PRACTICAL VOCATIONAL TRAINING (PVT) STRUCTURED COURSEWORK PROGRAMME FOR CANDIDATE LEGAL PRACTITIONERS (CANDIDATE ATTORNEYS)

Professional legal ethics, in terms of Regulation 6(10)(b)

LEGAL PRACTICE COUNCIL

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GUIDE FOR PROFESSIONAL LEGAL ETHICS

Regulation 6 (10)(b)

FIFTEEN GUIDES

There are fifteen guides for practical vocational training of candidate attorneys. This guide deals with the Professional Legal Ethics module in regulation 6(10)(b).

OVERVIEW

On 20 September 2014 Parliament assented to the Legal Practice Act 28 of 2014 (LPA). In terms of section 4 of the LPA, the Legal Practice Council (LPC) was established on 31 October 2018. The following day, on 1 November 2018 the bulk of the rest of the LPA came into effect.

The Legal Practice Act regulates all legal practitioners whether on the practising roll or the non-practising roll. There are three forms of legal practice. They are an attorney, an advocate and an advocate with a Fidelity Fund certificate: see section 34 of the LPA.

Under section 109(1)(a) of the LPA, the LPC published GN R921 in GG 41879 of 31 August 2018, as amended by GN R3779 in GG 49104 of 11 August 2023. The compulsory course work required in the regulations for candidate attorneys was standardised by the LPC in terms of the Norms and Standards. Regulation 6(10) reads:

"(10) The programme of structured course work referred to in sub-regulation (1)(a) and (b) must be standardised and uniform throughout the Republic and comprise the following modules:

(a) constitutional practice;
(b) **professional legal ethics**;
(c) personal injury claims;
(d) high court practice;
(e) magistrate's court practice;
(f) criminal court practice;
(g) labour dispute resolution;
(h) alternative dispute resolution;
(i) attorneys' bookkeeping;
(j) wills and estates;
(k) matrimonial law;
(l) legal costs;
(m) drafting of contracts;
(n) information and communication technology for practice, and associated aspects of cyber law; and
(o) introduction to practice management."

On 11 December 2020 the LPC published the Norms and Standards in Government Gazette 43981 under section 3 (g)(i) read with section 6(1)(b)(i) and section 95(1)(n) of the LPA.

Regulation 6(10) requires candidate attorneys to be trained in the modules listed above. The similarity between regulation 6(10) for candidate attorneys and regulation 7(9) for pupils is not an accident. Section 32 of the LPA permits legal practitioners at any time, as determined in the rules and upon payment of the fee determined by the LPC, to apply to the LPC to convert their enrolment as attorneys to that of advocates and *vice versa*. Consequently, the training of candidate legal practitioners must allow for seamless section 32 conversions.

Each guide *per* module deals with the requirements in regulation 6(10). Examiners are required to set questions drawn only from the latest LPC candidate attorneys' curriculum and reading list. The combined curriculum and reading list is referred to as the "syllabus".

Each of the fifteen guides will assist training supervisors, mentors, busy legal practitioners and candidate attorneys to navigate the syllabus. The focus of the syllabus is on practical vocational training.

INTRODUCTION TO EACH GUIDE

Each guide *per* module in Regulation 6(10) is designed to assist candidate attorneys to understand, in real time, the minimum necessary under practical vocational training to become effective attorneys in practice. The essence of effective legal practitioners is the ability to read, to assimilate legal principles from that reading and to apply those principles to the facts of your client's case and in argument before courts, tribunals, disciplinary bodies, and any other forms of formal gatherings and meetings.

The guides avoid prolixity.
However each guide requires dedicated concentration.

For the examinations, candidate legal practitioners (candidate attorneys and pupils) must be up to date with the latest Constitutional Court and Supreme Court of Appeal cases to within one week before the date of each exam.

The guides do not rehash what you studied at University. Your LLB proves your capability. This guide will assist you to prepare for the LPC admission examinations. More importantly, this guide will also equip you to be an effective, competent, calm and (reasonably) confident attorney when you enter the legal profession.

REQUEST TO CANDIDATE ATTORNEYS FOR DUE DILIGENCE
Please read this guide attentively.
Please carry out all recommended court attendances.
Please carry out all the recommended practical exercises.
Please complete reading all the material in the LPC reading list.
Please note the notional hours to complete all 15 guides are 400 hours.
Please note this guide, like the other fourteen guides, is sufficient for self-study.
Please remember, the exams are based on the LPC's most up to date reading list.

- Currently the most up to date syllabus dates from 28 March 2025: Notice 3086 of 2025 published in Government Gazette 52388.
- Matters omitted from the LPC syllabus will not be in the examinations unless the statute, case or article under question is included in your exam paper and you are allowed extra reading time to consider that statute, case or article.
- Matters mentioned in the LPC syllabus are the subject of exam questions.
- You will be required to answer the exam questions from the perspective of:
    - Facts first
    - Law later
- The LPC exams, also referred to as assessments, are practical in nature.
- The questions will proceed from the following perspectives: –
    - What would you, as attorney of record, advise your client to consider?
    - What would you, as attorney of record, advise your client to do?
    - When and why would you refer a matter to another attorney or to counsel?
    - And similar practical questions.

REFERENCES

One of the products of Juta & Co Ltd is Jutastat. Most of the notes to this guide are downloaded from Jutastat. Please read the notes with care and diligence. This guide also relies on the Southern African Legal Information Institute (SAFLII).
SAFLII is free and open access on the Internet.

NOTE WELL

The sequence of this guide follows the sequence in the most recent LPC syllabus of 28 March 2025 for candidate attorneys. The fifteen guides are designed to be updated when the LPC so requires. Bullet points below are drafted to assist you to grasp the material in the reading list. You must decide whether to accept or to amend the bullet points to suit your understanding. When there are no bullet points, you need nonetheless to read the rule or case or article to prepare for your exams.

LPC SYLLABUS AND THE OFFICIAL SOURCE FOR ALL EXAMINATION QUESTIONS AT THE LPC ATTORNEYS' ADMISSION EXAMS

CURRICULUM AND COURSE CONTENT	READING LISTS
This column is sourced from the Norms and Standards the LPC published on 11 December 2020 in Government Gazette 43981 Introduction to legal ethics and professional responsibility Lewis Golden Rule: all legal practitioners must avoid conduct which could damage their reputation as honourable people and honourable lawyers. The seven universal ethical principles The current Code of Conduct of 29 March 2019 applicable to attorneys: Section 3 in Part II of the general provisions in the Code of Conduct. Section 56 in Part VI: Scope and limits of legitimate cross-examination especially in the Magistrates' Courts. Section 60 in Part VI: Commitment of legal practitioner to an effective court process. Conflicts of interest, legal privilege, and confidentiality. What to do when client's instructions amount to "a hopeless case".	Legal Practice Act 28 of 2014: ss 33 - 35 ("LPA") The South African Legal Practice Council Code of Conduct in terms of s 36(1) of the LPA - Part I: Definitions - Part II: Code of Conduct: General Provisions - Part III: Conduct of Attorneys - Part VI: Conduct of legal practitioners and candidate legal practitioners in relation to appearances in court and before tribunals - Part VII: Conduct of legal practitioners not in private practice. *University of South Africa v Socikwa and Others* (J 675/23; J 680/23) [2023] ZALCJHB 172 (7 June 2023) *Freedom Under Law v Judicial Service Commission and Another* (550/2022) [2023] ZASCA 103; [2023] 3 All SA 631 (SCA) (22 June 2023) *Ex Parte Minister of Home Affairs and Another* 2024 (2) SA 58 (CC) at paras [105] to [118] All legal practitioners and candidate legal practitioners have their essential ethical duties enumerated in the Code of Conduct published in March 2019. Candidate attorneys are required to know those parts of the Code that relate to all legal practitioners and specifically to attorneys. Candidate attorneys will be assessed accordingly.

