

LEGAL PRACTICE COUNCIL
NOTICE 227 OF 2020

NATIONAL OFFICE
Thornhill Office Park
Building 20
94 Bekker Street
Vorna Valley, Midrand
1686
Tel: 010 001 8500



Date: 23 March 2020

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL
NOTIFICATION FOR COMMENT: APPLICATION FOR ACCREDITATION TO PRESENT
PRACTICAL VOCATIONAL TRAINING STRUCTURED PROGRAMMES

All interested parties are invited to comment on the draft Guidelines for application for accreditation to be made to the South African Legal Practice Council (“Council”) to present the Practical Vocational Training (“PVT”) structured programmes for the year 2021 and thereafter.

The draft Guidelines are published herewith for comment.

All interested parties are called upon to submit their comments to Council in writing within a period of 30 days from the date of publication of this notice.

All comments must be sent by email to rules@lpc.org.za on or before 03 May 2020.

SIGNED AT PRETORIA THIS 23rd DAY OF MARCH 2020



Ms Hlaleleni Kathleen Dlepu

Chairperson: Legal Practice Council

PROGRAMME OF STRUCTURED COURSE WORK

THE NORMS AND STANDARDS APPROVED BY THE LEGAL PRACTICE COUNCIL

APPLICATION FOR ACCREDITATION



LEGAL PRACTICE COUNCIL

Applications for Accreditation to present the programme of structured course work for Practical Vocational Training

GENERAL GUIDELINES

The requirements for the transformation and restructuring of the legal profession are set out in the Legal Practice Act. Central to this is the building of a legal profession that broadly reflects the diversity and demographics of South Africa, and is accountable, efficient, and independent, and upholds the rule of law, the administration of justice and the Constitution of the Republic (section 5 of the Legal Practice Act).

The building of such a system necessitates, among other things, the promotion of high standards of legal education and training, compulsory post-qualification professional development, continuing legal education and trial advocacy training not only in public universities, but also in organisations and institutions accredited by the Legal Practice Council: such courses need to be accessible and sustainable training courses for law graduates aspiring to be admitted and enrolled as legal practitioners having due regard to our inherited legacy and the aspirations of the new constitutional dispensation.

The accreditation of training institutions and organisations applies only to those institutions that offer training programmes that contribute to the qualification of legal practitioners and candidate legal practitioners. Accreditation means that an institution is granted the legal authority to offer duly accredited programmes.

The aim of accrediting these training institutions and individuals is to ensure that-

- (a) all accredited institutions offer a high quality of legal education as determined by the norms and standards applied by the Legal Practice Council;
- (b) all accredited institutions provide accessible and sustainable training of law graduates aspiring to be admitted and enrolled as legal practitioners;
- (c) all accredited institutions have the resources, capacity and expertise to deliver accredited programmes;
- (d) all accredited institutions will develop programmes in order to empower historically disadvantaged legal practitioners, as well as candidate legal practitioners;
- (e) all accredited institutions warrant that the candidate legal practitioners trained by them have attained an adequate level of competence as determined in the rules, for admission and enrolment as legal practitioners; and,
- (f) the system continues on a path of transformation in accordance with the design of the Legal Practice Act and complementary government policy and regulation.

Accreditation can be seen as a means of protecting the integrity of the legal system and the interests of the public and the Constitution of the Republic.

Chapter 2 of the Legal Practice Act deals specifically with training organisations and institutions. The Regulations for the accreditation of such institutions, of which this guide and the application form are an appendix, provide the legal framework within which the Legal Practice Council is required to regulate the accreditation of private institutions.

Section 6 of the Legal Practice Act empowers the Council to provide financial support to organizations or institutions providing legal education and training. Accordingly, as part of their application for accreditation, training institutions and organizations are required to include an application for any funding required, and to furnish a full breakdown of that funding, what it pertains to, the items in respect of which it is estimated that funding will be spent, and the estimated amount per trainee that is requested compared with the estimated cost per trainee of providing the accredited training.

MORE SPECIFIC GUIDELINES

Introduction

These are the guidelines for prospective applicants desiring to apply for accreditation to the Legal Practice Council (“the Council”).

All interested parties must apply for accreditation to the Council to present the Practical Vocational Training (“PVT”) structured programmes for the year 2021 and thereafter. Those parties who have already received accreditation for the year 2020 must treat such accreditation as valid only for this year. Accreditation henceforth will be valid for two years and must be renewed biennially. The Council may withdraw accreditation at any time should an applicant fail to abide by the terms of the accreditation.

The Guidelines

The purpose of these guidelines is to assist applicants to apply for accreditation. The guidelines are the following:

- In **Part A** the application process is set out: this includes the prescribed forms to be completed. Part A commences with the logistical requirements and contains the minimum standards applicants have to meet.
- The logistical requirements stipulated by the Council will be subject to verification and inspection by officials from the Council.
- Applicants must submit details of their proposed trainers and presenters. The Council provides minimum standards and guidelines for teaching and training methods.
- In **Part B** the required curriculum and details of the course work are set out. Applicants must comply with the structured course work approved by the Council.

- The Council will approve or reject the applicant's curriculum and course content. Applicants must comply with the Council's norms and standards set out below.
- Applicants have a right of appeal should the Council not accredit such applicant as a training institution.

PART A

Logistical Requirements

All applicants will have to meet the following requirements:

- a) There must be a comfortable teaching and learning environment;
- b) There must be a classroom or lecture venue capable of accommodating the number of candidates the applicant wishes to train;
- c) The classroom must be capable of being used as a moot court;
- d) The availability of break-away rooms for candidates to work on case studies. Provision must be made for at least 4 small break-away rooms;
- e) There must be access to basic text books and relevant legislation;
- f) There must be access to the internet for research purposes;
- g) The lecture room must be fitted with data projectors and screens with audio facilities;
- h) A computer room must be established to assist candidates to use technology;
- i) There must be access to refreshments;
- j) Ablution facilities must be provided;
- k) A rest area must be provided.

Site Visits

Applicants are informed that the Council will conduct site visits, upon reasonable notice to the training institution, to verify that minimum standards are met.

Training and Teaching Personnel

The Council will require that all teaching and training personnel be drawn from the ranks of experienced practitioners. Applicants will be required to provide full details of all trainers and teachers to be deployed. All trainers and teachers are expected to meet the norms and standards published by the Council. Minimum standards for teaching methods are stated below in Part B.

Non-Refundable Fee

Applicants will be expected to pay the following fees:

- a) A non-refundable fee to be paid on application for accreditation; and
- b) A non-refundable fee to be paid on annual renewal of accreditation.

- c) The fee payable on application for accreditation is R5 000 and must accompany the application. Absent payment, the application will not be processed.
- d) The fee payable for any renewal is R2 500 and must accompany applications for renewal of accreditation.
- e) All fees will be subject to review by the Council.

Application Form

Applicants should complete the Application Form after having read these Guidelines. The Application Form is a separate document appended at the end of the Guidelines. See the document entitled APPLICATION FOR ACCREDITATION AS A TRAINING INSTITUTION (*In terms of s 6(5)(g) of the Legal Practice Act 28 of 2014*).

PART B

Curriculum and Structured Course Work

All applicants are required to provide details of the structured course work to be offered to candidate legal practitioners. The following is expected:

- a) A full description of every course on offer with details of the course content;
- b) Applicants must produce and present their course materials and manuals. Note, course materials must be written by the applicants.
- c) Applicants must present a timetable for the whole PVT programme, indicating the required hours of study and how those hours are earned. There must be an indication of how many hours of class study, case studies, independent study and on-line study are proposed.
- d) The applicant is expected to provide a brief and clear statement of what the candidate can expect to achieve on successful completion of each course (outcomes).
- e) Applicants must satisfy the Council that they can comply with the norms and standards. The Council will assess the teaching methodology.

Guidelines for Teaching Methods

The following are the basic guidelines for teaching and training candidate legal practitioners (“candidates”) in the PVT programme and optional programmes. This is not an exhaustive list: applicants are encouraged to develop their own training methods. Please note: the Council does not expect applicants to redo the LLB.

- a) An appropriate and well-managed presentation; reading to candidates from books and legislation serves no practical purpose;
- b) Instructors must remain relevant to the content being dealt with;

- c) Instructors must focus on the candidates' understanding of the concepts and how to apply this in practice;
- d) Instructors must engage candidates by asking questions and calling for comment: candidates must be encouraged to ask questions and participate;
- e) Instructors must impress upon candidates that any drafting assignments be carried out without assistance and without the use of precedents;
- f) The course must be subdivided into appropriate units, lessons or modules;
- g) A sequential exposition is a must, with new material building on previous material;
- h) The use of a variety of approaches, including summaries, visual material and illustrative examples to illuminate particular concepts is encouraged;
- i) All instructors are to make candidates aware of recent judgments and amendments to legislation; and
- j) The inclusion of clear instructions to guide candidates through the material.
- k) Applicants must produce an assessment questionnaire for candidates who must complete the questionnaire at the end of each course. Such questionnaires must be filed and made available to the Council.

Fees for Training the PVT Programme

Applicants who intend to charge fees for attendance at PVT programmes must disclose the amount in their application. **Proposed fees are subject to Council approval.**

Accreditation for Single Subjects or Coursework

Applicants may apply for accreditation to provide training and teaching for specialised courses and not necessarily the whole PVT programme. Applications may be made for training of candidates and admitted legal practitioners for certain specialised programmes.

- a) The following is a list of such specialised courses:
 - Trial Advocacy
 - Legal Writing (for dispute resolution)
 - Drafting commercial contracts
 - Accounts management
 - Business practice and management
 - Wills and estates
 - Conveyancing
 - Notaries
- b) The courses above are typically three to five-day courses and are intensive. The course content and norms and standards are set by the Council. Applicants are expected to provide full details of the curriculum, coursework and outcomes.
- c) Applicants must disclose the fees for such training in the application: the fees are subject to approval by the Council.

Financial Information

The Council must be satisfied, at least for the period that accreditation is sought, that the applicant is financially capable of sustaining the training programme. Accordingly, relevant financial information is required from applicants in the application form. Although audited financial statements are not required as part of the application, the Council reserves the right to request audited financial statements should it deem such to be necessary.

Quality Control

The Council is mandated to carry out oversight regarding the quality of training provided by applicants. Applicants are informed of the following:

- a) A programme of quality control and oversight measures will be determined by the Council and published to all interested parties.
- b) Applicants will be subjected to regular inspection;
- c) Council staff will attend programmes;
- d) Poor or indifferent quality will result in termination of accreditation.
- e) The Council is committed to continuous improvement. Applicants are encouraged actively to improve course contents and training methods. The Council will release regular notices or newsletters to deal with new training materials and how to deal with changes and updates to the law and practice.

