



SCHOOL OF LAW
NLLB309: LEGAL ETHICS & PROFESSIONAL TRAINING
END OF SECOND SEMESTER EXAMINATIONS
APRIL 2025
LECTURER: DR. L. SITHOLE
DURATION: 3 HOURS

INSTRUCTIONS

1. Answer **three** questions.
2. **Question 1 is compulsory.**
3. This exam carries a total of **70 Marks.**
4. Refer to relevant authorities.

Question 1

Mike Ross is a registered legal practitioner who has been practising law for 5 years. Ross was hired to represent a defendant who was charged with operating a motor vehicle while under the influence of alcohol and leaving the scene of an accident after causing personal injury. At the time of the defendant's arrest, the defendant admitted to the arresting officer that she had been driving the car involved in the accident. (The victim identified the car and plate). Notwithstanding that admission, a friend of the defendant came forward as an alibi witness, claiming that the defendant had been with her watching television at the time of the accident. Having done nothing to attempt to suppress his client's statement to the police, and having failed to interview any of the three eyewitnesses to the accident named in the police report, Ross decided to pursue a defence based on alibi and mistaken identification.

On the day of trial, the defendant and her alibi witness went to the Court. Ross arrived shortly thereafter and spoke to the victim. From that conversation, he concluded that the victim would probably not be able to identify his client. Because his client and the alibi witness were somewhat similar in appearance, Ross decided to have the alibi witness impersonate the defendant in court, hoping thereby to confuse the victim and prompt a misidentification at trial. Ross advised his client to remain in the back of the court room, and told the alibi witness to come forward. The witness complied, and came forward. Ross's client was acquitted at trial.

- (a) Discuss the ethical issues raised by Ross' conduct. In your discussion, refer to relevant ethical rules involved and whether the rule(s) were violated. **[20 Marks]**

- (b) "The law on recusal is settled in all the common law and civil law jurisdictions. Little scope for originality exists. In very basic terms, and in the context of judicial proceedings, recusal is the stepping aside, or disqualification of a judicial officer from a case on the ground of personal interest in the matter, bias, prejudice, or conflict of interest. Recusal has its origins in the common law. It is now codified under section 69 of our Constitution, the Judicial Code of Ethics

and the Regulations made thereunder” ***Petina Gappah v Fadzayi Mahere HH 112-24/HC 7715-23***

Discuss.

[20 Marks]

Question 2

Discuss the disciplinary procedure for lawyers who are facing disciplinary issues. In your answer, explain the role of the Disciplinary Tribunal and the types of orders that it can make.

[15 Marks]

Question 3

a) Distinguish between the following terms:

i) champerty and contingency fee agreement;

[5 Marks]

ii) marketing and touting;

[5 Marks]

b) Define the following;

i) confidentiality;

[3 Marks]

ii) trust funds.

[2 Marks]

Question 4

Mr Hanga, a legal practitioner, resides in a house on a street that has commercial business on its corner. He is personal friends with the owner of the business, Mr Mbinga. A prospective client Max meets with Mr Hanga. During their initial meeting and interview, Max explains that he provided certain services to Mr Mbinga for which he has not compensated him. Max explains that he has invoiced, called, and written to Mr Mbinga requesting for payment several times. He indicates that he has received no promises or assurances of payment from Mr Mbinga. Max requests that Mr Mbinga represent him on a contingency fee basis.

Can Mr Hanga represent Max? Discuss.

[15 Marks]

Question 5

Mr Naughty represents his client in a matter that was allocated to Justice No-Nonsense for a pre-trial conference. On the first set down date, Mr Naughty sent his client to tend the pre-trial conference alone. The client explained that Mr. Naughty just gave him his file and told him to go to court alone without explaining why he was not coming with him. Justice No-Nonsense postponed the matter and told the client to tell his lawyer Mr Naughty to renounce agency if he was no longer representing him. Again, on the new date, Mr Naughty did not turn up and at the same time, he had not renounced agency. The matter was postponed again, and Justice No-Nonsense asked the Registrar to write to Mr. Naughty, inviting him to visit his chambers to show cause why he should not be ordered to pay costs *de bonis propriis* for all the occasions the matter was postponed due to his non-attendance. The letter was written and was duly served on Mr Naughty. However, Mr Naughty did not turn up.

As a result of Mr Naughty's conduct, Justice No-Nonsense was forced to postpone this matter on 4 occasions thereby causing the parties involved to incur unnecessary costs. The postponements also caused the Judge to waste unnecessary time as he had to accommodate this matter on 4 occasions. This caused delay in the finalisation of the pretrial conference.

Discuss the issues arising.

[15 Marks]

END OF EXAMINATION