

---

**SYLLABUS FOR THE COMPETENCY-BASED EXAMINATIONS FOR CANDIDATE ATTORNEYS  
21 AND 22 AUGUST 2024**

---

The examinations are provided for in **Rule 21 Competency-based examinations or assessments**

**[section 95(1)(n) read with section 26(1)(d), (2) and (3)]**

- 21.1 *A person wishing to qualify to be admitted and enrolled as a legal practitioner will be required to have passed a competency based assessment in terms of this rule 21, read with any rule made by the Council or the National Forum concerning levels of competence required for the admission and enrolment of legal practitioners.*
- 21.2 *The assessment of a person wishing to be admitted and enrolled as an attorney shall comprise assessment at least in relation to-*
- 21.2.1 *the practice and procedure in the High Court and in courts established under the Magistrates' Courts Act, 32 of 1944;*
  - 21.2.2 *the practice and procedure relating to the winding up and distribution of the estates of deceased persons;*
  - 21.2.3 *the practice, functions, and duties of an attorney, including the ethical duties of an attorney;*
  - 21.2.4 *a knowledge of accounting necessary for the keeping of accounting records referred to in section 87 of the Act, and compliance with accounting rules published by the Council from time to time.*

**The four examination papers for candidate attorneys cover the following modules:**

**Paper 1 (Court Practice and Procedures):** High Court Practice, Magistrates' Court Practice, Criminal Court Practice, and Personal Injury Claims (Motor Vehicle Accident Claims).

**Paper 2 (Wills and Estates):** Wills and Estates.

**Paper 3 (Attorneys' Practice and Legal Ethics):** Constitutional Practice, Professional Legal Ethics, Labour Dispute Resolution, Alternative Dispute Resolution, Matrimonial Law, Legal Costs, Drafting of Contracts, Information and Communication Technology for Practice and associated aspects of Cyber Law, and Introduction to Practice Management.

**Paper 4 (Attorneys' Bookkeeping):** Attorneys Bookkeeping

***All modules listed in Regulation 6(10)(a) to (o) are examinable, and will form part of the competency-based examinations for candidates.***

**Wednesday 21 August 2024, 09h00 – 12h15**

**This is a 3-hour examination, with 15 minutes reading time before the start of the examination. The paper counts 100 marks. Each of the four sections (high court, magistrates court, criminal court, and motor vehicle accident claims) count 25 marks, for a total of 100 marks for this paper.**

### **1.1 High court procedure**

The practical application of the High Court Act and rules. When drafting pleadings, use the correct lay-out, number the paragraphs, and use headings (where required). Remember pleadings must not be vague, each pleading must disclose a cause of action or a defence; and must be based on the facts of the case. Bare denials are not permitted – see rule 22 of the Uniform Rules.

**The following are the key practical skills and drafting to be tested:**

- Notices of motion - candidates must learn the different types of notices of motion and when each is used. This must include a long form notice of motion, and short form notice of motion.
- Affidavits - candidates must learn to draft founding, answering and replying affidavits.
- Causes of action for a summons, including how to establish a “cause of action” or “defence” from a set of facts or instructions.
- Trial proceedings
- Instructions to counsel on pleadings.
- Particulars of claim and a plea in contract, delict and/or divorce.
- Urgent applications in terms of Rule 6(12).
- Candidates must know when and how to draft a Special Plea.
- Disputes of fact in application proceedings, including the distinction between motion proceedings and actions.
- The Plascon-Evans Test.
- Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002.
- Particular kinds of applications, including default judgments, evictions, summary judgments, interdicts (interim and final and *mandament van spolie*), and Anton Pillar Orders.
- Reviews and appeals procedures, and enforcement of judgments and orders (interim and final orders).
- Heads of argument (when they are required, and how to draft them).
- Objections to processes or pleadings (rule 26 - failure to deliver pleadings; rule 27 – extension of time periods; rule 28 – amendments; rule 30A – non-compliance with the rules; vexatious proceedings and abuse of process);
- Jurisdiction;
- National Credit Act, 2005.

### **1.2 Magistrate's court procedure**

The practical application of the Magistrates' Courts Act and rules.