NORMS AND STANDARDS

Regulations 6(11) and 7(10) required the Council to provide training standardised in terms of norms and standards for the structured PVT coursework. The anticipated regulation 4 requires likewise. The document, setting out the required norms and standards, is annexed to these Guidelines. All applicants for accreditation are expected to meet such standards.

Applicants are advised to prepare their applications for accreditation based on the norms and standards published by the Council.

Certificate of Accreditation

The Council will issue all successful applicants for accreditation with a certificate of accreditation. The certificate will contain the date of issuance of accreditation and the time period during which the certificate remains valid.

APPLICATION FOR ACCREDITATION AS A TRAINING INSTITUTION*(In terms of s 6(5)(g) of the Legal Practice Act 28 of 2014)*

Note: Applicants must consult the document: *A Guide for Completing the Application for Accreditation as a Training Institution.*

A ADMINISTRATIVE DATA**1 Legal name of the applicant**

--

2 Particulars of authorised contact person or key individual*(a) Name*

--

(b) Designation of contact person (e.g. Ms, Mr, Dr, Prof, etc.)

--

(c) Telephone number

--

(d) Email address

--

3 Postal address of the applicant

Code	

4 Physical address and contact details of the applicant's main office

Code	
Telephone	
E-mail address	

5 Website address (if any)

--

B COMPANY, VOLUNTARY ASSOCIATION OR OTHER PERSON

7 **Legal name of the applicant (same as in Item 1)**

8 **Official trading name, abbreviation, acronym or translation (if applicable)**

9 **Type of juristic person**
(if a voluntary association – *universitas personarum* – attach its constitution)

10 **Company registration number**
(if applicable)

11 **Particulars of the Management**

(a) **Chief Executive Officer or head of the training institution**

(i) **Name**

(ii) **Title**

(iii) **Identity number (passport number and citizenship if not South African)**

(iv) **Telephone number including cellular phone number, if available**

(b) Names and identity numbers of all the applicant's current directors or key individuals

Surname & Initials	Title	Designation	Identity Number	Passport number

12 Details of the applicant's accountant or accounts manager**(a) Name of the applicant's auditor**

13 Tax and business registration details**(a) VAT Registration Number (if applicable)**

(b) Income Tax Number (if applicable)

14 Applicant's proposed tuition fees

Tuition fees of the Training Institution	Are fees to be charged?		Amount	LPC check
	Yes	No		
Tuition fees for the whole course	State the amount of the fee for the whole course			
Tuition fees for each course charged separately	State the amount of the fee per course			

15 Payment of the non-refundable LPC fee for the accreditation application/renewal application

	Payment to the Legal Practice Council	Date paid	LPC check
Application for whole course accreditation	R 5,000.00		
Application for renewal	R 2,500.00		
Application for select courses accreditation	Amount to be determined by the LPC		
Application for renewal	Amount to be determined by the LPC		

C PARTICULARS OF LEARNING PROGRAMMES

- 16 Table 01: Programmes submitted to the LPC for accreditation in terms of the Legal Practice Act:** On 26 October 2019 the LPC approved the Norms and Standards of the course content set out below in the left column of Table 01. Regulations published in GG No. 41879 on 31 August 2018 concerning legal practitioners qualifying as attorneys or advocates, with or without fidelity fund certificates – are to be read in conjunction with the approved course content of the practical vocational training programme. To compare the course names, see **Annexure C**.

Name of programme in the Norms and Standards approved by the LPC on 26 October 2019	List of course names	Mode of delivery	Language of instruction	Minimum duration in hours	Contact with students	
					Full-time	Part-time
Taking Instructions and Obtaining a Mandate	1					
Plain language Writing and Analytical Thinking	2					
Drafting Legal Documents – Pleadings & Motions	3					
Ethics for legal Practitioners	4					
Civil Procedure & Trial Advocacy	5					
Criminal Court Practice & Trial Advocacy	6					
Insolvency practice	7					
Drafting of Contracts	8					
Matrimonial Matters & Divorce	9					
Delictual Claims Including Personal Injury Claims	10					
Legal Practitioners Accounts Management	11					
Labour Dispute Resolution	12					
Alternative Dispute Resolution	13					
Wills and Estates	14					
Introduction to e-commerce and application of ECTA including the use of electronic signatures	15					
Basic Business Transactions						
Business Rescue						
Constitutional law	16					
Legal Technology (Online)	17					
Introduction to practice management (Online)	18					
Introduction to Cyber law (Online)	19					
Customary Law (Online)	20					
Numeracy skills training	21					
Legal Costs	22					

D STAFF AND STUDENT DATA

- 18 **Table: 04: Total staff expected to be employed and students to be registered for practical legal training programmes during the first year of operation. The data should be expressed as headcount only.**

	First intake	Second intake	Third (if any)
Students			
Academic / head office staff			
Full-time			
Part-time			
Support staff			
Full-time			
Part-time			
Service staff			
Full-time			
Part-time			

E FINANCIAL VIABILITY REPORTS AND LEGAL DOCUMENTS

- 19 **ANNEXURE A: Annual financial statements.**
- 20 **ANNEXURE B: Occupational health and safety compliance audit report.**

F DETAILS OF THE COURSE CURRICULA FOR THE APPROVED PROGRAMME

- 21 **ANNEXURE C: Table to compare the LPC 26 October 2019 approved practical vocational training programme with regulation 6 and 7 of R. 921 GG No. 41879, 31 August 2018**
- 22 **ANNEXURE D: Programme of structured course work. Norms and Standards approved by the Legal Practice Council on 26 October 2019**
- 23 **ANNEXURE E: Accounting course. Norms and Standards approved by the Legal Practice Council on 26 October 2019**
- 24 **ANNEXURE F: Appeal Form in the event an Applicant is aggrieved by a decision of the Legal Practice Council. The Council will give reasons for the decision not to accredit an Applicant as a training institution.**

I, _____ declare that this application and the documents and electronic documents submitted as evidence in part of this application are the rightful property of the training institution. I accept the terms and conditions of the application and grant permission to the Legal Practice Council to proceed with the invoicing and evaluation of this application.

SIGNATURE

DATE

ANNEXURE A ¹**(a) Annual financial statements**

For purposes of applying for accreditation as a training institution, the applicant must prepare and submit the annual financial statements for the previous financial year. The preparation and presentation of the financial statements must comply with the requirements of the the *Companies Act 71 of 2008* and the *Statements of GAAP*. The financial statements must include the following:

- Accountant's report
- Directors' report
- Balance sheet
- Income statement
- Cash-flow statement
- Summary of accounting policies
- Notes to the financial statements

The accountant's report referred to above must comply with the following requirements:

(i) The accountant's report

In the report, the accountant must express his/her opinion on the appropriateness of the management's use of the going concern assumption in their preparation of the applicant's financial statements. The accountant's report must be available for public scrutiny. Further, the accountant must indicate whether or not he/she concurs with the directors' Financial Viability Statement referred to below.

(ii) Directors' report

Any matter not dealt with in the balance sheet, statement of changes in equity, income statement, cash-flow statement or notes thereto, must be dealt with in the directors' report. Any post-balance sheet event that is material to the appreciation of the financial position of the applicant, its changes in equity, and the results of its operations and cash flows must also be tabled in the directors' report.

Ideally the report should include, but not be limited to, the following aspects:

- *Directors and secretary*
- *Principal activities/Nature of business*
- *Directors' responsibilities*
- *Going concern assessment*
- *Operating results*
- *Dividends (if any)*
- *Review of operations*
 - o Revenue
 - o Profit before tax
- *Share capital*
- *Post-balance-sheet events*

¹ The text of the current document is drawn from the Regulations for the Registration of Private Higher Education Institutions, 2003: Annexures GN R335 of 2003 GG 24976 of 28 Feb 2003: F FINANCIAL VIABILITY REPORTS AND LEGAL DOCUMENTS at ITEM 29.

So, the Council needs to consider the replacement of the auditor with an accountant.

- *Financial viability statement*

The Chief Executive Officer, or an official of similar standing, must sign the directors' report.

(b) Three-year financial forecasts

A new applicant who has not previously operated in any form whatsoever, must submit a three-year financial forecast drafted by the applicant's accountant. The three-year financial forecast must consist of the following:

- (a) *Accountant's report*
- (b) *Detailed assumptions*
- (c) *Balance sheet*
- (d) *Pro forma income statements for three years*
- (e) *Pro forma cashflow statements for three years*
- (f) *Explanatory notes to the financial forecasts*

(aa) Detailed assumptions

These assumptions should serve as the basis for all the figures and calculations done in the *pro forma* statements.

(bb) *Balance sheet*

This statement must, on analysis, be in a position to provide answers to the following questions:

- What assets does the applicant own?
- How much does the applicant intend investing in the proposed operations?
- What are the applicant's sources of funding?
- What is the proportion of debt to be incurred vis-a-vis own capital/equity?

(cc) *Pro forma income statements*

These statements must, on analysis, be able to show all the sources of the applicant's income and the amounts to be generated from each source. They must further indicate how the applicant is to meet the following funding requirements (start-up expenditure line items):

- *Capital costs*
- *Classroom furniture and equipment*
- *Library facility*
- *Student support services*
- *Student financial aid*
- *Research*
- *Quality assurance and quality promotion*
- *Professional fees (legal, financial, etc.)*
- *Costs for developing tuition materials*
- *Systems design, purchase and implementation*
- *Promotion/Advertising/Marketing Costs*
- *Furniture*

- *Electronic equipment (teaching and learning)*
- *Vehicles*
- *Staff recruitment*
- *Staff salaries*
- *Rent*
- *Travel*
- *Recreation*
- *Telecommunications*
- *Office consumables, etc.*

(dd) *Pro forma* cash flow statements

These statements must indicate how much, during the first three years of operation, the applicant expects to-

- *generate for/from operating activities;*
- *generate for/from investing activities; and*
- *generate for/from financing activities.*

(ee) *Explanatory notes*

Aspects that have not been dealt with as part of *Assumptions*, should be clearly explained in this section. Where applicable, this section should include, but not be limited to, the explanation of the following:

- *Dividend policy (if any)*
- *Financing terms and conditions*
- *VAT treatment, etc.*

ANNEXURE B

Applicants are referred to the legislation below and are expected to comply; with particular reference not only to employees but also to candidate legal practitioners in attendance

Occupational Health and Safety Act 85 of 1993

8 General duties of employers to their employees

(1) Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees.

