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**Question 1**

There is a Theoretical idea that there is a difference between the legal profession and a either a Job or a business. The practice of law requires complex professional judgements which is judged by fellow legal professionals.[[1]](#footnote-1) This judgement will be in accordance with good morals and adherence to the code of legal ethics.[[2]](#footnote-2) The practice of the law is a profession and this implies that the professional must be worthy of public trust and must carry out their duties with public spiritedness and must adhere to high standards of ethical conduct.[[3]](#footnote-3)

The legal practice must still be ran on good business principles however there are differences to merely running a business or a job in the following ways:

* Professionals must have specialized intellectual knowledge and skills which sets them apart from the lay person before gaining access to the profession.
* They are expected to be committed to promoting thee basic good in society (in justice).
* Must be committed to serve the public within their respective fields
* They have relative professional autonomy and discretion in them executing their duties. They don’t merely agree to all requests from clients.
* For the sake of maintaining public confidence in their respective fields they must be willing to take responsibility for their actions.
* They identify with other professionals within their field and to the moral community.
* They are self-disciplined and abide by a code of professional (legal) ethics established by the best thinkers in the field.
* The standards of professional conduct are regulated by a professional body e.g. the courts and the controlling body in the legal field.

A legal practice cannot be run merely as a business it has a lot more to adhere to than a mere business as shown immediately above.[[4]](#footnote-4)

A good lawyer must have values such as honesty and trustworthiness, good judgement and objectivity above a good awareness and knowledge of the law.

**Question 2**

This is a philosophical question as you must weigh the loyalty you owe your client and possibly losing earnings with what is wright and fair. Aristotle based his ideas on ethics on the excellence of character and less about rules that must be followed, that we must strive to acquire virtuous character treats.[[5]](#footnote-5) The question I would ask myself is ‘what a person of good moral character would do in such a situation?’ this person would be a person of courage. According to Aristotle all ethics are virtue ethics and as they involve a virtuous character.[[6]](#footnote-6) Virtue ethics require a person to be better that merely following rules and reacting to consequences. Kronman states that life in law must not be regarded as valuable merely because of money and status but must be motivated by making good reflective judgements. However I could invoke the Role differentiated approach and insulate myself from the immoral act by simply doing it and saying I am an actor in the scenario who is simply playing his role. However according to Markovits the morally good legal practitioner would not be comfortable with this because the legal practitioner is not a merely driven entity without autonomy, they are an entity of good moral standing and any betrayal of good morals would be a betrayal of their nature[[7]](#footnote-7). Calls this the Categorical imperative which says you obey the law out of a sense of rules that have become duty (deontic ethics)[[8]](#footnote-8): the community’s legal conviction would not regard this as moral behavior

So I would have to refuse this request from my client and face the consequences of my decision.

**Question 3**

3.1. All attorneys must have a trust bank account where all monies held or received on behalf of other people will be held. No amount in this account will form part of the attorney’s assets, this is informed by S 78 (7) of the Attorney act.[[9]](#footnote-9) *In Law Society of the Northern Provinces v Mabaso (20252/14) [2015] ZASCA 109 (21 August 2015)* on appeal, the court had to consider a matter where the Respondent misappropriated monies held in a trust account,[[10]](#footnote-10) by transferring R 26 000 and again R 50 000 from the trust account to the practices transacting accounts. The money held in this account is . Mr Magena cannot is not allowed to borrow from this account and this could result in him be struck of the roll.