**The following are the key practical skills and drafting to be tested:**

- All types of pleadings in action and application proceedings (including when to bring an action; and the difference between action and application procedures).
- All pleadings and notices used during those proceedings, i.e. summons, particulars of claim, a notice of motion, notice of intention to defend, objections to irregular proceedings, exceptions, pleas, and special pleas.
- Affidavits that may be applicable during those proceedings (candidates must learn to draft founding, answering and replying affidavits)
- All types of defences that can be raised.
- Judgments and orders that may be asked for (including rescission, variation, appeals).
- Reviews and appeals procedures, and enforcement of judgments and orders (interim and final orders).
- Jurisdiction.
- Preparation for trial, including: request for further particulars, discovery, and trial procedures.
- Law of evidence, including the burden of proof/onus, relevance, admissibility, hearsay, admissions, opinions, expert, similar fact evidence, and character evidence.

**1.3 Motor vehicle accident claims**

Candidates should know all aspects of the Multilateral Motor Vehicle Accidents Fund Act 93 of 1989 (as amended), as well as The Road Accident Fund Act 56 of 1996, the regulations promulgated in terms of this Act, as well as the case law concerning the rights of injured persons and dependents and the procedure relating to the formulation, computation and institution of claims against the Fund.

**The following are the key practical skills and drafting to be tested:**

- The Road Accident Fund Act No. 56 of 1996, specific in issues dealing with future medical treatment as well as non-compliance of claims lodged; specifically compliance with section 24(1) – (4) of the Act;
- The changes and differences between the RAF Act 1996, and the RAF Amendment Act, 2005.
- Locus standi across the board;
- Causation, wrongfulness, fault, damages;
- Contingency fees;
- Apportionment of claims;
- Drafting skills specifically pertaining to citations and pleadings;
- The legitimacy of claims/merit assessment of a claim;
- Quantum of damages;
- Serious Injury Assessment;
- Prescription.

**1.4 Criminal Court procedure**

**The following are the key practical skills and drafting to be tested:**

- Aspects regarding the prosecutor's role, crime investigation and the various methods to secure the accused's attendance in court.

- Charges - section 80-104 of the Criminal Procedure Act (CPA).
- The procedure relating to a criminal trial, and conduct of proceedings (s144 – 146 and chapter 22 of the CPA).
- Bail applications – chapters 9-10 of the CPA and s35(1)(f) of the Constitution.
- Draft statements in terms of Section 112 and 115.
- Ordinary Pleas [Constitution Section 35(3)(h) and CPA Sections 105, 106, 112, 113, 114, 115, 116, 117, inclusive of how pleas should be drafted (form and content) and plea and sentence agreements - section 105A]
- Right to legal representation [Constitution Section 35(3)(f) and (g) and CPA Section 73].
- Arrest [Constitution Section 14, 35(1)(d), 35(2)(a) and 35(4) and CPA Sections 39–53].
- Unreasonable delay/ permanent stay (s168 and s342A of the CPA).
- Discharge - CPA section 174.
- Pre-trial procedures in terms of section 212B.
- Admissions and confessions [Constitution Sections 35 and 36, and CPA Sections 217 to 220].
- Principles of sentencing and types of sentences (including imprisonment, fine, correctional supervision etc, and minimum sentencing with mitigating or aggravating factors) – chapter 28-29 of the CPA.
- Appeals [Constitution section 35(3)(o) and CPA chapters 30 and 31] and reviews [Constitution section 35(3)(o) and CPA chapter 30] – including the differences between appeals and reviews, and the powers of the court.
- Admissibility or inadmissibility of relevant evidence, including hearsay, similar fact evidence, opinion evidence, character evidence, previous consistent statements, and unlawfully obtained evidence.
- Mental capacity of accused persons [Chapter 13 of the CPA and Criminal Law Amendment Act 1 of 1988].
- Search and seizure [Sections 20-22 of the CPA].
- Prevention and Combatting of Corrupt Activities Act, 2004.
- Prevention of Organised Crime Act, 1998.
- Criminal Law Amendment Act, 1997.