(2) Without derogating from the generality of an employer's duties under subsection (1), the matters to which those duties refer include in particular-

(a) the provision and maintenance of systems of work, plant and machinery that, as far as is reasonably practicable, are safe and without risks to health;

(b) taking such steps as may be reasonably practicable to eliminate or mitigate any hazard or potential hazard to the safety or health of employees, before resorting to personal protective equipment;

(c) making arrangements for ensuring, as far as is reasonably practicable, the safety and absence of risks to health in connection with the production, processing, use, handling, storage or transport of articles or substances;

(d) establishing, as far as is reasonably practicable, what hazards to the health or safety of persons are attached to any work which is performed, any article or substance which is produced, processed, used, handled, stored or transported and any plant or machinery which is used in his business, and he shall, as far as is reasonably practicable, further establish what precautionary measures should be taken with respect to such work, article, substance, plant or machinery in order to protect the health and safety of persons, and he shall provide the necessary means to apply such precautionary measures;

(e) providing such information, instructions, training and supervision as may be necessary to ensure, as far as is reasonably practicable, the health and safety at work of his employees;

(f) as far as is reasonably practicable, not permitting any employee to do any work or to produce, process, use, handle, store or transport any article or substance or to operate any plant or machinery, unless the precautionary measures contemplated in paragraphs (b) and (d), or any other precautionary measures which may be prescribed, have been taken;

(g) taking all necessary measures to ensure that the requirements of this Act are complied with by every person in his employment or on premises under his control where plant or machinery is used;

(h) enforcing such measures as may be necessary in the interest of health and safety;

(i) ensuring that work is performed and that plant or machinery is used under the general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by the employer are implemented; and

(j) causing all employees to be informed regarding the scope of their authority as contemplated in section 37 (1) (b).

ANNEXURE C: HOW TO UNDERSTAND THE APPROVED PROGRAMME NAMES

Table A shows the PVT courses from the perspective of the LPC approval dated 26 October 2019.
Table B shows the PVT courses from the perspective of Regulation 6 (candidate attorneys) and Regulation 7 (pupils).

Table A

Name of programme in the Norms and Standards approved by the LPC on 26 October 2019	List in Annex B	Names in regulations	Regulation section numbers	Names in regulations	Regulation section numbers
Taking Instructions and Obtaining a Mandate	1				
Plain language Writing and Analytical Thinking	2				
Drafting Legal Documents – Pleadings & Motions	3	Legal writing and drafting	7(9)(g)		
Ethics for legal Practitioners	4	Professional legal ethics	6(10)(b)	Professional conduct & legal ethics of advocates	7(9)(f)
Civil Procedure & Trial Advocacy	5	High Court practice	6(10)(d)	Advocacy skills, including trial & motion court proceedings & attendance of court proceedings	7(9)(b)
		Magistrate’s Court practice	6(10)(e)	Civil procedure	7(9)(d)
Criminal Court Practice & Trial Advocacy	6	Criminal Court practice	6(10)(f)	Criminal procedure	7(9)(e)
Insolvency practice	7				
Drafting of Contracts	8	Drafting of contracts	6(10)(m)		
Matrimonial Matters & Divorce	9	Matrimonial law	6(10)(k)		
Delictual Claims Including Personal Injury Claims	10	Personal injury claims	6(10)(c)		
Legal Practitioners Accounts Management	11	Attorneys’ bookkeeping	6(10)(i)	For pupils intending to be admitted as advocates referred to in section 34(2)(b) of the Act, bookkeeping as contemplated in regulation 6(10)(i)	7(9)(a)
Labour Dispute Resolution	12	Labour dispute resolution	6(10)(g)		
Alternative Dispute Resolution	13	Alternative dispute resolution	6(10)(h)	Alternative dispute resolution	7(9)(c)
Wills and Estates	14	Wills and estates	6(10)(j)		
Introduction to e-commerce and application of ECTA including the use of electronic signatures	15				
Constitutional law	16	Constitutional practice	6(10)(a)	Constitutional law & Customary law	7(9)(h)
Legal Technology (Online)	17				
Introduction to practice management (Online)	18	Introduction to practice management	6(10)(o)		
Introduction to Cyber law (Online)	19	Information & communication technology for practice, and associated aspects of cyber law	6(10)(n) 7(9)(i)		
Customary Law (Online)	20				
Numeracy skills training	21				
Legal Costs	22	Legal costs	6(10)(l)		
Trial advocacy training programme	25(3)(a)(i) Rule 19				
Post-qualification professional development	5(h), 6(1)(a)(ix), & 5(e),(g)				
Continuing education and training	6(5)(e)				

Table B

Name of programme in the Regulations	Regulations Reg 6 listed from (10)(a) to (o) with Reg 7 integrated into the sequence of Reg 6.	Name of programme in the Norms and Standards approved by the LPC on 26 October 2019	List in Annex B
		Taking Instructions and Obtaining a Mandate	1
		Plain language Writing and Analytical Thinking	2
		Insolvency practice	7
		Introduction to e-commerce and application of ECTA including the use of electronic signatures	15
		Legal Technology (Online)	17
		Customary Law (Online)	20
		Numeracy skills training	21
Constitutional practice	6(10)(a)	Constitutional law	16
Constitutional law & Customary law	7(9)(h)	Constitutional law	16
		Customary Law	20
Professional legal ethics	6(10)(b)	Ethics for legal Practitioners	4
Professional conduct & legal ethics of advocates	7(9)(f)	Ethics for legal Practitioners	4
Personal injury claims	6(10)(c)	Delictual Claims Including Personal Injury Claims	10
High Court practice	6(10)(d)	Civil Procedure & Trial Advocacy	5
Advocacy skills, including trial & motion court proceedings & attendance of court proceedings	7(9)(b)	Civil Procedure & Trial Advocacy	5
Magistrate's Court practice	6(10)(e)	Civil Procedure & Trial Advocacy	5
Civil procedure	7(9)(d)	Civil Procedure & Trial Advocacy	5
Criminal Court practice	6(10)(f)	Criminal Court Practice & Trial Advocacy	6
Criminal procedure	7(9)(e)	Criminal Court Practice & Trial Advocacy	6
Labour dispute resolution	6(10)(g)	Labour Dispute Resolution	12
Alternative dispute resolution	6(10)(h)	Alternative Dispute Resolution	13
Attorneys' bookkeeping	6(10)(i)	Legal Practitioners Accounts Management	11
For pupils intending to be admitted as advocates referred to in section 34(2)(b) of the Act, bookkeeping as contemplated in regulation 6(10)(i)	7(9)(a)	Legal Practitioners Accounts Management	11
Wills and estates	6(10)(j)	Wills and Estates	14
Matrimonial law	6(10)(k)	Matrimonial Matters & Divorce	9
Legal costs	6(10)(l)	Legal Costs	22
Drafting of contracts	6(10)(m)	Drafting of Contracts	8
Legal writing and drafting	7(9)(g)	Drafting Legal Documents – Pleadings & Motions	3
Information & communication technology for practice, and associated aspects of cyber law	6(10)(n)	Introduction to Cyber law (Online)	19
Introduction to practice management	6(10)(o)	Introduction to practice management (Online)	18

Table C

Name of programme in the Norms and Standards approved by the LPC on 26 October 2019	List in Annex B	Names in new regulations about to be published	Regulation section 4(1) sub-paragraphs
Taking Instructions and Obtaining a Mandate	1	taking instructions and obtaining a mandate	(a)
Plain language Writing and Analytical Thinking	2	plain language writing and analytical thinking	(b)
Drafting Legal Documents – Pleadings & Motions	3	drafting legal documents - pleadings and motions	(c)
Ethics for legal Practitioners	4	ethics for legal practitioners	(d)
Civil Procedure & Trial Advocacy	5	civil procedure and trial advocacy	(e)
Criminal Court Practice & Trial Advocacy	6	criminal court practice and trial advocacy	(f)
Insolvency practice	7	Insolvency practice	(g)
Drafting of Contracts	8	drafting of contracts	(h)
Matrimonial Matters & Divorce	9	matrimonial matters and divorce	(i)
Delictual Claims Including Personal Injury Claims	10	delictual claims, including personal injury claims	(j)
Legal Practitioners Accounts Management	11	legal practitioners' account management	(k)
Labour Dispute Resolution	12	labour dispute resolution	(l)
Alternative Dispute Resolution	13	alternative dispute resolution	(m)
Wills and Estates	14	wills and estates	(n)
Introduction to e-commerce and application of ECTA including the use of electronic signatures	15	introduction to E-commerce and application of the Electronic Communications and Transactions Act, 25 of 2002, including the electronic signatures	(o)
		basic business transactions	(p)
		business rescue	(q)
Constitutional law	16	constitutional law	(r)
Legal Technology (Online)	17	legal technology (online)	(s)
Introduction to practice management (Online)	18	introduction to practice management (online)	(t)
Introduction to Cyber law (Online)	19	introduction to cyber law (online)	(u)
Customary Law (Online)	20	customary law (online)	(v)
Numeracy skills training	21	numeracy skills training	(w)
Legal Costs	22		
Trial advocacy training programme	25(3)(a)(i) Rule 19		
Post-qualification professional development	5(h), 6(1)(a)(ix), & 5)(e),(g)		
Continuing education and training	6(5)(e)		

ANNEXURE D

Programme of structured course work

Norms and Standards : Regulation 4(1) of the new regulations replacing regulations 6(11) and 7(10)

Subject and curriculum	Outcomes	Remarks	1	2	3
<p>1 Taking Instructions and Obtaining a Mandate – Reg 4(1)(a) Content: This course starts with FICA and CPA compliance. An explanation why a client is entitled to an estimate of fees and disbursements. Reference to tariffs of fees and templates for making fee assessments. How to prepare for a first consultation. How to conduct a first consultation. How to contextualise a client's problem. How to arrange follow up consultations. The importance of first obtaining all the relevant facts. How to obtain relevant documentation. How to listen to a client without interrupting. How to ask relevant questions to bring out the facts. How to structure questions. Why leading questions must be avoided.</p>	<p><u>Expected Outcomes</u> The candidate must understand the following:</p> <ol style="list-style-type: none"> What to do to prepare for a first consultation with a potential client. What are the basic compliance requirements? How to carry out the first interview or consultation. How to go about taking instructions. How to obtain the relevant facts. Techniques in carrying out a consultation. An understanding of applied research, as opposed to academic research. How to use the available research tools. How to do research in an effective and efficient manner. 	<p><u>Note to Trainer</u> This module contemplates training on a practical level. Candidates must know what to do, why we do and how to do it. An assessment of the candidates will take place through both formative and summative assessments. Candidates will have to score a minimum of 50% to pass an assessment.</p>	8	2	10