How fiduciary duties are based on the principles and precepts of ethics. Consider: *Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and Others* [2023] ZASCA 112 at paras [26] to [28] **From the Norms & Standards** The summative assessment must be an open book exam. Candidates must have **open book access to the Code of Conduct and relevant regulations during the assessment**.	Principles governing the hopeless case: "The ethics of the hopeless case", Owen Rogers, Advocate December 2017 *Motswai v Road Accident Fund* 2013 (3) SA 8 (GSJ) at paras [26]-[37] - **reversed on appeal**: see *Motswai v Road Accident Fund* 2014 (6) SA 360 (SCA) especially at paras [22], [26] to [28], [33] and [57] to [59] *University of South Africa v Socikwa and Others* [2023] ZALCJHB 172 (7 June 2023) *Freedom Under Law v Judicial Service Commission and Another* [2023] ZASCA 103; [2023] 3 All SA 631 (SCA) (22 June 2023) To exercise the duty of care and skill Code of conduct section 18.14

INDEX FOR PROFESSIONAL LEGAL ETHICS

Professional Legal Ethics – HOW TO USE THE READING LIST

GENERAL

This module prepares you to understand the basic but essential principles, concepts and procedures of professional legal ethics. Candidates must read each part of the cases and statutes indicated in the reading list. Some of the salient issues are set out in the bullet points below.

The reason to read the references in the reading list is to prepare for your attorneys' admission exams. The examiners draft exam questions from the syllabus. The syllabus includes the column **Curriculum and Course Content** and the column **Reading List** in the table above.

Questions based on matters not in the syllabus are allowed only where the statute, case or article being examined is added into the examination paper. In that event, you will be given an extra fifteen minutes to read and consider the question before writing your exam. This principle applies to all the modules in regulation 6(10) and for all your admission exams.

The reading list is repeated below with short bullet points to focus your grasp of the material and additional references to the SAFLII versions of the case law. You will be able to download the case law from SAFLII onto your mobile devices at any time and while in court.

Remember: the bullet points are designed to help you understand salient issues. The phrase: *Subject to your reading, the following points may be drawn from the case cited above* requires you to check whether the bullet points are indeed an accurate reflection of the case. Be proactive: you can develop your own bullet points for exam preparation and for use later in practice.

Note well: many candidate attorneys do not have access to the South African Law Reports nor the All South Africa reports published by LexisNexis. In this guide references to the URLs of SAFLII are included. This will assist all candidates to access the relevant case law, even when you are in court – of course – if the court has internet access and accessible WiFi.

The Department of Justice website also has up to date legislation and subordinate legislation.

See the following URLs:
https://www.justice.gov.za/
https://www.justice.gov.za/constitution/index.html
https://www.justice.gov.za/legislation/acts/acts_full.html
https://www.justice.gov.za/legislation/rules/rules.htm

GENERAL CONCEPTS FROM THE NORMS AND STANDARDS

The main purpose of the Norms and Standards is to provide a national approach to standardise and implement practical vocation training of candidate attorneys in terms of regulation 6(10). Five years of deliberation including two colloquiums and frequent publications of the syllabus have preceded the gazetting of the LPC syllabus on 28 March 2025. In future, the LPC syllabus will be updated and amended as required by circumstances in the legal profession.

The following concepts are introduced in the syllabus for professional legal ethics. The concepts are dealt with first, then the reading list. It is important to understand that the concepts dealt with below also form part of the syllabus from which examiners may set exam questions.

The concepts are:

A. Introduction to legal ethics and professional responsibility
B. Lewis: the Golden Rule and the seven universal ethical principles
C. The Code of Conduct applicable to legal practitioners
    - Section 3 in Part II of the general provisions in the Code of Conduct.
    - Section 56 in Part VI: Scope and limits of legitimate cross-examination especially in the Magistrates' Courts.
    - Section 60 in Part VI: Commitment to an effective court process.
    - Conflicts of interest, legal privilege, and confidentiality.
D. What to do when client's instructions amount to "a hopeless case".
E. How fiduciary duties are based on the principles and precepts of ethics. Herein lies the essence of being fit and proper to be admitted as an attorney and to remain admitted as an attorney.

A. INTRODUCTION TO LEGAL ETHICS & PROFESSIONAL RESPONSIBILITY

Entering the legal profession is daunting, especially if you come straight from university. This Guide will assist you to find your feet quickly and securely. Professional legal ethics are practical rather than philosophical or academic.

In South Africa professional legal ethics are based on our Constitution, legislation, regulations, rules, codes of conduct and case law applicable to each profession. Our Constitution permits all that was good from our common law and customary law, case law and previous codes of conduct and excludes everything that was abhorrent from our colonial and apartheid past.

- **Your first task** is to read the preamble to the Legal Practice Act 28 of 2014.
- **Your second task** is to read the entire Legal Practice Act **and** to make your own non-AI assisted notes and summaries of the Legal Practice Act (LPA).
- **Your third task** is to read the Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities, gazetted in March 2019.
    - The Code of Conduct has many amendments.
    - The latest amendment dates from 22 November 2024.

- Make sure to use your university research skills to find the latest and most up to date version of the Code of Conduct. Jutastat is a useful start.
- Your knowledge and understanding of the Code of Conduct will be examined critically in your attorneys' admission exams.
- Read the Code frequently and get familiar with its requirements.

When you have completed the three tasks above and reported such to your principal who signed your practical vocational training contract, you will have demonstrated an essential part of your professional responsibility as a candidate legal practitioner.

Politely ask your principal to write down the date and time when you completed your three tasks. Keep a note for yourself too. Your principal will use that information for your admission as an attorney in due course.

Welcome, new colleagues, to the legal profession.

B. LEWIS: THE GOLDEN RULE & THE SEVEN UNIVERSAL ETHICAL PRINCIPLES

Seven universal ethical principles
Ethics applies to everyone in the world. Whether one is a believer in a religion or not, whether as professionals, business people, workers, students, teachers or people engaged in any activity undertaken by human beings, there are seven universal ethical principles. They are:

- Honesty
- Trustworthiness
- Loyalty
- Respect for others
- Adherence to the law (and the rule of law)
- Doing good and avoiding harm to others
- Accountability

https://www.iaa.govt.nz/for-advisers/adviser-tools/ethics-toolkit/professional-ethics-and-codes-of-conduct/

The seven universal principles are applied in various ways and under different names across the entire spectrum of human affairs. "Ethics is based on well-founded standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, [duties], obligations, benefits to society, fairness, or specific virtues." Ethics is the basis for your moral compass.
See: https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/what-is-ethics/

However, professional legal ethics have a specific application in our law which affects you directly as a candidate legal practitioner and soon, we hope, as a legal practitioner.

