal practitioner. The legal profession has put in place systems and processes that are aimed at protecting clients. Bearing in mind the division of the legal profession into both attorneys and advocates, discuss the lawyers’ relationship with clients. In your discussion you should consider among others:

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2. The referral rule and its rationale
3. The need for a trust banking account
4. The duty of confidentiality owed to a client
5. Recourse for clients who are not satisfied with a legal practitioner’s work

[25]

QUESTION 3

“The court has an inherent common law power to regulate the legal profession and therefore remains the final arbiter of what is appropriate in this regard” Professional Ethics Study Guide (LJU413J) 5. Refer to case law in your discussion of this statement in as far as it relates to the power of the court to

Admit prospective legal practitioners into the profession,

Strike errant legal practitioners off the roll, and

Reinstate legal practitioners who want to rejoin the profession after having being struck off the roll

[30]

QUESTION 4

4.1 To remove a judge from office is a fairly complex process, as opposed to when a judge resigns. Discuss

(10)

4.2 Discuss utilitarianism as one of the philosophical approaches to legal ethics. Your discussion should also make mention of the problems attendant to this approach

(10)

[20]

TOTAL: [100]
LJU4802
PROFESSIONAL ETHICS

Duration 2 Hours 100 Marks

EXAMINERS :
FIRST
MR FD MNYONGANI
SECOND
PROF M SLABBERT

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This paper consists of 3 pages

1 ANSWER ALL THE QUESTIONS
2 READ THE QUESTIONS CAREFULLY BEFORE ANSWERING THEM

QUESTION 1

"The crisis of professionalism is not restricted to law and similar concerns have been raised in connection with other professions, such as the medical profession " Professional Ethics Study Guide (LJU4802) 53

Do you agree/disagree that the legal profession is in an ethical crisis? Motivate your answer [5]

QUESTION 2

When you practise as an attorney or an advocate you are referred to as a professional What makes you different from an ordinary businessman? [5]
QUESTION 3
People who want to enter the legal profession as attorneys or advocates are subjected to extensive character screening. What does this mean? Who is responsible for it? Give examples on how political considerations influenced character screening in the past. What was the Constitutional Court's view on this issue? [25]

QUESTION 4
The religious commitments of attorneys may bring them in conflict with their duty to uphold the law of the state. Discuss whether such commitments render them unfit and improper to practise law. Refer to case law. [10]

QUESTION 5
What are the functions of a Code of Legal Ethics? [5]

QUESTION 6
In spite of lofty ideals about codes of conduct and legal ethics there is criticism from both the side of the profession and the general public against such codes. Discuss. [10]

QUESTION 7
A mid-wife performed an illegal abortion at her home. She is being prosecuted for the act and comes to you as an attorney for legal help. Abortions are against your religious beliefs. Will you help the lady or not? Motivate your answer. If you were an advocate and the case was referred to you will you accept the brief or not? [5]

QUESTION 8
You are an attorney. On Saturdays you play golf with the local doctor and the state prosecutor. While playing you tell them about one of your exciting cases. You mention the person's name as well as the facts of the case. You all have a good laugh because the case is very interesting. But is your conduct acceptable? [5]

QUESTION 9
Attorneys and advocates are officials of the court and should always give the courts their utmost respect and promote the dignity of the court. Discuss. [5]

QUESTION 10
During a rape trial the defence advocate calls a witness a whore. The judge does not seem perturbed by this and the prosecutor looks on with no objection registered on his face. Discuss. [5]

[TURN OVER]
QUESTION 11

A judge was caught driving under the influence of alcohol. He also used bad language in the verbal altercation that ensued. The public is enraged, and they want him removed from office. Explain how judges may be removed from office. [5]

QUESTION 12

Is the traditional approach to legal ethics still acceptable today? Discuss. [10]

QUESTION 13

Explain what is meant with the term touting. Also give an example. [5]

TOTAL: [100]