¹ **Minimum contact hours**

² **Assignments**

³ **Notional hours**

<p>When to write letters and when not to write letters. How much detail to include in a letter and what type of detail. An introduction on how to carry out legal research. Where to find the law. How to find the law quickly. How to use annotations effectively. How to use electronic Law reports. What is meant by: "the best statement of the law is to be found in the most recent decision of the highest court."</p>				
<p><u>2 Plain Language Writing and Analytical Thinking – Reg 4(1)(b) Content:</u> A sensitive assessment of English language competency needs to be done. What is plain language writing: why plain language is relevant to lawyers: and, how to achieve writing in plain language. A short course on writing skills to cover grammar, syntax, sentence construction, punctuation and vocabulary. Assistance with comprehension skills. Introduction of a compulsory reading programme. All candidates are required to read at least one book, of their own choice, per month throughout the period of the PVT contract. Principals and pupil masters must ensure compliance.</p>	<p><u>Expected Outcomes</u> The ability to write well is an essential skill. The following is expected of candidates: a) Candidates must write in plain English on their own. They must not become slaves to precedents. b) After the PVT contract is completed, there must be a demonstrable improvement in the candidate's literacy skills. c) During PVT contracts, candidates must be encouraged to develop a culture of reading and writing. d) Candidates must demonstrate the ability to write as a lawyer without <i>sounding</i> like one. Candidates must not use jargon or "legalese".</p>	<p><u>Note to Trainer</u> The module is extremely important: an effort has to be made to improve literacy skills amongst candidates. Principals and pupil masters must be aware of their roles in this. An experienced English teacher must present the plain English writing module. The module must have writing and reading assignments from the outset: one book per month. Principals and pupil masters must monitor candidates from the outset. Assessment of writing skills needs to take place throughout the PVT contract.</p>	8	3
				11

<p>Candidates must be encouraged to write on their own without copying and pasting from office precedents.</p> <p><u>Problem Solving</u> An explanation of how to analyse a legal problem. How to think like a lawyer. How to apply logic. How to find solutions to legal problems. Critical thinking: What is critical thinking? How to apply critical thinking. The object is to develop application of cognitive skills. How to apply the law to the peculiar facts of one's case. Facts first: law second.</p>	<p>e) Candidates must understand how to approach a legal problem. They must grasp that the facts are the most important: only then should one consider the law. f) An understanding of how to gather the known facts and analyse them is an essential skill. g) The candidate must understand that first the facts have to be obtained, then the matter can be contextualised as to the area of the law that is applicable. h) Candidates have to understand that any legal solution must be supported by the facts of the case.</p>	<p>The final assessments will include the ability to write. Experienced practitioners (at least seven years' experience in practice or a comparable level of expertise) must explain the concept of how to understand a legal problem: how to analyse and contextualise the problem. Then follows the method of finding answers for a client with reference to the facts and the law. Writing involves thinking. There is a method in this. Candidates must apply their minds before putting pen to paper. This must be taught during the first month of the PVT contract. NB: Candidates cannot expect to pass exams and assessments if they are unable to write properly due to poor literacy skills.</p>	
<p>3 Drafting Legal Documents – Pleadings and Motions – Reg 4(1)(c) <u>Content:</u> <u>Managing Fact:</u> a) How to obtain relevant facts. b) What are the sources of fact. c) Obtaining documents including electronic documents. How to preserve documents. d) Obtaining witness statements. e) Carrying out <i>in loco</i> inspections if necessary: how to record the evidence.</p>	<p><u>Expected Outcomes</u> Candidates will know the following: a) Candidates must understand the skills listed in the content column. They are not expected to be expert drafters already. b) Candidates must be able to recognise the procedures and be able to assist in dealing with cases under the supervision of principals and pupil masters.</p>	<p><u>Note to Trainers</u> Note: for this module we expect the trainers to have at least 7 to 10 years of practical experience or a comparable level of expertise in all areas of dispute resolution and litigation in particular. When assessing assignments, assist by correcting the faults and ask the candidate to redraft; in this way</p>	

<p>f) How to obtain and preserve relevant exhibits: what exhibits are. g) The explanation above is required before any papers are drafted.</p>	<p>c) Candidates will be subjected to both formative and summative assessments. d) Candidates will know how to analyse three sets of affidavits in motion matters. e) Candidates will know how to grasp findings of facts on affidavits, including the <i>Plascon-Evans</i> test. f) Candidates will know how to bring an interdict [as part of the case studies].</p>	<p>there will be some skills transfer. Remember to explain managing facts before allowing candidates to start drafting pleadings. Explain that the sequence of facts forms the crux of chronologies needed in terms of Directives in many Courts.</p>	
<p><u>Analysing Fact.</u> a) Candidates must understand what to do after gathering the facts. b) Candidates must learn, at the outset, to sequence all the facts and documents. c) Candidates must be able to analyse facts on the basis that only relevant facts must be retained and presented at a hearing; only facts that are admissible, in terms of the rules of evidence, can be relied on. Further, candidates must understand that any version of facts they intend to rely on, must be probable in relation to the circumstances of the case. d) Candidates must learn, early in their careers, that they cannot go to court with a version that is improbable or implausible. e) Candidates must be able to work out that there are facts which support their own client's version of what actually happened; and that there will be facts that do not support their client's version. f) Candidates must understand that carrying out such an analysis is the</p>			

<p>only way for lawyers to understand the facts of their client’s case.</p> <p>g) Merely reading witness statements and documents is of no value. Nor is it of any value merely to accept a version on the basis that “those are my instructions”; one must carry out an objective fact analysis first.</p> <p><u>Working out the case concept (or theory of your case)</u></p> <p>a) What happened according to your client’s version of the facts?</p> <p>b) What are the issues, factual and legal, that emerge from the facts?</p> <p>c) What are you going to tell the judge at the hearing?</p> <p>d) What version are you going to present in your papers?</p> <p>e) How will you present evidence?</p> <p>f) Who will be the witnesses and what documents will you need?</p> <p>g) How will you run the case from pleadings to final argument?</p> <p>h) This process has to be applied before any papers are drafted.</p> <p><u>Working out the cause of action or defence</u></p> <p>a) There must be a comprehensive explanation, using case studies, of how one takes a set of facts and works out what your client’s cause</p>					
--	--	--	--	--	--

<p>of action or defence is. Look to the case concept and the applicable law. Do not draft papers without first undertaking this step.</p> <p>b) Candidates must understand the meaning of the elements of one's cause of action or defence and where and how to find those elements in the peculiar facts of your case and with reference to the law.</p> <p>c) Candidates must know how to recognise and formulate a cause of action and defence before any drafting commences.</p> <p>d) The object is for candidates to understand this method instead of consulting a precedent first.</p> <p><u>Deciding what procedure to use Action / Application</u></p> <p>a) Candidates must understand the test whether to proceed by way of action or motion.</p> <p>b) Candidates must understand the main differences between actions and applications.</p> <p>c) Refer to the Uniform Rules of Court and practice directives.</p> <p>d) What is meant by a dispute of fact: how does one test a set of facts?</p> <p>e) Candidates must know what happens in court when an application cannot be adjudicated on the papers.</p>	<p>Emphasise the importance of drafting pleadings without using a precedent.</p> <p>We recommend using case studies to assist candidates to understand the test whether to proceed by way of motion or action.</p> <p>Explain a referral to evidence and a referral to trial. In each case use a case study of how such referrals are drafted.</p>		
---	--	--	--

<p><u>Drafting pleadings</u> (including how to get to your first rough draft)</p> <ol style="list-style-type: none"> a) Candidates must draft on their own without the assistance of a precedent. b) Candidates must read and understand rules 18 and 22 of the Uniform Rules. c) Candidates must know how to draft particulars of claim and a plea. d) Candidates must draft causes of action in contract, delict, divorce and unjust enrichment. The focus must be on contract and delict. e) Candidates must do assignments for formative assessments. f) Candidates must grasp the lay-out of pleadings with proper paragraph numbering, appropriate spacing, font types, use of headings and point first drafting. g) No pleading may be vague: each pleading must disclose a cause of action. h) A plea must comply with Rule 22 of the Uniform Rules. Bare denials are not allowed. Candidates must plead their client's version, which, if proved, will amount to a defence to plaintiff's claim. i) Candidates must be able to draft a Special Plea and to know when and how to draft a Special Plea. 	<p>Emphasise that candidates draft on their own without the assistance of a precedent.</p> <p>Explain the method of drafting with reference to Rules 18 and 22 of the Uniform Rules of Court.</p> <p>Use case studies to assist candidates to draft all causes of action.</p> <p>Assignments can be submitted on e-learning platforms. Trainers must assess each assignment.</p> <p>Explain the lay-out of pleadings with proper paragraph numbering, appropriate spacing, font types, use of headings and point first drafting.</p> <p>Explain what is meant by a pleading that is vague and one that does not disclose a cause of action.</p> <p>Explain that in a plea there must be a response to the plaintiff's facts and that evasive drafting is not tolerated. They are not to draft bare denials without setting out their client's version.</p>		
---	--	--	--

<p><u>Drafting Notices of Motion and three sets of affidavits</u></p> <p>a) Candidates must learn the different types of notices of motion and when each is used. This must include a long form notice of motion, a short form notice of motion and a Two-Part notice of motion.</p> <p>b) Candidates must know when and how each of the three types is used.</p> <p>c) Candidates must learn to draft founding, answering and replying affidavits.</p> <p>d) Candidates must know the required lay-out of each of the affidavits with reference to the requirements in the Uniform Rules and directives.</p> <p>e) Candidates must know how to index and paginate court files.</p>		<p>Explain a “Special Plea”, when it is used and how it is drafted.</p> <p>Use case studies and get the candidates to draft on their own.</p> <p>Explain the purpose of founding, answering and replying affidavits.</p> <p>Online Drafting exercises and case studies will have to be completed.</p>		
<p>4 Ethics for legal Practitioners – Reg 4(1)(d)</p> <p>Content: A single contact session as well as Ethics for Legal Practitioners needs to be incorporated into the introduction to each module recommended in this programme. Candidates must be aware of the ethical requirements for all types of practitioner.</p>	<p><u>Expected Outcomes</u></p> <p>a) Candidates will know the seven universal ethical principles that apply to all professions.</p> <p>b) Candidates will know any specific rule in the Code of Conduct that applies to any module.</p>	<p><u>Note to Trainer</u></p> <p>The content of the course must be uniform for all candidate legal practitioners.</p> <p>Currently the regulations and the Code of Conduct provide for three types of legal practitioner. So, the candidate must be aware of the ethical requirements for all three.</p>	6	6