Lewis and the golden rule
Juta & Co Ltd published EAL Lewis *Legal Ethics: A Guide to Professional Conduct for South African Attorneys* in 1982. The book is out of print.

You are not expected to track down the book in a library. The summary below is sufficient for your admission exams. The summary is based on case law references and articles which refer to Lewis's book on Ethics.

Lewis postulated a number of principles which still apply today.

- All legal practitioners must avoid conduct which could damage their reputation as honourable people and honourable lawyers. This is the Golden Rule.
- There is a fundamental requirement that an attorney should be honest and truthful not only in dealings with colleagues but also the Court. (See *Society of Advocates of Natal and Another v Merret* 1997 (4) SA 374 (N), Lewis *Legal Ethics* (1982) at 11 - 12.)
    - The requirement that advocates should be honest and truthful in their dealings with each other
    - and the Court
    - applies equally to attorneys. (See Lewis *Legal Ethics* (1982) at 11 - 12.)
- In the handling of any matter which comes or is to come before any court or other tribunal the practitioner must at all times act with proper respect for that court or tribunal so as not in any way to impair its authority and dignity. See *Nodala v Magistrate, Umtata* 1992 (2) SA 696 (Tk) at page 702.
- An attorney must not make deductions or withdrawals from the trust money unless he or she has good reason to be certain that the fees cannot be successfully challenged.
    - In any instance where there is uncertainty the money should remain in the trust account until certainty is achieved. See *Blakes Maphanga Inc v Outsurance Ins Co Ltd* 2010 (4) SA 232 (SCA) at para [14].
    - A client is entitled to taxation of his or her attorney's account. It follows that the amount of a disputed bill of costs is not liquidated. It is not capable of 'easy and speedy proof'. *Blakes Maphanga Inc v Outsurance Ins Co Ltd* 2010 (4) SA 232 (SCA) at para [17].
    - Solution to the fees' issue: agree the fee with your client, then you may withdraw the amount of the agreed fee from the trust account.
- Legal practitioners must maintain their professional competence at all times
    - which includes continuing professional development (CPD) after entering the profession and
    - Legal practitioners must must execute their duties properly
- Legal practitioners have fiduciary duties to the court, their clients and the legal profession
    - The duties to the court are dealt with in the Code of Conduct referenced below
    - The duties to clients are also referenced below
    - Likewise the duties to the legal profession and one's colleagues in the profession
- Legal practitioners must uphold the law and advise their clients accordingly

C. CURRENT CODE OF CONDUCT OF 29 MARCH 2019: ATTORNEYS

The current version of the ***Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities***, first published in GenN 168 of 2019 is the version amended to GenN 2847 in GG 51637 of 22 November 2024. The most up to date version of the Code is not possible to find on the internet and is not yet up to date on the LPC website. However, by the time you read this Guide the most up to date version will probably be on the LPC website.

The niceties of the Code of Conduct are referenced later in this Guide. In the meantime, please read again the following sections:

- Section 3 in Part II of the general provisions in the Code of Conduct.
- Section 56 in Part VI: Scope and limits of legitimate cross-examination especially in the Magistrates' Courts.
- Section 57 in Part VI: Disclosures and non-disclosures by legal practitioner, which deals with legal privilege and confidentiality.
- Section 58 in Part VI: Conflicts of interests involving legal practitioners
- Section 59 in Part VI: Conflicts of interest among clients of legal practitioners
- Section 60 in Part VI: Commitment of legal practitioner to an effective court process.

Note to candidates: section 60 is often the source of questions in your admission exams.

D. WHAT TO DO WHEN CLIENT'S INSTRUCTIONS AMOUNT TO "A HOPELESS CASE"

Please read *The ethics of the hopeless case*, Owen Rogers, Advocate December 2017
https://gcbsa.co.za/law-journals/2017/december/2017-december-vol030-no3-pp46-51.pdf
The summary on page 50 is often a source of questions for your admission exams.
Subject to your reading, the following points may be drawn from the article cited above

- Pleadings and affidavits must be scrupulously honest.
    - Nothing should be asserted or denied without a reasonable factual foundation.
    - Practitioners who act contrary to this standard are guilty of misleading the court and may make themselves party to perjury.
    - They also fail to honour their paramount duty to the court and the administration of justice.
- It is improper for practitioners to act for a client in respect of a claim or defence which is hopeless in law or on the facts.
    - Practitioners must be able to formulate a coherent argument consisting of a sequence of logical propositions for which there is reasonable foundation in the facts and on the law and
    - which, if they are all accepted by the court, will result in a conclusion favourable to the client.
    - Practitioners may properly act even though they think one or more of the essential links are likely to fail.
    - But if practitioners are quite satisfied that one or more of them will fail, the case is hopeless.
- A necessary correlative is that practitioners must research the law properly and insist on adequate factual instructions.
    - They must not fill gaps with guesswork or
    - plead denials because their instructions are incomplete.
- In principle practitioners may properly conclude that a case is hopeless on the facts though in general, practitioners cannot be expected to be the arbiter of credibility.
- There is an ethical obligation to ensure that only genuine and arguable issues are ventilated and that this is achieved without delay.

Note to Candidates: this case is not in the reading list. However it is a very useful case to read: *Children's Resource Centre Trust v Pioneer Food (Pty) Ltd* 2013 (2) SA 213 (SCA) at para [35] concerning the two aspects of a hopeless case. [1]

- It is hopeless if it is advanced on a basis that is legally untenable;
- It is also hopeless if it is advanced in the absence of any credible evidence to support it.

Note to Candidates: there is a principle which underlies the admonitions (warnings) concerning the hopeless case. It is this: in your practice during your lifetime you will win and lose cases for your clients. If you regard losing a case as a reflection on your self-worth, you will be wrong, unless you failed properly to prepare your client's case.

Over time, like most legal practitioners you will develop **professional detachment**:

- You will still care deeply about doing good work
- But you will stop equating outcomes with your own self-worth
- You will focus more on process and ethics than just on the results of your client's cases
- The sooner you achieve that level of maturity in your practice, the more esteem you will gain in the profession
- **Remember**: it is your client whom you serve as a professional: not yourself

E. HOW FIDUCIARY DUTIES ARE BASED ON THE PRINCIPLES AND PRECEPTS OF ETHICS. Herein lies the essence of being fit and proper to be admitted as an attorney and to remain admitted as an attorney.

At university during your LLB studies, you learned that ethics are the foundation of fiduciary duties and that the essence of applying ethics while exercising fiduciary duties is informed by your moral compass. You may have read *Legal Ethics, Rules of Conduct and the Moral Compass "Considerations from a Law Student's Perspective* (Vol 19) [2016] PER 45 and similar articles. https://www.saflii.org/za/journals/PER/2016/45.html

For your admission exams you are not required to answer academic questions about fiduciary duties and ethics. You are required to read the reading list and the Code of Conduct. It is important to remember that during the admission exam you will be furnished with a copy of the relevant parts of the Code of Conduct. However, you will be at a disadvantage if you read the Code for the first time during the exam.

In the introduction to the article cited above, the authors van Zyl and Visser state:

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[1] [35] The appellants accepted that a class action should not be certified if the case is 'hopeless'. I am not sure that this constitutes a sufficiently clear standard to be applied on a case-by-case basis. **Whether a case is hopeless has two aspects**. It is hopeless if it is advanced on a basis that is legally untenable. It is also hopeless if it is advanced in the absence of any credible evidence to support it. These are categories that have long been recognised in our law and practice.