## PAPER 2: WILLS AND ESTATES

**Wednesday 21 August 2024, 14h00 – 16h45**

**This is a 2 and a half hour examination, with 15 minutes reading time before the start of the examination. The paper counts 100 marks, with a minimum of 60-70 marks for the drafting of the Liquidation and Distribution Account.**

**The following are the fundamental practical skills to be tested:**

- Drafting of Wills and Testate Succession, including Wills - Section 2(1)(a); Amendments of Wills - Section 2(1)(b); Codicils; and the Court's overriding discretion regarding the validity of wills - (Section 2(3)).
- Formalities and the Execution of Wills, Amendments of Wills, and Incorporation by Reference; Capacity to make a will and to witness a will; Capacity to Benefit under a Will or on Intestacy; Invalidity of Wills Generally: Mistake, Fraud, Duress and Undue Influence; Revocation and Revival; Custody and Registration of Wills; Appointment of Heirs and Legatees: Dies, Conditions; Vesting; Substitution; Legacies; Accrual.

- Massed estates;
- Intestate Succession;
- Administration of Estates;
- Drafting the Liquidation and Distribution Account (including the Liquidation Account; Recapitulation Statement; Distribution Account; Income and Expenditure Account; Fiduciary Asset Account; Estate Duty Addendum; and Executor's Certificate; and other necessary accounts and statements).
- Calculation of Estate Duty and Estate Duty Payable;
- Knowledge of the application in practice of the relevant legislation – candidates are to know the practical implementation of various Acts and Regulations.
  - ✓ The Wills Act No. 7 of 1953.
  - ✓ The Intestate Succession Act No. 81 of 1987.
  - ✓ Administration of Estates Act No. 66 of 1965, and Regulations to the Estates Act.
  - ✓ Estate Duty Act No. 45 of 1955, and Regulations under the Estate Duty Act No. 45 of 1955: Notice No. R1942 of 23 September 1977 - Annuity Tables.
  - ✓ Maintenance of Surviving Spouses Act No. 27 of 1990.
  - ✓ The Matrimonial Affairs Act No. 37 of 1953 (Section 5(3)(b)).

### PAPER 3: ATTORNEYS' PRACTICE AND LEGAL ETHICS

**Thursday 22 August 2024, 09h00 – 12h15**

**This is a 3-hour examination, with 15 minutes reading time before the start of the examination. The paper counts 100 marks. All modules listed below will be examined.**

#### **3.1 Professional Legal Ethics**

- The attorneys' practice includes professional ethics, which entails the LPC Code of Conduct, and all the rules of professional conduct appertaining to a Legal Practitioner in his professional life - as an officer of the court, in his relationship with his client, colleagues, society, and staff - also extra-professionally while he remains in the profession.
- Conflicts of interest;
- Confidentiality and legal professional privilege;
- The ethical duties of an attorney related to the profession and the code of conduct;
- Legal Practice Act 28 of 2014: ss 33 – 35;
- Ethical consequences of prescription;
- The Legal Practice Council Code of Conduct in terms of s 36(1) of the LPA, in particular:
  - Part I: Definitions
  - Part II: Code of Conduct: General Provisions
    - 2A: Misconduct
    - 3: Legal practitioners, candidate legal practitioners, and juristic entities shall - (3.1 – 3.18.4)

- 7: Approached and publicity
- 8: Specialisation and expertise
- 9. Integrity in performance of professional services
- Part III: Conduct of Attorneys
  - 12: Sharing of fees
  - 13: Sharing of offices
  - 18: Specific provisions relating to conduct of attorneys (18.1 – 18.22)
- Part VI: Conduct of legal practitioners and candidate legal practitioners in relation to appearances in court and before tribunals
  - 57: Disclosures and non-disclosures by legal practitioners
  - 58: Conflicts of interests involving legal practitioners
  - 59: Conflicts of interest among clients of legal practitioners
  - 60: Commitment of legal practitioners to an effective court process

### **3.2 Constitutional Practice (including aspects of Customary Law)**

- The Bill of Rights;
- Jurisdiction of the courts to hear constitutional matters, access to the Constitutional Court, and the exclusive jurisdiction of the Constitutional Court;
- Declaration of invalidity, reading down, reading in, severance, and the remedies available
- Advising clients about their Constitutional rights, duties, obligations, and the Constitutional Court's stance on legal standing;
- Customary law including land, customary marriages (Recognition of Customary Marriages Act, 1998), succession, ownership of property, and traditional leadership. Refer to constitutional court cases on these topics, including the Bhe judgment, and others.
- Constitution, 1996 as related to the topics listed above.