<p>Details of course content</p> <p>The seven universal ethical principles</p> <p>The current Code of Conduct of 29 March 2019:</p> <p>Section 3 of the general provisions in the Code of Conduct requires attention.</p> <p>Section 56 The scope and limits of legitimate cross-emanation are particularly important.</p>	<p>c) Candidates will be able to apply the Code of Conduct applicable to all branches of the legal profession, be it attorney, advocate or advocate with a trust account.</p> <p>d) All candidates will understand and know the provisions of section 3.</p> <p>e) All candidates will be able to apply section 56 of the Code when doing the Trial Advocacy programme and in the summative assessment of the open book exam.</p>	<p>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.</p> <p>Candidates will answer questions based on applying the Code.</p>		
<p>Universal ethical principles</p> <p>honesty</p> <p>trustworthiness</p> <p>loyalty</p> <p>respect for others</p> <p>adherence to the law</p> <p>doing good and avoiding harm to others</p> <p>accountability</p>	<p>The universal ethical principles text is from https://www.iaa.govt.nz/for-advisers/adviser-tools/ethics-toolkit/professional-ethics-and-codes-of-conduct/</p>	<p>Only the seven ethical principles set out in the first column must be memorised by rote.</p>		
<p><u>5 Civil Procedure and Trial Advocacy – Reg 4(1)(e)</u></p> <p>Content:</p> <p>There is a substantial overlap in the Uniform Rules of Court and Magistrates’ Courts Rules.</p> <p>Candidates must have knowledge of the rules in both courts. The differences must be highlighted. In particular the difference in powers and functions</p>	<p><u>Expected Outcomes</u></p> <p>Candidates must understand the process and procedures in taking a matter to trial from pleadings to hearing.</p> <p>The purpose is to ensure that candidates</p>	<p><u>We provide for six days of training</u></p> <p><u>Note to Trainers</u></p> <p>What follows is part of the Trial Advocacy programme. For purposes of this PVT programme we expect the various disciplines to be dealt with in a programme which can be included within the high court and magistrates court practice</p>	<p>36</p>	<p>6</p>
			<p>42</p>	

<p>regarding the Magistrate's Court. Candidates must be made familiar with Practice Directives in both the High Court and Magistrate's Court. Candidates must know where to find the directives and how they are applied.</p> <p>The following must be dealt with: <u>Contingency Litigation:</u> What is contingency litigation and how to decide whether to take a matter on contingency? What are the rules and how to charge contingency fees? What do courts say about contingency litigation?</p> <p><u>Case management:</u> What is Case Management, and how to apply it in your practice and in court proceedings. Candidates must learn that modern day litigation is less adversarial and more cooperative with the object being to resolve disputes quickly and at a reasonable cost. Candidates must know how to refer a matter to case management, the process and procedures in case management.</p> <p><u>Certification:</u> Candidates must understand how the trial certification process works. In particular that a judge will require the parties to agree and record the triable issue/s.</p>	<p>understand the practical steps required to be taken and how to prepare for a trial.</p> <p>Candidates will know how to set down a matter for trial.</p>	<p>and procedure. The minimum hours must be achieved. This course is not to be confused with the five-day advanced course that we recommend for those practitioners who want to appear in court trials and applications. That advanced course is dealt with separately, below. The instruction method is practical: this requires the use of case studies. Advocacy is a performance skill: so, trainers are expected to give demonstrations. This can also be included in a moot court programme.</p>	
<p><u>Note to Trainers</u> Since instruction is of a practical nature, trainers must use case studies so that candidates can actually carry out various tasks or see how they are done. The trainers for this module must have at least 7 to 10 years' experience or a comparable level of expertise in dispute resolution.</p> <p>Instruction must be given about the process and procedures in case management and certification process: this must include attending case conferences and certifications with a judge.</p>			

<p><u>Trial Preparation:</u> Candidates must understand that there is a duty on a practitioner to settle a matter at any stage. The earlier the matter gets settled, the better.</p> <p>Candidates must acquire the following skills:</p> <ul style="list-style-type: none"> * How to analyse pleadings. * How to determine triable issues. * How to limit the issues for trial. * How to initiate case conferences for certification and for trial readiness. * How to do pre-trial conferences, and how to draft the agenda. * How to carry out a proof analysis. <p>Candidates must understand what is meant by “proof of a fact” and how to discharge the onus.</p> <ul style="list-style-type: none"> * How to carry out witness and documentation analysis. * How to prepare chronology documents. <p><u>Discovery:</u></p> <ul style="list-style-type: none"> * Candidates must understand latest Developments on how to obtain, preserve and present relevant documentation including Electronic Documents. * Candidates must understand the concept of narrow discovery and proportionality. 	<p><u>Note to Trainer</u> Explain what is meant by “door settlements” and why our courts are against them. Explain the consequences of making door settlements.</p> <p>Explain that the intended purpose of the pre-trial conference must be achieved; it is not merely a step requiring compliance.</p> <p>Explain that once the issues are settled, candidates have to consider how they will go about proving their client’s version.</p>		
---	---	--	--

<p>* Candidates must know how to prepare trial bundles. This must include the importance of sequencing.</p> <p><u>How to Attend Pre-Trial Conferences and Case Conferences.</u></p> <p>* Candidates must understand the purpose of these conferences and how that purpose can be achieved.</p> <p><u>Trial Procedure</u></p> <p>Requirement of practice notes for the court. When are these notes expected to be filed and what are the contents?</p> <p><u>The content</u></p> <p>Before proceeding with this programme, candidates must be made aware of their Case Concept, how they intend to proceed with the hearing and discharge the onus.</p> <ul style="list-style-type: none"> * Witness briefing. Candidates must know how to prepare a witness for court appearances. * Opening Statement. * Leading a witness in chief. * Cross examination. * Re-examination. * Presenting argument. <p>Note: this is part of the trial advocacy programme. These skills will be split up as separate modules which will be incorporated into and presented as part of</p>	<p><u>Note to Trainer</u></p> <p>This will include an explanation of case conferencing with judicial officers.</p> <p>Explain how to prepare for a case or pre-trial conference.</p> <p>Explain the purpose of practice notes.</p>		
---	--	--	--

<p>the civil procedure programme. Different instructors can be used.</p> <p><u>Heads of Argument.</u></p> <ul style="list-style-type: none"> * When are heads required. * What is meant by “main heads of argument”. * What are Short heads and Comprehensive heads. <p>Note: candidates will not be expected to draft heads in this programme.</p>		<p>Explain how a typical set of heads is laid out.</p>		
<p><u>6 Criminal Court Practice and Trial Advocacy – Reg 4(1)(f)</u></p> <p>Content:</p> <p>Candidates must know the peculiar requirements in a criminal trial thus:</p> <p><u>Course Content</u></p> <ul style="list-style-type: none"> * How to obtain and analyse the charge sheet and docket. * How to take instructions and obtain your client’s version. * How to obtain witness statements and ensure witness presence in court. * How to do plea bargaining. * How to do bail applications. * How to plead effectively, including when to make a Plea explanation. * How to attend trial and pre-trial conferences. * How to cross-examine state witnesses. 	<p><u>Expected Outcomes</u></p> <p>Candidates will understand the process involved in conducting a criminal matter, from obtaining the charge sheet to final argument.</p>	<p><u>Note to Trainers</u></p> <p>This module contemplates training on a practical level. So, avoid repeating the university lectures on criminal procedure.</p> <p>Candidates are expected to attend criminal trials and bail applications in the Magistrate’s Court and High Court during the duration of the PVT contract. Use case studies and demonstrate what happens in court.</p> <p>The trial advocacy component can be incorporated into the trial advocacy training for the High Court.</p>	12	4
			16	

CONTINUES ON PAGE 130 - PART 2



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Vol. 658

3 April 2020
April

No. 43192

PART 2 OF 4

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes

ISSN 1682-5843



9 771682 584003

43192



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

<p>* How to present your client's version to a state witness.</p> <p>* How to lead evidence in chief including the decision to call your client.</p> <p>* How to present argument</p> <p>* How to present sentencing options and evidence in mitigation.</p> <p>Note: the court craft here will also be a module of Trial Advocacy.</p>					
<p>7 Insolvency practice – Reg 4(1)(g)</p> <p>Content:</p> <p>How to bring an: Application for sequestration both: - Voluntary and - Compulsory</p> <p>Liquidation and, Business rescue. Application for Rehabilitation.</p> <p>Discussion of the relevant provisions of the Insolvency Act and Companies Act. Candidates must understand the effect of a sequestration of a person's estate and the effect of the winding up of a juristic person. Candidates are not expected to run meetings of creditors. That experience is gained inhouse while in practice with senior lawyers.</p> <p>Blended learning: made up of contact sessions + online work.</p>	<p><u>Expected Outcomes</u></p> <p>The candidate will be able to:</p> <p>a) Draft a notice of motion for each type of application, be it liquidation or sequestration.</p> <p>b) Draft the founding affidavit for each type of application so that the allegations contain all the basic compliance requirements.</p> <p>c) Understand the difference between friendly and voluntary applications for sequestration.</p> <p>d) Understand the effect of sequestration on the insolvent's property.</p> <p>e) Find the applicable law concerning the winding-up and liquidation of companies.</p> <p>f) Be able to apply the relevant practice directives.</p>	<p><u>Note to Trainer</u></p> <p>The course requires formative assessments while candidates get used to drafting the notices of motion and founding affidavits.</p> <p>Summative assessments need to be open book exams in the sense that candidates have access to the Insolvency Act 24 of 1936, the Companies Act 71 of 2008 and Chapter XIV of the Companies Act 61 of 1973.</p> <p>The summative assessment must establish whether the candidate can produce a valid application: it must not rehash the LLB degree.</p>	12	4	16

<p>8 Drafting of Contracts – Reg 4(1)(h) Content:</p> <ul style="list-style-type: none"> * General techniques in drafting a commercial contract: Obtaining instructions: * The basic provisions for effective contracts: * The structure of a contract (international best practice): * How to use commercial precedents. * How to draft the standard boilerplate provisions. * How to draft transactional provisions. * Where relevant, questions of basic compliance must be addressed. * Introduction to due diligence. 	<p><u>Expected Outcomes</u></p> <p>Candidates must understand that drafting a contract involves much more than merely reaching for a precedent.</p> <p>Understanding the transaction is of vital importance followed by due diligence.</p>	<p><u>Note to Trainer</u></p> <p>The emphasis must be on how to understand the transaction, then to draft the provisions.</p> <p>There must be a critical method in using precedents. It is not a mere copy and paste exercise.</p> <p>We recommend the use of a case study which will become part of the formative assessment.</p>	12	3	15
<p>9 Matrimonial Matters and Divorce – Reg 4(1)(i) Content:</p> <p>Taking instructions in detail.</p> <p>Advice on marriage and its consequences</p> <p>Ante-nuptial contracts</p> <p>Advice on out of community of property with or without the accrual system and marriage in community of property</p> <p>Divorce and its consequences</p> <p>Drafting particulars of claim / defence.</p> <p>Drafting Rule 43 Applications.</p> <p>How to settle matrimonial disputes outside Court. ADR in Family Law.</p>	<p><u>Expected Outcomes</u></p> <p>Candidates must appreciate that all family law matters are dealt with differently. Our courts do not encourage adversarial litigation and expect the parties to cooperate towards a reasonable settlement.</p> <p>These matters must be dealt with in a sensitive and sensible manner. Candidates must be alive to this especially where minor children are involved.</p> <p>The candidate must understand the following:</p>	<p><u>Note to Trainers</u></p> <p>This module must be presented by a practitioner with 7 years or more experience or a comparable level of expertise in all aspects of family law.</p> <p>The course requires formative assessments while candidates get used to drafting pleadings for divorce and Rule 43 applications.</p> <p>Summative assessments need to be open book exams in the sense that</p>	10	6	16