- A case is legally hopeless if it could be the subject of a successful exception.
- It is factually hopeless if the evidence available and potentially available after discovery and other steps directed at procuring evidence will not sustain the cause of action on which the claim is based.
- In other words, if there is no *prima facie* case then it is factually hopeless.

> "Being fit and proper is of the utmost importance to legal practitioners. Not only is it a fundamental statutory requirement for admittance, but it is also indispensable in avoiding disbarment from the esteemed and honourable profession of the law. Since no legislative or regulatory framework exists to describe exactly what it is to be fit and proper, and since it is clearly the cornerstone upon which entry to legal practice rests, law students approaching the dawn of their careers may rightly ponder the questions: "What is meant by 'fit and proper'?" or "How do I avoid being struck from the roll?" A good place to look for the answers to these questions is the professional codes of conduct, for example. Apart from this external source, a student may also answer these questions internally; that is, with reference to his [or her] own moral compass."

First consider the approach adopted by the SCA in:

Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and Others [2023] ZASCA 112 at paras [26] to [28]
https://www.saflii.org/za/cases/ZASCA/2023/112.html

Subject to your reading, the following points may be drawn from the case cited above

- Every director has a fiduciary duty towards the company of which it is a director.
  - To plead ignorance of financial matters, when faced with allegations of misappropriation, does not absolve a director.
  - It has been emphasised over the years that legal practitioners cannot escape liability by contending that they had no responsibility for the keeping of the books of account or the control and administration of the trust account.
  - For an attorney to explain trust deficits on the grounds that he or she had no involvement in the financial affairs of the firm 'is no defence at all'.
- Abdication of responsibilities does not absolve legal practitioners of their duties.
  - The court has cautioned attorneys who excuse their conduct on the basis that they were responsible for other work in the firm,
  - and did not concern themselves with the books of account.
- Every attorney must realise that it is a fundamental duty on his/her part to ensure that the books of the firm are properly kept,
  - that there are sufficient funds at all times to meet the trust account claims, and
  - that when he/she makes the declaration required for fidelity fund purposes
  - there is no doubt that *that* declaration is truly and honestly made.
- Once a legal practitioner is appointed as a director, whatever the factual terms of the arrangement may be, they bear full responsibility for the finances of the firm.
- At this stage, the inquiry is not whether the legal practitioner is 'fit and proper'.
  - That is the inquiry to be undertaken when final relief is sought.
  - If it is found that the legal practitioner is not fit and proper,
    - the court then has a discretion on what sanction to impose.
    - All that is necessary at this stage is that sufficient facts have been shown to justify an interim suspension.

Comments and case law on *fit and proper*

The phrase *fit and proper* is not defined in the LPA nor its regulations and is not mentioned directly in the Code of Conduct. Yet the phrase is pivotal for your PVT contract and essential for your admission as a legal practitioner.

Although reversed in part on appeal, and not in the reading list, the case of *General Council of the Bar of SA v Jiba* 2017 (2) SA 122 (GP) is very instructive. Consider:

"**Judgment**
Legodi J (Hughes J concurring):
[1] A very important requirement for admission as an attorney or advocate is to be a 'fit and proper' person. Lawyers are also struck from the respective rolls of advocates or attorneys if they cease to be 'fit and proper'. The requirements of being a 'fit and proper' person are not defined or described in the legislation. These are left to the subjective interpretation of and application by seniors in the profession, and ultimately the court. In the apartheid years this requirement was applied arbitrarily, but today the question may be asked why some lawyers who have been found to be 'fit and proper' do not act as such. The pre-admission character-screening of lawyers seems not to be effective any more. Post-admission moral development is imperative. [Fn: Professor M Slabbert, Department of Jurisprudence, UNISA]

[2] A successful practitioner, an attorney or an advocate, should possess and display certain qualities, most of which cannot be acquired through learning. Having these qualities could indicate that a person is indeed a 'fit and proper' person for the profession. An appropriate academic training may, however, play a vital part in improving them, as they are 'by nature at least latent'.

[3] The following are listed as the least of the qualities a lawyer should possess: [Fn: Du Plessis 'The Ideal Legal Practitioner' (from an academic angle) 1981 De Rebus at 424 – 7]

- Integrity — meaning impeccable honesty or an antipathy to doing anything dishonest or irregular for the sake of personal gain
- objectivity — no irrelevant consideration whatsoever should bear upon one's judgment
- dignity — practitioners should conduct themselves in a dignified manner and should also maintain the dignity of the court
- the possession of knowledge and technical skills
- a capacity for hard work
- respect for legal order, and
- a sense of equality or fairness."

The seven qualities listed in paragraph [3] are indeed the core of the concept "*fit and proper*".

Furthermore, section 17 on the application for admission and enrolment as legal practitioners requires confirmation that the applicant is a fit and proper person to be admitted. [2] That confirmation includes a statement on:

- any previous criminal convictions
- any previous disciplinary proceedings
- any provisional or final sequestration of the applicant
- and if so, whether the applicant has been rehabilitated

[2] See the Legal Practice Act 28 of 2014, Rules in terms of sections 95(1), 95(3) and 109(2) published in GenN 401 of 2018, GG 41781 of 20 July 2018 at Part V Professional Practice (rules 17-20).

Finally, applications to strike off and suspend legal practitioners are governed by ss 31(1), 43 and 44 of the LPA.
S 31: Cancellation and suspension of enrolment
S 43: Urgent legal proceedings
S 44: Powers of the High Court
Please read those sections in the LPA

AI – artificial intelligence

The use of artificial intelligence (AI) is making law research both easier and more hazardous. Consider Thaldar, D. (2025). *Can AI think like a lawyer? Evaluating generative AI in South African law*. *Potchefstroom Electronic Law Journal*, *28*, (Published on 16 October 2025) pp 1-32. https://doi.org/10.17159/1727-3781/2025/v28i0a21584
For the summary see: https://thaldar.com/tag/artificial-intelligence/

Research via AI is easier if one knows how to prompt the AI large language model (LLM) one is using. It is more hazardous if one does not know enough about the topic to doubt or to suspect hallucinated replies and certainly when one fails to verify case law references.

Although not yet in the curriculum and reading list (syllabus) for Professional Legal Ethics, there is little doubt that the following cases are important. **Please read these cases despite their omission for the syllabus**.

Mavundla v MEC: Department of Co-Operative Government and Traditional Affairs KwaZulu-Natal and Others (7940/2024P) [2025] ZAKZPHC 2; 2025 (3) SA 534 (KZP)
https://www.saflii.org/za/cases/ZAKZPHC/2025/2.html
Subject to your reading, the following points may be drawn from the case cited above

- The court held that the candidate attorney — having produced the supplementary notice containing the non-existent citations — as well as the counsel and instructing attorney — having failed to verify the accuracy of those citations — had fallen foul of the duty of legal practitioners not to mislead a court, whether through negligence or intent
    - The court explained that, when argument was advanced and authorities cited, there is a tacit representation by counsel that authorities cited and relied upon do actually exist
        - upon which representation the court is entitled to rely
    - Furthermore, practitioners are required to present an honest account of the law
        - which did not mean presenting fictitious or non-existent cases.
- The applicant's attorneys had additionally breached the duty of legal practitioners to exercise proper control and supervision over their staff and offices.
    - Such supervisory role includes verifying the accuracy and correctness of any information sourced from generative AI systems and
    - other technologies and
    - databases
        - by staff
        - including candidate legal practitioners
        - in the legal practitioner's employ.