3.2. Mr Mangena can be re-admitted and re-enrolled (herein referring to both as ‘re-instate’), however he must prove that he is a fit and proper person again.[[11]](#footnote-11) S15 (2) of the Attorneys Act 53 of 1979 has expressly made the re-instatement of attorneys a discretion of the courts,[[12]](#footnote-12) this was expressed by Ackerman J in *Swartzberg v Law Society, Northern Provinces 2008 All SA 438 (SCA*).[[13]](#footnote-13) In *Kaplan v Incorporated Law Society, Transvaal 1981 All SA 15(T)* a case of an attorney who was applying for re-instatement after being struck off for unprofessional conduct was heard. The court required that the applicant show that he has reformed himself since the offending conduct. Its investigation in to this relates to: (a) the nature of the conduct that lead to the applicant being struck off, (b) the applicant’s behavior after the offending conduct was found out, and (c) it must consider whether the applicant is a fit and proper person to be re-admitted as an attorney.[[14]](#footnote-14)

**Question 4**

4.1. I would suggest that she proceed with the action against the plastic surgeon and that I will represent her, I would take no fee if the case is unsuccessful however I would recover my fees on a successful conclusion of the case. We would conclude a Contingency fees agreement governed by the Contingency fees act 66 of 1997, this will help her access justice even though she does not have the finances.

4.2. I would take her case and we would conclude a Contingency agreement, with this agreement I would charge no fee for the case and would receive no fee if the case is unsuccessful[[15]](#footnote-15). However if successful I would recover my fee, which could be more than my normal fee given the risk I took.[[16]](#footnote-16) A contingency agreement is governed by the Contingency fees act 66 of 1997 which came into effect on 23 April 1999 (herein referred to as the ‘Contingency act’) and for the agreement to be valid I would have to draw it up in a manner that complies with S 3 of the Contingency act[[17]](#footnote-17) to stipulate that in the event of a successfully conclusion to the case, I would charge the lesser of not more than 25% of the capital amount of the client or a bill of costs. The advantage of this agreement is that she gets access to justice, however it is a disadvantage to me as her attorney that if I lose the case I cannot recover any fees

4.3. I would expect 25% of the R132 000 which is R 33 000 this is stipulated in S 2(2) the Contingency act if it is the lesser between. The court clarified the 25% and how it must be determined in *Masango and Another v Road Accident Fund and Others 2016 (6) SA 508 (GJ).* The court different between a *no win no fee* agreement and an agreement which has the practitioner recovering a fee on the cases success, the court named this amount as a ‘success fee’ this must be governed by the Contingency fee agreement.[[18]](#footnote-18) The attorney can increase their baseline fees (fees they would have recovered if they did not conclude a contingency agreement) by not more than 100%, in this calculation the baseline fees are an important 1st step.[[19]](#footnote-19) The practitioner can also charge 25% of the award as fees and can impose VAT on the 25%, given that the later calculated amount is less.

1. Study guide page 2, 3. [↑](#footnote-ref-1)
2. Study guide page 3. [↑](#footnote-ref-2)
3. Study guide page 4. [↑](#footnote-ref-3)
4. Study guide page 4. [↑](#footnote-ref-4)
5. Study guide page 18. [↑](#footnote-ref-5)
6. Study guide page 18. [↑](#footnote-ref-6)
7. Study guide page 45. [↑](#footnote-ref-7)
8. Study guide page 12. [↑](#footnote-ref-8)
9. Study guide page 53. [↑](#footnote-ref-9)
10. Study guide page 37. [↑](#footnote-ref-10)
11. Study guide page 38. [↑](#footnote-ref-11)
12. Attorney’s act 53 of 1979 S15 (2). [↑](#footnote-ref-12)
13. Study guide page 39. [↑](#footnote-ref-13)
14. Study guide page 39 [↑](#footnote-ref-14)
15. Contingency fees act 66 of 1997 S 2 (1) (a). [↑](#footnote-ref-15)
16. Study guide page 58, Contingency act S 2 (1) (b). [↑](#footnote-ref-16)
17. Contingency act S 3. [↑](#footnote-ref-17)
18. Masango and another v Road accident fund and other 2016 (6) SA 508 (GJ) (herein referred to as ‘Masango’) para 10. [↑](#footnote-ref-18)
19. Masango para 12. [↑](#footnote-ref-19)