<p>Advice on rights and duties concerning children in a marriage, including: Adoptive children: Step-children: and, Children in foster care. How to deal with custody of children. The best interests of the child principle. Maintenance of children and, if applicable, former spouses. A discussion on the judgement in <u>Brownlee v Brownlee</u>. The duty of a practitioner in all family matters to resolve disputes quickly and cheaply. Blended learning: made up of contact sessions + online work.</p>	<p>a) How to carry out the first consultation to get all the facts. b) How to advise on marriage, ante-nuptial contracts with or without the accrual system, community of property and the consequences of marriage. c) How to advise on divorce and its consequences. d) How to settle matrimonial disputes outside Court and to introduce clients to the idea of settlement through ADR. e) How to draft divorce particulars of claim or defence. f) How to draft Rule 43 applications. g) How to give advice concerning the Children's Act 38 of 2005, especially the Hague Convention. h) How to work out maintenance for children, and where applicable, former spouses. i) How to enforce divorce settlement agreements. j) Able to identify the principle in the Brownlee case.</p>	<p>candidates have access to the Children's Act 38 of 2005, and legislation like the Marriage Act 25 of 1961, Recognition of Customary Marriages Act 120 of 1998, Civil Union Act 17 of 2006 and Divorce Act 70 of 1979, and all applicable practice directives and practice manuals. Emphasis must be on the application of the law, not rote learning of statutes. 50% is required to pass an assessment. One must assume that candidates dealt in their LLB with the law relating to engagement, the contract of marriage, the formalities required for a valid marriage to the Marriage Act, the Recognition of Customary Marriages Act and the Civil Union Act. Likewise, one assumes the LLB dealt with the Child Care Act 38 of 2005 and the Divorce Act 70 of 1979.</p>	6	6	12
<p>10 Delictual Claims Including Personal Injury Claims – Reg 4(1)(j) Content: * How to gather & analyse the facts before deciding on a cause of action.</p>	<p><u>Expected Outcomes</u> Delictual claims, including personal injury claims are an important part of any litigation practice.</p>	<p><u>Note to Trainer</u> This module requires a trainer of more than 7 years of practical experience or a comparable level of</p>	6	6	12

<p>* How to work out the cause of action.</p> <p>* How to draft the cause of action (particulars of claim).</p> <p>* How to assess quantum.</p> <p>* Candidates must be familiar with the Uniform Rules of Court and practice directives relating to these claims.</p> <p>* Case studies on RAF claims and medical negligence claims.</p> <p>* How and when to engage an expert and the case management of experts before the matter is allocated a trial date (case management process).</p>	<p>Candidates must know how to obtain the facts, contextualise the matter and formulate a cause of action with reference to the facts and the law.</p> <p>Candidates are expected to know that there is a process of “certification” in court which case manages these claims from issue to hearing.</p>	<p>expertise.</p> <p>It is important for trainers to point out that there are abuses that take place; such as the over-inflation of quantum.</p> <p>Candidates must avoid this and where possible, settle the claim as soon as possible.</p> <p>There should be no “door settlements”.</p> <p>In new directives, door settlements may require the legal practitioners to forego their fees or, worse, pay the fees of the parties.</p>	<p>30</p>	<p>6</p>	<p>36</p>
<p>11 <u>Legal Practitioners – Accounts Management – Reg 4(1)(k)</u></p> <p>See Annexure “E”</p> <p>Old content:</p> <p>* Cash book.</p> <p>* Ledgers.</p> <p>* Transfer Procedures.</p> <p>* VAT.</p> <p>* Section 86 (3) and Section 86 (4) Trust Investments + Rules.</p> <p>* Conveyancing Transactions.</p> <p>* Correspondents Transactions and Accounts.</p> <p>* Trust Banking Accounts.</p> <p>Note that the above is a decades’ old programme, roundly criticised for not serving any useful purpose.</p>	<p>See Annexure “E”</p>	<p>See Annexure “E”</p> <p>Note 01: <u>The Legal Practice Management course is currently provided by LEAD and may be undertaken at any time after completion of this course.</u></p> <p>Note 02: this programme coupled with the current book keeping exams requires urgent review.</p> <p>Note 03: if an alternative programme, such as the above recommendation, is approved; then this need not be an elective course and can be of uniform application, not only for attorneys and advocates with trust accounts.</p>	<p>30</p>	<p>6</p>	<p>36</p>

<p>It has become outdated and irrelevant.</p> <p>Suggested reviewed programme:</p> <p><u>First Module</u></p> <ul style="list-style-type: none"> * How to use accounting software. * Comprehensive training on the management of trust funds and trust accounts – the rules and obligations. * Thorough knowledge of Sections 86 to 91 of the Legal Practice Act. * The rules and requirements of the Fidelity Fund. * Applying for a Fidelity Fund Certificate. <p><u>Second Module</u></p> <ul style="list-style-type: none"> * How to manage the finances of one's practice. * How to manage personal finance. <p><u>Third Module</u></p> <ul style="list-style-type: none"> * Introduction to Legal Practice Management 	<p><u>12 Labour Dispute Resolution – Reg 4(1)(f)</u></p> <p><u>Content:</u></p> <p>Industrial Relations Framework. Identification of an employee Permanent employees. Temporary employees.</p>	<p><u>Expected Outcomes</u></p> <p>The candidate will understand the following:</p> <p>a) How to conduct consultations to get all the facts, especially to obtain a balanced understanding of any dispute between the parties.</p>	<p><u>Note to Trainer</u></p> <p>The course requires formative assessments while candidates draft statements of case, notices of motion and founding affidavits for the Labour Court, and appeals to the Labour Appeal Court.</p>	<p>12</p>	<p>0</p>	<p>12</p>
--	--	---	--	------------------	-----------------	------------------

<p>Disciplinary Proceedings and Hearings. Dismissals. Bargaining Agents, Forums and Collective Bargaining. Dispute resolution. Labour Relations Act 66 of 1995. Basic Conditions of Employment Act. Employment Equity Act 75 of 1997. Rules for the Conduct of Proceedings in the Labour Court (GN 1665 of 1996; GG 17495 of 14 Oct 1996) Rules for the Conduct of Proceedings in the Labour Appeal Court (GN 1666 of 1996; GG 17495 of 14 Oct 1996)</p> <p>NB: The LSSA Manual on Labour Dispute 2019 is a mini textbook. This manual will have to be revised.</p>	<p>b) How to identify an employee. c) How to identify temporary and permanent employees. d) How to identify the difference between temporary employees and independent contractors: Chapter IX of the LRA. e) How to draft a statement of claim ito Form 2, Rule 6 Referrals of the Labour Court Rules. f) How to draft applications ito Form 4, Rule 7 Applications of the Rules. g) Whether a dismissal complies with Chapter VIII and Schedule 8: Code of Good Practice: Dismissal of the LRA.</p>	<p>Summative assessments need to be open book exams in the sense that candidates have access to the Labour Relations Act, the Basic Conditions of Employment Act, and the Employment Equity Act.</p> <p>The summative assessment must establish whether the candidate can produce a valid pleading: it must not rehash the LLB degree.</p>		
<p>13 Alternative Dispute Resolution – Reg 4(1)(m) Content: Defining and understanding: - what is a conflict. Negotiation. Mediation. Protection of Investment Act 22 of 2015, section 13. Arbitration. Arbitration Act 42 of 1965 and the International Arbitration Act 15 of 2017.</p>	<p><u>Expected Outcomes</u> The candidate must understand the following: a) How to identify a conflict. b) The differences between negotiation, mediation, arbitration and litigation. c) The pros and cons of negotiation, mediation, arbitration and litigation. d) When is mediation appropriate? e) When does mediation not work? f) How arbitration differs to litigation. g) Is arbitration appropriate for organs of state that are audited by the Auditor General?</p>	<p><u>Note to Trainer</u> The course requires formative assessments while candidates engage in case studies. Summative assessments need to be open book exams. Candidates have access to the Arbitration Act, the International Arbitration Act and section 13 of the Protection of Investment Act 22 of 2015.</p>	6	6

<p>The role of ADR in litigation. The LSSA Manual on Alternative Dispute Resolution.</p>	<p>14 Wills and Estates – Reg 4(1)(n) Content: Wills. The Wills Act 7 of 1953 The Trust Property Control Act 57 of 1988. Drafting Wills. Taking instructions, what one needs to know to draft a will. Proper consultation. The role of sound literacy skills. Interpreting (archaic) Wills. Drafting Living Wills. Does the National Health Act 61 of 2003 make provision for a living will? Testate and Intestate Succession. Intestate Succession Act 81 of 1987. Maintenance of Surviving Spouses Act 27 of 1990 Recognition of Customary Marriages Act 120 of 1998 Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009. Administration of deceased estates. Administration of Estates Act 66 of 1965 Estate duty. Estate Duty Act 45 of 1955.</p>	<p>Expected Outcomes</p> <p>The candidate must understand the following:</p> <ol style="list-style-type: none"> How to conduct a comprehensive consultation with clients before advising on the law of succession and drafting a will. How to draft a will. How to draft a living will. How to apply the Trust Property Control Act to trusts established in a will. How to apply the Intestate Succession Act. How to apply the Administration of Estates Act from reporting the estate to the final liquidation and distribution account. How to apply the Estate Duty Act. Candidates must be familiar with the other legislation mentioned in the first column. 	<p>Note to Trainer</p> <p>The course requires formative assessments while candidates engage in drafting wills. Summative assessments need to be open book exams. Candidates must have access to the Wills Act, the Trust Property Control Act, the Intestate Succession Act and the Reform of Customary Law of Succession and Regulation of Related Matters Act.</p>	18	4	22
--	--	--	--	----	---	----