- As to the efficacy of the ChatGPT application as tool for legal research, the court described it as unreliable.
- The court expressed the view that relying on AI technologies when doing legal research was irresponsible and downright unprofessional.
- The court held that it would be unfair to expect the applicant to pay the costs incurred by further appearances necessitated by the discovery of the problematic authorities.
    - It was appropriate to grant an order directing the applicant's attorneys to pay the costs *de bonis propriis* (scale A).
- Finally, the court directed the registrar to send a copy of the judgment to the Legal Practice Council for its attention and further action.

Northbound Processing (Pty) Ltd v South African Diamond and Precious Metals Regulator and Others (2025/072038) [2025] ZAGPJHC 661 (30 June 2025) at paras [86] to [96], esp para [93]: https://www.saflii.org/za/cases/ZAGPJHC/2025/661.html

Subject to your reading, the following points may be drawn from the case cited above

Ayinde v The London Borough of Haringey; Al-Haroun v Qatar National Bank QPSC [2025] EWHC 1383 (Admin):

- In the context of legal research, the risks of using AI are now well known.
    - Such tools can produce apparently coherent and plausible responses to prompts, but those coherent and plausible responses may turn out to be entirely incorrect.
    - The responses may make confident assertions that are simply untrue.
    - They may cite sources that do not exist.
    - They may purport to quote passages from a genuine source that do not appear in that source. [And the source itself may not exist at all.]
- Those who use AI to conduct legal research despite the risks have a professional duty to check the accuracy of such research by reference to authoritative sources
    - before using it in their professional work
        - to advise clients or
        - before a court
- There are serious implications for the administration of justice and public confidence in the justice system if artificial intelligence is misused.
    - Every individual currently providing legal services must understand and
        - comply with their professional and ethical obligations and
        - their duties to the court
    - when using AI.
- Where those duties are not complied with, and depending on the circumstances of each case, the court's powers include:
    - public admonition of the lawyer
    - imposition of a costs order
    - imposition of a wasted costs order
    - striking out a case
    - referral to a regulator
    - initiation of contempt proceedings, and
    - referral to the police.
- When lawyers place false citations before the court (whether by use of AI without proper checks, or otherwise) that involves a breach of ethical and regulatory requirements, and it is likely for the court to refer the lawyer to the regulator.

READING LIST

Note to Candidates: it is not necessary to know the legislation, regulations, rules and Code of Conduct by heart. You need to understand what the law is so that you can apply your understanding not only during your admission exams, but also in practice.

Legal Practice Act 28 of 2014 (LPA): ss 33 – 35 **Please read these sections again**
https://www.gov.za/documents/legal-practice-act
https://www.justice.gov.za/legislation/acts/2014-028.pdf

Section 33
Subject to your reading, the following points may be drawn from the section cited above

- no person other than a practising legal practitioner may,
  - in expectation of any fee, commission, gain or reward
  - appear in any court of law or before any board, tribunal or similar institution in which only legal practitioners are entitled to appear
  - draw up or execute any instruments or documents relating to or required or intended for use in any action, suit or other proceedings in a court of civil or criminal jurisdiction
- such legal practitioner must be admitted and enrolled in terms of the LPA
- No person other than a legal practitioner may hold himself or herself out as a legal practitioner
- No person may perform any act or render any service which may only be done by an advocate, attorney, conveyancer or notary, unless that person is a practising advocate, attorney, conveyancer or notary
- A legal practitioner who is struck off the Roll or suspended from practice may not
  - render services as a legal practitioner
  - be employed by, or otherwise be engaged, in a legal practice without the prior written consent of the Council (LPC)

Section 34
Subject to your reading, the following points may be drawn from the section cited above

- An attorney may render legal services in expectation of any fee, commission, gain, or reward upon receipt of a request directly from the public for that service
- A referral advocate may render legal services in expectation of a fee, commission, gain or reward upon receipt of a brief from an attorney
- An advocate with a Fidelity Fund certificate (trust account) upon receipt of a request directly from a member of the public or from a justice centre for that service
- The LPC must make rules relating to the **instruction** of attorneys and the **briefing** of advocates
- **Attorneys may only practise-**
  - for their own account; or
  - as part of a commercial juristic entity and may only make over to, share or divide any portion of their professional fee whether by way of partnership, commission, allowance, or otherwise with an attorney;

A commercial juristic entity may be established to conduct a legal practice provided that in terms of its founding documents
  - its shareholding, partnership or membership is comprised exclusively of attorneys
  - legal services are rendered only by or under the supervision of admitted and enrolled attorneys
  - all present and past shareholders, partners or members are liable jointly and severally together with the commercial juristic entity for
    - the debts and liabilities of the commercial juristic entity as are or were contracted during their period of office
    - and in respect of any theft committed during their period of office
- as part of a law clinic
- as part of Legal Aid South Africa; or
- as an attorney in the full-time employment of the State as a state attorney or the South African Human Rights Commission.

Section 35

Section 35 deals with fees in respect of legal services. It has twelve subsections. Nine of the subsections are yet to be proclaimed. Three of the subsections were proclaimed on 1 November 2018. Section 35 is going to be a contentious section for many years to come.

Subject to your reading, the following points may be drawn from section 35 cited above

- Subsections (4) and (5) required the South African Law Reform Commission to report on fees in the legal profession. The SALRC published its report on 30 March 2022.
  See: https://www.justice.gov.za/salrc/reports/r-pr142-LegalFees-30Mar2022.pdf
- Subsection (6) permits the Minister of Justice to determine maximum tariffs payable to legal practitioners who are instructed by any State Department or Provincial or Local Government in any matter.
  - This determination must be done by notice in the Gazette.
  - When you are in practice you will come across the tariffs already gazetted.
  - You will not be examined on the tariffs.

SOUTH AFRICAN LEGAL PRACTICE COUNCIL CODE OF CONDUCT ito s 36(1) of the LPA: Please read the entire LPC Code of Conduct again.

Make sure you read the most up to date version of the Code. The latest version at the time of compiling this Guide dates from 22 November 2024 as amended by GenN 2847 in Government Gazette 51637. Indeed, since the Code was first published on 29 March 2019 by GenN 168 in Government Gazette 42337, **the Code is now in its sixth amendment**. It is very important to read the whole of the most up to date version of the Code.
See: the LPC will have an up to date version of the Code on its website by mid-2026

Remember: in terms of the Norms and Standards the Ethics exam is partly an open book exam. You will have a copy of the Code of Conduct in the exam. If you read the Code often, you will find the Code easy to navigate during the pressure of the exam. If you read the Code for the first time during the exam you will run out of time to complete the exam.

Hence it is important to read the following Parts of the Code.

Part I: **Definitions**
There are 28 definitions in the Code and one catch-all phrase that reads as follows:

"1.29 Words or expressions referred to in this code which are not defined shall bear the respective meanings assigned to them by section 1 of the [Legal Practice] Act."