### **3.3 Labour Dispute Resolution**

- Dismissals, disciplinary processes, notices and warnings under the Labour Relations Act No. 66 of 1995, including CCMA conciliation and arbitration processes, including drafting;
- Unfair labour practices and remedies;
- The procedure and implications for strikes (protected and unprotected) and lockouts.
- Basic Conditions of Employment Act 75 of 1997; Occupational Health and Safety Act 85 of 1993; and the Unemployment Insurance Act 63 of 2001.

### **3.4 Alternative Dispute Resolution**

- Defining and understanding: - what is a conflict;
- Distinction between adversarial proceedings and facilitative / consensus-building processes;
- Negotiation;

- Conciliation;
- Mediation;
- Court-annexed mediation processes in terms of Rule 41A of the Uniform Rules of Court;
- Role of the Chairperson/Presiding Officer in ADR proceedings;
- Arbitration;
- The role of ADR in litigation, and the role of the mediator and arbitrator
- Ethics involved in conciliation (conflicts of interest, confidentiality, mediator liability).

### **3.5 Matrimonial Law**

- To understand marriage in Community of property and out of Community of property, and the effect and implications hereof on the various types of contracts.
- Divorce Act, 70 of 1979, Matrimonial Property Act, 88 of 1984, Maintenance Act, 23 of 1963.
- Advice on marriage and its consequences; Ante-nuptial contracts; Advice on out of community of property with or without the accrual system and marriage in community of property.
- Divorce and its consequences.
- The best interests of the child principle.
- Maintenance of children and, if applicable, former spouses.
- Drafting particulars of claim and a plea.
- Customary marriages, and Muslim marriages.
- Care, contact, and primary residence of minor children.

### **3.6 Legal Costs**

- The content of a fee agreement, including the structure, the tariffs, an explanation of the various fee scales as well as when and how applicable;
- Different types of fee agreements (including contingency fee agreements and litigation funding agreements);
- Costs in the normal course of litigation;
- non-litigious matters;
- civil litigious matters;
- The different types of fees that can be charged and not charged and the factors to consider when establishing the cost structure;
- The various principles considered when evaluating fees;
- The rights of members of the public and clients to dispute the fees and the processes for same;
- The different types of cost orders that a Court of law can award;
- Different cost orders; party and party costs; attorney and client costs; costs de bonis propriis; wasted costs; reserved costs / costs to stand over; costs in the cause; costs of the day; all costs/costs/taxed costs; no order made / no order as to costs; specific cost orders);
- Ethics in relation to costs – overreaching and undercharging;

- Taxation, and related aspects.

### **3.7 Drafting of Contracts**

- Deeds of sale - movable and immovable goods.
- Introduction to contract law and principles of drafting contracts, including to know the difference between essential, material and natural elements of a contract.
- Drafting boilerplate/standard clauses including: parties, jurisdiction, confidentiality, non-variation, force majeure, dispute resolution, indemnification, severability, arbitration, breach, termination, limitation of liability, damages, cession and assignment, and warranty.
- Movable and immovable property sale agreements, including litigation drafts on such agreements and options to purchase agreements or immovable property.
- Acknowledgement of debt, and suretyship.
- Power of attorney and mandates [attorney and client] {natural and juristic persons} including the different types of mandates and the contents of the agreements that can exist between the attorney and client; and factors to be considered when considering a mandate, and drafting of resolutions in a company.
- Cession, delegation and assignment.
- Option: right of pre-emption.
- Sale of business, and sale of shares;
- Lease of movable and immovable property;
- Letters of demand;
- Cancellation of an agreement;
- Conditions;
- Employment contracts;
- Credit Agreement Act;
- National Credit Act applicable to this syllabus;
- Consumer Protection Act applicable to this syllabus.