<p><u>15 Introduction to E- Commerce and application of the Electronic Communications and Transactions Act 25 of 2002, including the use of electronic signatures – Reg 4(1)(o)</u> Content: A discussion on the content of ‘ECTA’, the Electronic Communications and Transactions Act 25 of 2002. What is an electronic signature? How to deal with these signatures in practice. What is an advanced signature and where is it required in practice? The effect of ECTA on drafting contracts, in particular “non-variation clauses”. The effect on business and legal practice of the internet and cloud technology. An introduction to Block Chain technology and smart contracts.</p>	<p><u>Expected Outcomes</u></p> <p>This module is intended to introduce candidates to the ever-changing world of digital technologies and how this impacts on the work of practitioners, how clients access legal services and the impact on how contracts are drafted and concluded.</p> <p>It is important for candidates to understand what is meant by an electronic signature and how this impacts on commercial transactions.</p>	<p><u>Note to Trainers</u></p> <p>The trainer for this module must be an experienced practitioner who is routinely involved in digital commerce.</p> <p>This module will not be subject to any summative assessments.</p>	3	0	3
<p>Basic Business Transactions – Reg 4(1)(p) Content: The seven main business transactions. * Sale of business * Sale of shares * Lease of immovable property * Employment of an independent contractor * Partnership agreement * Joint venture * Service level agreement</p>	<p><u>Expected Outcomes</u></p> <p>The candidate must understand the following: a) How to identify the seven main business transactions. b) How to understand the peculiar transaction client is engaged in. c) How to apply the general principles of contract from offer and acceptance to capacity and reciprocal obligations. d) How to negotiate, plan, draft and</p>	<p><u>Note to Trainer</u></p> <p>Summative assessments need to be open book exams. The instruction must focus on candidates drafting their own contracts without recourse to precedents insofar as it relates to the transaction. Ensure candidates can understand the difference between a sale and a</p>			

<p>Good faith, public policy and legal certainty in drafting contracts. Performance and administration of business contracts. Remedies for breach of contracts. NB. Responsible use of precedents is allowed.</p>	<p>administer a contract. e) How to weigh key elements of the contract like liabilities and debts, taxes, manageability and business growth with reciprocal obligations (rights and duties). f) When and whether good faith is an element of a contract: implied, tacit, express or required by law – like case law.</p>	<p>lease: and, a partnership and a joint venture. For a critical comparison of constitutionalism bringing potential uncertainty to contract law, see the article by Judge of Appeal Malcolm Wallis ‘<i>Commercial Certainty and Constitutionalism: Are They Compatible</i>’ (2016) 133 SALJ 545.</p>	
<p>Business Rescue – Reg 4(1)(q) Content: Definition & purpose of business rescue Definition of financially distressed How to accomplish business rescue Who may object to business rescue and the grounds of objection? How an affected person applies to court for an order placing a company under supervision and commencing business rescue proceedings. How a company may legally dispose of its property while under business rescue. The order of preference of creditors when a company lacks money to meet its debts. Effects of business rescue on contracts: employees, shareholders and directors. Rights of employees during business rescue. Participation by creditors and holders of</p>	<p>Expected Outcomes The candidate must understand the following: a) How business rescue in Chapter 6 of the Companies Act is applied. b) How to assess whether a company is financially distressed. c) The advantages and disadvantages of business rescue generally. d) How an affected person applies to court to place a company under business rescue. e) What is the effect of such an order? f) How to draft such founding affidavit. g) How to draft an answering affidavit against business rescue. h) Who has preference in claims against the company under rescue? i) The effect on contracts, employees, shareholders and directors. j) Who has a right to participation in the</p>	<p>Note to Trainer Summative assessments need to be open book exams. Trainers need to discuss the pros and cons of business rescue and ensure candidates know the extent and effect of the moratorium on legal proceedings and the protection of the company’s property interests. Candidates should know the general powers of business rescue practitioners. The rights and duties of the affected persons from employees, directors, shareholders to creditors needs to be understood generally.</p>	

<p>company securities. Requirements of a business rescue plan. Implementing a business plan. Consequences for failure to implement the plan.</p>	<p>business rescue proceedings? The requirements of a business rescue plan. How a plan is implemented and the consequences if it is not.</p>	<p>Finally, the implementation of a business plan must be understood as well as the consequences for default.</p>		
<p>16 Constitutional law – Reg 4(1)(r) Content: Introduction to Constitutional law and Customary law. For Customary Law see the online course below at item 20. Constitutional Law: Jurisdiction of our courts to hear constitutional matters. The 2013 change to the jurisdiction of the Constitutional Court. Introduction to the Rules and Directives in the Constitutional Court. Eleven ways to get to the Constitutional Court. How to enforce Constitutional rights. How to advise clients about their Constitutional rights, duties and obligations. How to apply Chapter 2 of the Bill of Rights and the limitations clause. How to apply the rest of the Constitution in giving advice to clients.</p>	<p><u>Expected Outcomes</u> The candidate must understand the following: a) How to conduct a comprehensive consultation with clients before advising on the Constitution. b) How to assess a constitutional issue. c) How to draft applications in terms of the Rules of the Constitutional Court. d) How to draft applications for leave to appeal to the Constitutional Court. e) How to explain and give clients advice about the remedies permitted in the Constitution.</p>	<p><u>Note to Trainer</u> Summative assessments need to be open book exams. Candidates must have access to the Constitution, 1996 and the Constitutional Court Rules and the Uniform Rules of Court.</p>	<p>6</p>	<p>3</p>
			<p>9</p>	

<p>17 Legal Technology (Online) – Reg 4(1)(s) Content:</p> <p>This module is intended to introduce candidates to the impact of technology on legal practice. Candidates must be aware of how a modern legal practice is set up and what technologies avail practitioners. Candidates must be made aware of how technology has changed the way clients, or consumers, access legal services. This must include how practitioners make use of technology to market their firms and remain relevant to their clients.</p>	<p><u>Expected Outcomes</u></p> <p>This module represents an introduction to the use of technology in a 21st century law practice. Candidates must understand how technology has changed how consumers access legal services. Candidates must be encouraged constantly to keep up with the changes that flow from the increasing use of technology in our practices.</p>	<p><u>Note to Trainers</u></p> <p>This module must be presented by a practitioner in a practice that makes use of the latest technologies. Trainers must impress on candidates that technology will constantly influence how we work and serve our clients. There will not be any summative assessments of this module.</p>	0	6
<p>18 Introduction to practice management (Online) – Reg 4(1)(t) Content:</p> <p>The role of management Organisational behaviour Business plan Marketing Financial management Administration Risk management Personal management Starting a practice The attorney and insurance</p>	<p><u>Expected Outcomes</u></p> <p>This module is vital to candidates who seek eventually to open their own practices.</p>	<p><u>Note to Trainers</u></p> <p>This module must be presented by an experienced practitioner who started his or her own practice from scratch. There will not be any summative assessments of this module.</p>	0	6

<p>19 Introduction to Cyber law (Online) – Reg 4(1)(u) Content:</p> <p>Awareness of cyberattacks. Protective risk management strategy. Data response plan. Chapter 1: Technology Chapter 2: Organisational processes Chapter 3: Staff training Responsibility for personal/commercial information. Specific cyber security tips.</p> <p>The future of artificial intelligence as a boon and a threat to legal practitioners.</p>	<p><u>Expected Outcomes</u></p> <p>Candidates will be able:</p> <ol style="list-style-type: none"> to make adequate decisions about the technology required to sustain a reasonable measure of cybersecurity in the context of a law firm/practice, to have a good grasp of the organisational processes involved in a law practice to maintain adequate cybersecurity, and, to have an appreciation of what is required to keep all staff in a law practice, in particular – oneself – up-to-date with the essential elements of cybersecurity. 	<p><u>Note to Trainer</u></p> <p>Currently the cybersecurity course is an online course. Summative assessments are done online during the course.</p>	0	6	6
<p>20 Customary Law (Online) – Reg 4(1)(v) Content:</p> <p>Customary law in the context of the Constitution, 1996 The anomaly of the <i>Bhe</i> decision (living versus official customary law) Marriages into customary law – section 15 of the Constitution Language and culture – section 30 of the Constitution Traditional leadership – ss 211 & 212 of the Constitution</p>	<p><u>Expected Outcomes</u></p> <p>After having studied this study unit, candidates are able to:</p> <ol style="list-style-type: none"> explain the concept customary law differentiate between living customary law and official customary law differentiate between customary law and common law Analyse the significance of customary law in relation to the Constitution Give advice about customary law marriages. Give advice about inheritance and succession under customary law. 	<p><u>Note to Trainer</u></p> <p>Currently, the Customary Law course is an online course. Summative assessments are done online during the course.</p>	0	4	4

<p>Social structure of indigenous communities Succession and inheritance Land and property rights</p>	<p>g) Give advice about land and property rights.</p>			
<p>21 Numeracy skills training – Reg 4(1)(w) Content: The numerical system Basic symbols and terminology in mathematics Using your calculator Basic calculations Order of calculations Rounding off Substitution into formulae Introduction to fractions Adding and subtracting fractions Multiplying and dividing Fractions, decimals and percentages Percentage increase and decrease Value Added Tax and averages Simple and compound interest Proportional allocation Introduction to ratios Comparing ratios Proportional allocation Apportionment of damages</p>	<p><u>Expected Outcomes</u> After having studied this study unit, candidates will be able to: a) understand Roman numerals and writing and reading numbers; b) The windows calculator, the ordinary calculator and the scientific calculator; c) Addition, subtraction, multiplication and division; d) Rounding off, fractions and the concept of the lowest common denominator; e) Adding, subtracting, multiplying and dividing fractions. f) Calculating interest and VAT; g) Understand proportions, ratios and proportional allocation; and h) Apportionment of damages.</p>	<p><u>Note to Trainer</u> Be patient with candidates. There is no exam for numeracy skills. The trainer must be competent in teaching mathematics to adults. There will not be any summative assessments of this module.</p>	<p>0</p>	<p>6</p>

<p>22 Legal Costs – Reg 4(1)(x) Content: Section 35(4) of the Legal Practice Act provides that the SALRC must investigate legal costs and report to the Minister within two years. Until then the tariffs determined by the Rules Board for Courts of Law apply. In the interim the content of the module is as follows: The concept of “legal costs” non-litigious matters civil litigious matters Early advice to client and estimate of costs Estimate of fees and disbursements Mandate Taking a deposit Contingency fees Retainers Agreed fees Ethics in relation to costs overreaching undercharging recovery / attempted recovery of costs for work not strictly necessary Keeping proper accounting records Failure to render accounts Different cost orders party and party costs attorney and client costs attorney and own client costs</p>	<p><u>Expected Outcomes</u> After having studied this module, candidates will be able to:</p> <ol style="list-style-type: none"> explain the concept of legal costs; differentiate non-litigious matters and litigious matters; give a client an accurate estimate of the costs of a matter concerning fees and disbursements to the sheriff, counsel and expert witnesses (if any); understand and apply the law about contingency fees; understand the need to keep proper accounting records; understand the need to account to client in terms of the mandate between client and attorney; understand the different costs orders and be able to explain the orders to a client; draw a bill of costs; attend at taxation and give a useful and meaningful response to the Taxing Master on items in the Bill of Costs. 	<p><u>Note to Trainer</u> Summative assessments may be done online during the course.</p>	6	0	6
---	--	--	---	---	---

<p>costs <i>de bonis propriis</i> 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 Settlement agreements Payments into court and tenders Cost consultants settling of bills of cost formal requirements for taxation notice of taxation taxability of costs appearance on taxation interest on a taxed allocatur consent to taxation Review of taxation</p>					
--	--	--	--	--	--

OPTIONAL COURSES

The LPC will have to accredit institutions to provide the two options below. The LPC can anticipate applications for the options below. The structured course work and the norms and standards appear below. These courses will be attended by practitioners as well.