Part II: **Code of Conduct: General Provisions**
Although there are 10 numbered sections in Part II, most have many subsections of importance.

Section 2A sets a general rule for the Code:
Misconduct on the part of a legal practitioner includes a breach of the [Legal Practice] Act or of the code or of any of the rules.

Part III: **Conduct of Attorneys**
Although there are also 10 numbered sections in Part III, most have many subsections of importance. One of the most important sections, which many attorneys ignore and which causes endless unnecessary problems in practice, is section 16, to wit:

> "An attorney shall within a reasonable time reply to all communications which require an answer unless there is good cause for refusing an answer."

Subject to your reading, the following points may be drawn from section 16 of the Code

- A reasonable time is during the same calendar week of receiving the communication
    - If a communication arrives on a Friday afternoon, at least acknowledge receipt and promise to address the substance by the mid-week that follows
    - Responsibility is the ability to respond
        - So, answer your telephone when it rings
        - If you cannot answer, send a message that you will return the call soon
        - Answer your WhatsApp messages and emails with alacrity
        - You will learn: the sooner you engage with your client's requests, the more work you will receive and the fewer complaints you will face
        - You will learn: the sooner you address your colleagues' communications, the better you will enhance your reputation as a reliable lawyer
- *Good cause* is a concept well-known in our law [3]
- But do you really need to go through the disciplinary hearing effort to explain why you had *good cause* to refuse an answer?
    - Remember: with modern communication systems, it is easy to work out from the meta-data when you became aware of an incoming communication
    - So, don't be coy: address the issue
    - Politely even if firmly.

[3] For example, see *Minister of Agriculture & Land Affairs v CJ Rance (Pty) Ltd* 2010 (4) SA 109 (SCA) at para [36], *Minister of Police v Yekiso* 2019 (2) SA 281 (WCC) at para [13] and *De Lange v Methodist Church and Another* 2016 (2) SA 1 (CC) (2016 (1) BCLR 1; [2015] ZACC 35) at paras [36] and [37].

Another important aspect of Part III is section 20.1:

"**20 Instructions involving court appearance**

20.1 The provisions of paragraphs 28.1, 28.4, 28.5, 28.6, 28.8, 28.9, 28.10, 28.11, 28.12 and 28.13 of [the Code] applicable to the acceptance of briefs by advocates apply, with the necessary changes required by the context, to attorneys who accept instructions to appear in court."

Part VI: Conduct of legal practitioners and candidate legal practitioners in relation to appearances in court and before tribunals

Note to Candidates: The case law cited below is not in the syllabus for candidate attorneys. However, it is part of the syllabus for pupils. Since there is an important overlap in the rules applicable to all three forms of practice, the following text is adapted from the pupils' syllabus for use by candidate attorneys who will soon present cases in court.

Duty to act honestly and not to mislead the court

Code of Conduct paras 57.6 and 57.9

Kekana v Society of Advocates of South Africa 1998 (4) SA 649 (SCA) at 655G to 656B.

- Legal practitioners occupy a unique position.
    - They serve the interests of their clients, fearlessly and vigorously;
    - As officers of the Court they serve the interests of justice against the admission of fabricated evidence;
    - What happens between legal representatives and their clients or witnesses is not a matter for public scrutiny.
- The preservation of a high standard of professional ethics is left almost entirely in the hands of individual practitioners.
- So absolute personal integrity and scrupulous honesty are demanded of each of them.
- A practitioner who lacks these qualities is not fit and proper to practice.
- Duty in *ex parte* applications to act with utmost good faith and to disclose material facts which might influence the court

Ex parte orders

Code of Conduct 57.4

Recycling & Economic Dev Initiative of SA NPC v Minister of Environmental Affairs 2019 (3) SA 251 (SCA) at paras [45] to [47]

- Where an order is sought *ex parte* it is well established that the utmost good faith must be observed.
- All material facts must be disclosed which **might** influence a court in coming to its decision
    - withholding or
    - suppression of material facts
    - by itself
    - entitles a court to set aside an order
    - even if the non-disclosure or suppression was not wilful or *mala fide*
- The duty of utmost good faith,
    - and in particular the duty of full and fair disclosure,
    - is imposed

- because orders granted without notice to affected parties are a departure from a fundamental principle of the administration of justice, namely, *audi alteram partem*.
- The law sometimes allows a departure from *audi alteram partem* in the interests of justice
- But in those exceptional circumstances the *ex parte* applicant assumes a heavy responsibility to neutralise the prejudice the affected party suffers by his, her or its absence.
- Applicants must be scrupulously fair in presenting their own case.
    - Applicants must also speak for the absent party by disclosing all relevant facts the applicant knows or reasonably expects the absent party would want placed before the court.
    - Applicants must disclose and deal fairly with any defences of which they are aware or may reasonably anticipate.
    - Applicants must disclose all relevant adverse material the absent respondent might have put up in opposition to the order.
    - Applicants must also exercise due care and make such enquiries and conduct such investigations as are reasonable in the circumstances before seeking *ex parte* relief.
    - Applicants may not refrain from disclosing matter asserted by the absent party because the applicant believes it to be untrue.
    - Finally, even where the *ex parte* applicant has endeavoured in good faith to discharge all required duties, an applicant will have fallen short if the court finds that matter regarded as irrelevant was sufficiently material to require disclosure.
- The test is objective.

Thint (Pty) Ltd v National Director of Public Prosecutions; Zuma v NDPP 2009 (1) SA 1 (CC) at paras [102] and [296]

- An applicant in an *ex parte* application bears a duty of utmost good faith in placing all the relevant material facts before the court.
- In a complex case, the duty to disclose is limited to disclosure of facts that are material.
- There can be no crystal-clear distinction between facts which are material and those which are not. There will always be room for debate.
- An applicant for a search and seizure warrant will have to make a value judgment.
- However, the court has a discretion and is not compelled, even if the non-disclosure was material, to dismiss the application or to set aside the proceedings.

Schlesinger v Schlesinger 1979 (4) SCA 342 (W) at 349A

- In *ex parte* applications all material facts must be disclosed which might influence a Court in coming to a decision;
- Non-disclosure or suppression of facts need not be wilful or *mala fide* to incur the penalty of rescission;
- The Court, apprised of the true facts, has a discretion to set aside the former order or to preserve it.

Duty to direct the court's attention to relevant and adverse authorities

Code of Conduct 57.5

Ulde v Minister of Home Affairs & Another 2008 (6) SA 483 (W) at paras [36] to [39], especially at para [37]

- A judge is entitled to take legal practitioner at their word.
- When an argument is advanced and authority is cited, there is a tacit representation by legal practitioner that no contradictory authority is known to him.
- Where such a representation is made and there exists a reported superior court's decision in point disapproving the authority cited in support of a proposition,
    - The legal practitioner commits an act of negligence if he is ignorant thereof.
    - Where the legal practitioner has actual knowledge of the superior court's decision, and remains silent and relies on the disapproved *dictum*, the legal practitioner misleads the court.

Duty to draw the court's attention to deviation from standard forms and orders
Code of Conduct 57.8 – please read the text in the Code.