### **3.8 Information and Communication Technology for Practice and associated aspects of Cyber Law**

- The classification and applicability of agreements under the Electronic Communications and Transactions Act No. 25 of 2002;
- Security of personal information;
- Awareness and protecting against fraudulent transfers out of the trust account, and cyber security;
- Electronic documents and signatures;
- Business email compromise;
- Interception of payments to/from trust accounts.

### **3.9 Introduction to Practice Management.**

- The regulatory requirements for legal practitioners with the Legal Practice Council;



- Starting a practice and closing a practice;
- The role of the Legal Practitioners' Fidelity Fund, and the liability and extent of the liability in terms of the LPIIF and LPFF (a brief overview).
- Risk management (including Risks in accounting; Cyber fraud; FICA; RICA; FAIS compliance; and money laundering) and the POPI Act;
- Legal Practice Act, 28 of 2014, as it relates to the topics listed above.

#### PAPER 4: ATTORNEYS' BOOKKEEPING (LEGAL ACCOUNTING)

Thursday 22 August 2024, 14h00 – 16h45

This is a 2 and a half-hour examination, with 15 minutes reading time before the start of the examination. The paper counts 100 marks.

***Please note: No bookkeeping [accounting] paper stationery will be provided in the answer books. Candidates must draw the necessary columns for the various books of account required. Calculators may be brought along and utilised for this paper.***

This paper entails a test concerning the practical skills necessary for keeping Legal Practitioner's books of account. This, therefore, entails that candidates must thoroughly know the concept of trust money, the essential requirements of the double-entry bookkeeping system as applied to Legal practitioners' bookkeeping, and the functions of the various books of account. They must have sufficient practical knowledge of the supervision of bookkeeping to maintain the books of account required in a Legal Practitioner's office. They must be able to apply accepted measures, controls, and ethical standards to bookkeeping and financial matters.

**The following are the fundamental practical skills and drafting to be tested:**

- To understand the double entry system and capture these as ledger accounts.
- To know the various books of prime entry [this is where the transactions are initially captured before transferring to the ledger.
- To know the difference between business accounts [including bank accounts] and ledger compared to Trust accounts [including bank accounts] & and ledgers.
- To understand the difference and nature of the fees journal, trust journal, transfer journal and general (business) journals, and how to draft and use these journals.
- The treatment of Trust creditors and the difference compared to business creditors.
- Bank reconciliation of the business and Trust bank accounts.
- Understand the nature and accounting treatment of correspondent attorneys, including acting as a correspondent attorney.
- Collection Commission – what is collection commission, calculations, on an attorney-client or party-party scale, recording collection commission in the books of account.

- Receiving instructions from clients who are not legal practitioners, including receiving trust money, investing trust money, paying disbursements on behalf of a client (from the trust/business account), accounting to the client.
- Distinguish between an instructing and an instructed correspondent, i.e. whether you are receiving the instructions, or giving the instructions to another attorney;
- Receiving instructions from clients who are legal practitioners (correspondents) - sharing of fees in terms of s34(5)(b) of the Legal Practice Act, recording the transactions in the books of account, finalising the matter and account to correspondent, preparing the accounting statement to correspondent.
- Giving instructions to a correspondent – receiving an accounting statement from the instructed correspondent and recording thereof, taking the necessary steps, and accounting to the client.
- Required to draft:
  - Cashbooks (Trust cashbook and business cashbook) – these are books of prime entry for cash transactions/banking) and the respective banking accounts; petty cash; supplementary cashbooks.
  - Business banking account.
  - Bank Reconciliation (Trust and business bank recons) – Reconciling items – transactions which cause the difference between the cashbook and bank statement (i.e. transactions in the cash book but not on the bank statement, and transactions on the bank statement but not in the cashbook); bank errors; firm errors.
  - Journals (books of prime entry for non-cash/non-banking transactions, transactions recorded in a journal will not appear on the bank statement). Trust journal, Business/general journal, Business/general ledger account, Fee journal.
  - Ledgers – books of secondary entry (distinguish between opening and closing balances); double entry principles; [transactions recorded in either a cashbook or a journal (first entry) will thereafter be recorded (posted to) in the respective ledger (second entry)]. This includes the general ledger and its subsidiary ledgers – distinguish between a ledger and a ledger account.
- To know the treatment of the interest in terms of the various Trust account investments: sections 86(2), 86(3), 86(4), and 86(5).
- Questions on the treatment of VAT in financial transactions, including calculations, input and output VAT, when to register as a VAT vendor,
- Display an understanding of the following: What is an asset? What is a liability? What is income? What is an expense? What is a fixed cost? What is a variable cost? What is a business expense? What is a private expense?
- How to rectify a Trust Debit (shortfall); How to rectify a Business Credit.
- How to rectify an error in a Trust/Business/General Ledger Account.
- Rule 54, and sections 84, 86, 87, 88 and 91 of the Legal Practice Act.
- Management of the trust account.

