LEGAL PRACTICE COUNCIL

ADVOCATES' EXAMINATION

PAPER FOUR: ETHICS, CONSTITUTIONAL LAW & CUSTOMARY LAW

Regulations 7(9)(f) and 7(9)(h)

DATE: Thursday, 10 April 2025 **DURATION: 1 HOUR**

TIME: 14:00 – 15:15 **TOTAL: 50 MARKS**

INSTRUCTIONS TO CANDIDATES:

1. Candidates must assess how much of their time to spend on answers to the questions in proportion to the allocation of marks to each question.
2. 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.
3. Candidates must answer **all t**he questions.
4. 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.
5. Please write only in **black pen** on the right-hand pages. Answers written in pencil or another colour ink will not be marked. The left-hand pages must only be used for your own notes.
6. No cell phone (or other electronic devices) and no unauthorised materials may be used by candidates during the examination. Candidates found to be using an electronic device or unauthorised materials will be removed from the examination and subject to the LPC disciplinary procedures.
7. A pass for this paper is 50%. Candidates will be required to do an oral if a candidate achieves from 40% to 49%.
8. **FINAL EXAM INSTRUCTION TO CONSIDER:** You are not allowed to make up facts outside the questions.

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

ETHICS [30 MARKS]

QUESTION 1 [20 marks]

Section 22.3 of the **Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities** states that:

> "The interpretation of Part IV of this code shall be effected purposively and aimed to give the fullest effect to the fundamental principles that shape, guide and express the essence of the profession of advocacy, which principles are that-
>
> 22.3.1 counsel are independent practitioners of advocacy and agents of the rule of law, who resist any undue influence from anyone, whose specialised services are available to all persons, in particular indigent people, regardless of any disregard in which persons requiring the services of counsel may be held by anyone:
>
> 22.3.2 counsel understand that the profession of advocacy is primarily vocational and serves the public interest and accordingly acknowledge fiduciary duties towards the courts and to their clients and to all professional colleagues."

Explain what section 22.3 means in light of your practical vocational training. Focus, in particular, on the following seven phrases with regard to the text above.

- Independent practitioners of advocacy;
- Agents of the rule of law;
- Resist undue influence;
- Whose specialised services are available to all;
- In particular indigent people;
- Advocacy is primarily vocational; and,
- Fiduciary duties towards the courts and to their clients and to all professional colleagues

You may use each of the phrases above in separate headings. You may add other aspects of section 22.3 for discussion. This question concerns your appreciation of what it means to be an advocate. Take your time, consider your answers carefully and convince the examiners you deserve to be an advocate.

QUESTION 2 **[10 marks]**

Comment on the correctness of the following statements.

2.1 An advocate may give legal advice orally or in a written opinion. [2]

2.2 Advocates may prepare any documents required for use in any court or arbitration or other adjudicative proceedings. [2]

2.3 Advocates may make representations to the National Prosecution Authority about whether or not to charge a person with a criminal offence. If correct, what is the rationale for the rule? If incorrect, motivate your answer. [4]

2.4 Advocates may act as curators *ad litem*. [2 marks]

CONSTITUTIONAL LAW [15 MARKS]

QUESTION 3 **[10 marks]**

The Constitutional Court can grant an array of remedies. List the remedies you can advise your attorney to consider in any case. You may accept you have briefs from practitioners in private practice as well as the State Attorney.

QUESTION 4 **[5 marks]**

Sometimes the Constitutional Court does not sit *en banc*, that is with all eleven judges. What happens to the appellant's case if the Constitutional Court sits ten judges or eight judges and half of the Court upholds the appeal and the other half dismisses the appeal? What is the ultimate effect on the appellant's case? Motivate your answer.

CUSTOMARY LAW [5 MARKS]

QUESTION 5 **[5 marks]**

Are customary law marriages considered to be in community of property? Can a person enter into a valid customary marriage with a third party if he or she is already married under the civil law? Motivate your answers.

TOTAL MARKS: 50

- **THE END -**