Duty to present the best argument available to the litigant
Feni v Gxothiwe and Another 2014 (1) SA 594 (ECG) at paras [6] and [7]

- Heads of argument serve a critical purpose.
    - They ought to articulate the best argument available.
    - They ought to engage fairly with the evidence and to advance submissions in relation thereto.
    - They ought to deal with the case law.
- Where this is not done and the work is left to the Judges, justice cannot be seen to be done.
- It is essential that those who have the privilege of appearing in the Superior Courts do their duty scrupulously in this regard.

See also the Code of Conduct at section 61.12

Duty to preserve and uphold the dignity of the courts and officers of the court
Code of Conduct, sections 61.6 to 61.11 – please read the text of the Code

Duty not to abuse the process of court
Code of Conduct, section 60 – please read the text of the Code.
This section is the source of many questions in your admission exams.

Applications for recusal of presiding officers
President of the Republic of South Africa and Others v South African Rugby Football Union and Others 1999 (4) SA 147 (CC) (1999 (7) BCLR 725; [1999] ZACC 9) at paras [35] – [48]

- The cornerstone of any fair and just legal system is the impartial adjudication of disputes;
- This applies to:
    - both criminal and civil cases
    - and to quasi-judicial and administrative proceedings.
- The test for bias is:
    - the existence of a reasonable suspicion of bias (apprehension of bias);
    - an apprehension of a real likelihood that the decision maker will be biased is not a prerequisite for disqualifying bias;
- the application of the test for apprehended bias is **objective**;
- the onus of establishing it rests upon the applicant.

Legal practitioner's duty to clients
Duty to further clients' cases fearlessly to the best of legal practitioner's ability
Code of Conduct, sections 3.3 and 25.1 – please read the text in the Code

Maintaining confidentiality and legal professional privilege
Code of Conduct 57. 2; 57. 3; 57. 6; 57.7; 57.10 – please read the text in the Code

Conflict of interest between clients
Code of Conduct 3.5; 58.4; 58.5; 58.6 – please read the text in the Code

Conflict of interest between legal practitioner and clients and presiding officer/opponents
Code of Conduct 58.1 - 58.3; 58.7 - 58.12 – please read the text in the Code

Legal practitioner's independence in conducting matters
Code of Conduct 3. 9; 9. 9; 22. 3. 1; 25.3 – please read the text in the Code

Admissions and undertakings made and settlement concluded by legal practitioner on behalf of clients
Code of Conduct 25.6 – please read the text in the Code

Interviewing witnesses of opponent
Code of Conduct 55.6 - 55.8 – please read the text of the Code
Code of Conduct 55.9 - 55.11 – please read the text of the Code

Interviewing witnesses during trial
Interviewing witnesses after they have been sworn in (that is in chief)
Code of Conduct 55.5 (generally prohibited) – please read the text of the Code
General prohibition against interviewing witnesses who are under cross-examination as well as between cross-examination and re-examination

Cross-examination
Code of Conduct 56.1-56.6 – please read the text of the Code

President of the Republic of South Africa & Others v SA Rugby Football Union & Others 2000 (1) SA 1 (CC) at paras [61] to [64] (duty to challenge evidence in cross-examination)

- Cross-examination not only constitutes a right;
- It imposes certain duties;
    - If it is intended to suggest a witness is not speaking the truth on a particular point,
    - the cross-examiner must direct the witness's attention to that point by questions put in cross-examination;
        - to show that an imputation will be made
        - how it will be made and
        - to afford the witness an opportunity
        - while still in the witness-box,
        - to give any explanation open to the witness and
        - to defend his or her character.
- If a point in dispute is left unchallenged in cross-examination,
    - the party calling the witness is entitled to assume that
    - the unchallenged witness's testimony is accepted as correct.

Rules governing Legal practitioner's fees
Contingency fee agreements
Code of Conduct 32 – please read the text of the Code

South African Association of Personal Injury Lawyers v Minister of Justice and Constitutional Development (Road Accident Fund, Intervening Party) 2013 (2) SA 583 (GSJ) (Full Bench) paras [7] and [8], [23] to [27] and [68]

- The common-law prohibited contingency fee agreements between lawyers and their clients;
- The Contingency Fees Act 66 of 1997 allows such agreements under strict conditions.
- Contingency fee agreements are a form of *pacta de quota litis* between a lawyer and his client, which has additional undesirable features:
    - Contingency fee agreements compromise the lawyer's relationship with his client by introducing conflicts of interest;
    - contingency fee agreements give a legal practitioner a material financial interest in the outcome of the litigation,
        - and an overriding desire to secure a successful outcome may tempt him or her into practices
        - which may compromise his or her duties to the court,
        - such as coaching witnesses, misleading the court, falsifying evidence, etc.

Champerty agreements
Price Waterhouse Coopers Inc and Others v National Potato Co-Operative Ltd and Another 2004 (6) SA 66 (SCA) paras [26] to [44] especially paras [39] to [41]

- Champerty agreement is a fair agreement to supply funds to carry on a suit in consideration of having a share of the property, if recovered, ought not to be regarded as being *per se* opposed to public policy;
- The legislature was obviously of the view that the conflict between the duty and interests of legal practitioners would not lead to an abuse of legal procedure;
- It clearly considered that it is better that people be able to take their disputes to court in this way rather than not at all;
- Upholding agreements between a litigant and a third party who finances the litigation for reward is consistent with the constitutional values underlining freedom of contract.
- Note the nuances in the judgment of Southwood AJA in the following quote:
    - English common law condemned champerty out of a concern for the integrity of the judicial system; the fear that champertous agreements may give rise to abuses such as the inflation of damages, the suppressing of evidence and the suborning of witnesses

Pro bono and *pro amico* briefs
Code of Conduct 31 – please read the text in the Code

Costs *de bonis propriis* and orders disentitling legal practitioner to charge fees
Schneider NO v AA 2010 (5) SA 203 (WCC)

- Advocate investigated for connivance on expert testimony to deceive the court;
- The fact that the expert is called by a particular party because his or her opinion is in favour of that party's line of argument does not absolve the expert from his duty to provide the court with as objective and unbiased an opinion as possible.
- The advocate found not to have engaged in such conduct.

For the reasonableness of legal practitioner's fees marking briefs and furnishing fee accounts
Code of Conduct paras 29-35 – please read the text in the Code

Legal practitioner's qualified privilege and freedom of speech in court
Code of Conduct 56.2; 56.4; 56.6 – please read the text in the Code

Court and professional etiquette
Code of Conduct 61.3 - 61.14 – please read the text in the Code

Duty to obey rules of the profession
Code of Conduct 2; 21. 1; 54.1 – please read the text in the Code

Applications for admission and enrolment as an attorney
Sections 24(1) and (2); 26(1) of the LPA

- Remember Rule 3A of the Uniform Rules of Court

Northern Cape Society v Mziako [2018] ZANCHC 28 paras [30] to [34]

- Forum shopping to find a court where an advocate's criminal record is not known and not to disclose the record is sufficient evidence that such advocate is not fit and proper for readmission as an advocate.

Ex Parte Goosen 2019 (3) SA 489 (GJ)

- S 115 of the LPA preserves the vested rights of LLB graduates who graduated before the commencement of the LPA on 1 November 2018;
- The court suggested the Minister of Justice amend the LPA to prevent lawyers from entering the profession under s 115 without the training required in the LPA.

Alves v Legal Practice Council and Similar Matters 2019 (6) SA 18 (WCC)

- Attorneys are entitled to rely on s 115 of the LPA.