## **GENERAL POINTS TO NOTE REGARDING THE EXAMINATIONS:**

1. In these examinations, candidates must have a sound knowledge of substantive law and be able to apply it to matters covered by this syllabus. Although the examination emphasises practical aspects and the candidates' understanding of the substantive law and its practical application in practice, this can never be separated from a thorough knowledge of the law, the Acts with regulations and court rules. As new entrants, the primary application of the law in practice is tested.
2. A candidate who attains 50% or more in a paper will be deemed to have passed, but in exceptional circumstances, may have to attend an oral examination. Candidates who score from 40% and below 50% in any of the papers will be permitted to do an oral in respect of that paper. Candidates who attain less than 40% in any of these papers will be deemed to have failed the paper and will not qualify for an oral examination.
3. Candidates who are dissatisfied with their marks in any section of the examination may have their paper remarked before oral examinations are conducted if they apply for a remark of the paper within three days [3] of the results of the examination becoming available; and they pay a remark fee equivalent to twice the fee for the examination. If the remark is successful and the status improves (e.g. failed and after the remark is a pass), this fee will be refunded.
4. A candidate may complete the four examinations in any sequence.
5. The allocation of marks is a good indication of the detail required. In the examinations, candidates should consider the question paper and plan for each section accordingly.
6. The examinations are conducted to establish whether candidates meet the standards required to enter the profession. Examination questions may be set with more than one objective. In a single question, candidates may be tested on their knowledge of the rules and practice in the courts in whose jurisdiction they are examined and, simultaneously, they may be tested on their ability to examine and analyse facts placed before them, to apply the substantive law to the facts and to draft documents logically and coherently based on the relevant facts.
7. The content of the syllabus (and the nature of the examination) aims at ensuring that candidates have specific basic skills and experience. The level expected is that of a newly admitted Legal Practitioner in a general medium-sized firm.
8. Candidates must be competent and have adequate experience in the basic skills and techniques of Legal Practitioners, and for that purpose:
  - be able to handle facts and apply legal principles to factual situations;
  - be able to research legal problems and use the sources of law;

- have knowledge of the practical aspects of advocacy (the arguing of cases before courts and tribunals and the effective presentation of written legal arguments);
- understand office procedures and routines, including the keeping of Legal Practitioner's books of accounts and the preparation and rendering of bills of cost and accounts, and administering the affairs of clients;
- be experienced in drafting documents (straightforward contracts, wills, pleadings, opinions, briefs to counsel and pleadings in the Magistrate's court and, where relevant, in the High court).
- be able to communicate effectively with clients, colleagues, and officials orally and in writing.

These objectives presuppose that candidates have knowledge of substantive law's relevant principles and provisions.

9. **You are strongly discouraged from relying on past examination papers and answer memoranda for these examinations. Please use the syllabus document for your preparation, and do not learn from past papers. Reliance on previous examination papers will not assist you in these examinations.**
10. The examinations have been drafted by an independent panel experts, comprising legal practitioners and legal academics. This panel of experts have ensured that questions in the examinations are taken from this syllabus only, and you must prepare on all topics covered therein.
11. **All examination papers are a mix of theory and practical application type questions. After learning the theory, you need to learn to apply what you have learnt.**