SA Legal Practice Council v Alves 2021 (4) SA 158 (SCA)

- Section 115 preserved the rights of those who qualified for admission and enrolment prior to the LPA to be admitted and enrolled under the LPA;
- Section 115 may be relied on *ad infinitum* by any person who qualified prior to the commencement of the LPA.
- Legal practitioners, whether practising as advocates or attorneys, are officers of the High Court;
- They are admitted by the High Court not by the LPC;

- The High Court authorises their enrolment in the practice in which they are qualified, and they owe a special ethical duty to the Court.
- The High Court retains the oversight over their conduct and the jurisdiction to pronounce on matters concerning their conduct.
- To this extent they practise under the auspices of the High Court.
- See paragraph [24] of the judgment quoted below.

<u>Part VII</u>: Conduct of legal practitioners not in private practice

Please read Part VII

If questions are posed in your admission exams on Part VII, if you have read this part of the Code you will navigate the Code with less stress in the exam.

Case law in the reading list

University of South Africa v Socikwa and Others [2023] ZALCJHB 172
https://www.saflii.org/za/cases/ZALCJHB/2023/172.html

Subject to your reading, the following points may be drawn from the case cited above

- Courts are constitutional constructs designed to serve justice and enhance the rule of law.
- Courts are not theatres of amusement to elevate hedonism.
- Courts must be respected
    - by their officers and
    - those privileged to have the right of audience.
- Legal practitioners bringing hopeless cases to court must be prepared for consequences that flow.
- Legal practitioners must not align themselves with cases that are absolutely hopeless for pecuniary reasons and thereby frustrate *bona fide* litigants with worthy cases for courts to adjudicate.

Freedom Under Law v Judicial Service Commission and Another (550/2022) [2023] ZASCA 103; [2023] 3 All SA 631 (SCA) (22 June 2023)
https://www.saflii.org/za/cases/ZASCA/2023/103.html

Subject to your reading, the following points may be drawn from the case cited above

- Judge's conduct was egregious
    - His behaviour was characterised by racism, sexism and vulgarity.
    - The public watched him conduct a dishonest defence during his trial and on appeal.
    - The public watched him dishonestly accuse B of using the k-word, only to thereafter withdraw the accusation.
    - The public watched him lie under oath to the Tribunal about his level of intoxication.
    - His conduct is inimical to his office.
- For as long as the errant judge is entitled to be called Judge, the judiciary continues to be stained in the eyes of the public.

Ex Parte Minister of Home Affairs and Another 2024 (2) SA 58 (CC) at paras [105] to [118]
https://www.saflii.org/za/cases/ZACC/2023/34.html
Subject to your reading, the following points may be drawn from the case cited above

- Legal practitioners occupy a unique position.
- On the one hand they serve the interests of their clients, which require a case to be presented fearlessly and vigorously.
- On the other hand, as officers of the court, they serve the interests of justice itself by acting as a bulwark against the admission of fabricated evidence.
- Both professions have strict ethical rules aimed at preventing their members from becoming parties to the deception of the court.
    - Unfortunately, the observance of the rules is not assured because what happens between legal representatives and their clients
    - or witnesses
    - is not a matter for public scrutiny.
- The preservation of a high standard of professional ethics having thus been left almost entirely in the hands of individual practitioners, it stands to reason,
    - firstly, that absolute personal integrity and scrupulous honesty are demanded of each of them, and
    - secondly, that practitioners who lack these qualities cannot be expected to play their part.

Motswai v Road Accident Fund 2013 (3) SA 8 (GSJ) at paras [26]-[37]
https://www.saflii.org/za/cases/ZAGPJHC/2013/99.html
- **reversed on appeal**:
see *Motswai v Road Accident Fund* 2014 (6) SA 360 (SCA)
https://www.saflii.org/za/cases/ZASCA/2014/104.html
Subject to your reading, the following points may be drawn from the case cited above

Note to Candidates: both the above cases are testimony to the current malaise in the Road Accident Fund.

<u>These cases mark your coming of age in the legal profession</u>.

- When we studied law at university one of the objectives of law was to dispense justice.
- In the context of the post-colonial and post-apartheid order, justice in South Africa meant an egalitarian society where
    - all classes and people are secure, and
    - safe, and
    - everyone has a living wage, and
    - the unemployed are protected by State subsidies
    - so that no one is left behind under any circumstances.
- These cases demonstrate that law is a blunt instrument when one seeks justice as contemplated above.
- However, there is a kernel (core) of legal philosophy that is most important to remember.
- It is the following quote from paragraph [22] of the SCA judgment.

- The SCA judgment contains the seeds of what you will need to consider throughout your life in law.
- Paragraph [22] contains the following admonition and call for improvement for all legal practitioners and judicial officers:

> "The tone of the judgment is strident – almost evangelical. It contains a trenchant critique of how claims against the Fund are dealt with, and is evidently aimed at correcting the perceived abuse of the road accident compensation system by 'predatory' administrators, attorneys, advocates and medico-legal experts all of whom she accuses of being 'enriched' to the detriment of accident victims and taxpayers.
>
> But, in making this observation, no doubt because of her considerable experience with claims against the Fund, the learned judge made sweeping findings against the professionals who rendered services in this case, including the plaintiff's attorneys.
>
> She did so without conducting a proper hearing in an open court and, as will become apparent, without a factual basis.
>
> In the process she overlooked a recent dictum by this court that judges must be astute not to pontificate or to be judgmental about persons who have not been called upon to defend themselves."

In short, in all circumstances in your career as a legal practitioner remember the key, core and essential legal maxim:
Apply *audi alteram partem* before judging anyone, including your clients, your opponents and your enemies, especially those who are 'so obviously guilty'.

- *Audi alteram partem* is an aspect of rule of law
- which can be conveniently categorised as part of due process,
- itself part of the doctrine of legality in the rule of law.

To exercise the duty of care and skill
Code of conduct section 18.14
Subject to your reading, the following points may be drawn from section 18.14 above

> "An attorney shall … perform professional work or work of a kind commonly performed by an attorney with such a degree of skill, care or attention, or of such a quality or standard, as may reasonably be expected of an attorney."

Sayed NO v RAF 2021 (3) SA 538 (GP)
https://www.saflii.org/za/cases/ZAGPPHC/2024/333.html
Subject to your reading, the following points may be drawn from the case cited above

- The court stressed that attorneys, should they wish to cease to act on behalf of a party in any proceedings, had a duty formally to withdraw from proceedings by delivering a notice of withdrawal as attorney of record
- Such a duty was one attorneys owed not only to their clients,
    - but also to the court,
    - as well as to their opponents
    - and their clients

- The court considered the position of attorneys who ceased to involve themselves in proceedings, yet refused to withdraw in order to preserve commercial relationships with their client
    - An attorney who acted in such a manner was guilty of unprofessional conduct
    - The court stressed that an attorney's ethical obligations always outweighed matters of financial or commercial expediency
- Whatever the reasons for remaining on record may be, if the attorneys adopted the position that they were entitled to remain as attorneys of record, then they had to continue to fulfil their obligations.
- Legal practitioners cannot both approbate and reprobate.

Conclusion

The mark and the measure of your life in law will depend on your commitment to honest, ethical practice and a devotion to hard work.

Welcome, once again colleagues, to a life in law.

Nicholas J. Tee
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