<p>23 Optional courses:</p> <p>a) Advanced Trial Advocacy – 5 days (40 hrs) This is a structured course as contemplated in Section 25 (3) (a) of the LPA and rule 19.2. The programme must satisfy the requirement of 40 hours, minimum.</p> <p>Advocacy is a performance skill. The course is divided into four parts: the first two parts comprise theory: the last two parts are performances in a mock trial situation under supervision as indicated in the third column, notice to trainers.</p> <p>Part one, how to assess facts. Fact analysis. Part two, how to adopt a strategy for trial, aka a trial theory: a candidate will learn the essential difference between a leading question (for use in cross-examination) and a valid question in leading a witness (the who, what, when, where, why, how and how much questions). Part three, performing in the mock trial as counsel for plaintiff and/or defendant: one day a candidate will be counsel for plaintiff, the next counsel for defendant <i>et cetera</i>. Part four, cross-examination in a mock criminal law trial: all candidates will practice this session.</p>	<p style="text-align: center;"><u>Expected Outcomes</u></p> <p>The trial advocacy training will ensure that:</p> <p>a) Candidates appreciate and understand how to conduct trials with confidence despite their natural nervousness when performing in court.</p> <p>b) Candidates will be able to assess facts that are in their client's favour and against their client's case.</p> <p>c) Equally, candidates will be able to assess facts that favour the other litigant in the case as well as facts that do not favour the other litigant.</p> <p>d) Candidates will have a good grasp of the Good fact – Bad fact assessment. The model assesses good and bad facts for each party independently, first for the plaintiff and then for the defendant.</p> <p>e) Candidates will be able to present an opening statement.</p> <p>f) Candidates will be able to conduct an examination-in-chief using, <i>inter alia</i>, the piggy-back or looping method.</p> <p>g) Candidates will be able to conduct cross-examination in civil cases.</p>	<p style="text-align: center;"><u>Note to Trainer</u></p> <p>The course requires formative assessments while candidates engage in mock trials. The trainer must identify the following six steps during the training and require the candidate to repeat the drill.</p> <ol style="list-style-type: none"> 1. Headnote – a catchy phrase to identify only one fault in the candidate's performance. 2. Playback – repeat exactly the phrase the candidate used which requires improvement. 3. Rationale – explain the nature of the problem and why the performance needs improvement. 4. Prescription – a clear pithy statement of how the performance can be improved. 5. Demonstration – the trainer shows the candidate how to perform. 6. Replay – then candidates immediately repeat the critical part of their performance to show they have grasped the lesson. The replay must be short and to the point. <p>The method requires all candidates to be</p>
---	---	--

<p>The theory and mock trial performances deal with:</p> <ul style="list-style-type: none"> • Opening statement • Examination-in-chief • Cross-examination (civil & criminal) • Re-examination (to be avoided) • Final argument <p>NB: it is assumed that the candidates have an adequate knowledge of the rules of court, the rules of evidence, how to draft pleadings and heads of argument, and a good grasp of ethics.</p> <p>It is also assumed that candidates will read the trial exercises properly before attending the trial advocacy course.</p>	<p>h) Candidates will understand that leading questions are permissible ONLY in cross-examination.</p> <p>i) Candidates will be able to conduct cross-examination in criminal cases. The core duty in criminal cases is to put the version of the accused to the witnesses for the State. Failure to do so renders the accused at risk of being found guilty as charged.</p> <p>j) Candidates will understand why re-examination is not advised.</p> <p>k) Finally, candidates will be able to present a coherent final argument at the end of the trial.</p>	<p>present for each performance. Learning is incremental and each candidate learns from other candidates' performances.</p> <p>Candidates must also be witnesses in the mock trials while they are not performing as counsel in the mock trial. Accordingly, candidates must read the trial exercises carefully and have a thorough recollection of the role each witness plays in the mock trial.</p> <p>NB the trainers will be responsible for both formative and summative assessments of the candidates. The standard of such assessment must be approved by the LPC.</p> <p><u>At the end of the training a candidate must receive a certificate of competence in terms of Rule 19.2.4.</u></p>
<p>b) Advanced drafting course – 5 days</p> <p>Content:</p> <p>Candidates must receive practical training in the following skills:</p> <p><u>Drafting Pleadings</u></p> <p>Candidates must receive training in the following disciplines:</p> <ol style="list-style-type: none"> a) How to obtain the facts and documents; b) How to sequence the facts and documents; c) How to contextualise the matter in law; d) Where to find the applicable law; e) How to apply the law to the facts of the case; f) How to work out the cause of action or defence. 	<p><u>The Expected Outcomes</u></p> <p>Candidates are expected to have a working knowledge of how to draft.</p> <p>An assessment must be made using an open book format of examination combined with the assignments completed during the course.</p> <p>This course must be done after the candidate completed the course on plain English writing. The candidate must also be part of the literacy programme which requires the candidate to read and complete one book per month.</p>	<p><u>Note to Trainers</u></p> <p>This module is an intensive course.</p> <p>Encourage candidates to write on their own from day one. We encourage the use of case studies. Give candidates a statement of fact and require them to draft particulars of claim on their own and without the assistance of precedents.</p> <p>Candidates are expected to draft particulars of claim in Contract and Delict. Each effort must be assessed by a trainer and candidates must be encouraged to repeat the draft until they</p>

<p><u>Drafting skills</u> With the use of case studies, candidates must draft the following:</p> <ol style="list-style-type: none"> a) Be able to write down the material facts of the case; b) Be able to recognise the material elements of the cause of action or defence; c) Be able to use this to prepare a rough draft of particulars of claim’; d) Draft particulars of claim with reference to the Uniform Rules and practice directives; e) Draft particulars of claim with reference to the peculiar facts of the case; f) Draft particulars of claim without reference to precedents. g) Be able to draft a plea with reference to the Uniform Rules and practice directives; h) Be able to draft a version setting out a defence to plaintiff’s claim. i) Candidates must be introduced into drafting statements of claim and statements of defence. 		<p>get it right. This is time consuming and trainers are to impress upon candidates that they are expected to work long hours and at home to complete case studies.</p> <p>The trainer for this module must have more than 10 years’ experience or a comparable level of expertise in drafting for litigation.</p>
<p><u>Motion Court</u> Candidates must learn the following skills:</p> <ol style="list-style-type: none"> a) To assess the facts and the law to decide whether a matter may be dealt with in an application rather than an action. When is a dispute of fact not capable of being adjudicated on the papers? b) To draft notices of motion; including long 		<p><u>Note to Trainers</u></p> <p>This module requires trainers with at least 10 years of experience or a comparable level of expertise in drafting motion papers.</p> <p>We recommend the use of case studies where candidates must draft on their own under supervision of a trainer.</p>

<p>and short form notices as well as two-part notices of motion. A notice of motion in search and seizure applications (Anton Pillar).</p> <p>c) To draft a founding affidavit. This must include the recommended layout in the Uniform Rules and practice directives. Candidates must learn how to set out the cause of action and the supporting evidence and be able to provide justification for the order sought.</p> <p>d) To draft an answering affidavit. The most effective layout must be explained including how to set out a version that will answer an applicant's case.</p> <p>e) To draft a replying affidavit. It must be short and only drafted if strictly necessary.</p> <p>f) To know how to use annexures. Avoid bulky documents and ones not strictly necessary to support the deponent's case.</p> <p>g) Candidates must know how to apply the <i>Plascon-Evans</i> test.</p> <p><u>Heads of Argument</u> Candidates must be familiar with the layout and method of drafting the different types of heads of argument (concise heads; comprehensive heads; main heads of argument (SCA) and written argument (CC)).</p> <p>The following must be in this module:</p> <p>a) The typical layout of heads of argument; b) The method to be used in Applications;</p>		<p>We recommend that one of the case studies include drafting papers for an interdict.</p> <p>This is an intensive course and requires intensive application by trainers. We therefore recommend that no more than 20 candidates be accommodated per 5-day session.</p>
---	--	---

<p>c) The method to be used in Trials; d) The method to be used in Appeals and Reviews. e) Candidates must know how to draft chronology documents to be filed with heads of argument. Candidates must know the relevant Rules and practice directives; in particular regarding page limitations and the prohibition of copying and pasting from authorities.</p>		
<p><u>Writing Opinions</u> Candidates must learn how to set out and write an opinion. <u>Course content</u> The following must be in this module: a) The modern method of setting out an opinion. b) Understanding the question. c) The need to answer the question and provide recommendations. d) An efficient approach to legal research. e) How to write short opinions. f) How to justify your position with reference to the facts and the law.</p>		<p><u>Note to Trainers</u> It is recommended that candidates be given a simple opinion to write under supervision of the trainer.</p>

General notes for the Legal Practice Council

Candidate legal practitioners (candidates) must score a minimum of 50% to pass any assessment, formative or summative.

Some of the courses require experienced practitioners of at least seven to ten years' experience in practice. However, practitioners with a comparable level of expertise, despite having served fewer years in practice, are welcome to assist with the training.

Provision is made in the text above for trainers with comparable experience.

Annexure E

LEGAL PRACTITIONER'S ACCOUNTS MANAGEMENT

Current Curriculum content	Relevant Section in Legal Practice Act	Recommendations
Chapter 1 – Introduction		
Bookkeeping and Accounting	<p>Rule 54.6 – A Legal Practitioner shall have and keep Business and Trust Account transactions as are necessary to enable the firm to satisfy its obligations in terms of the Act, these rules and any other law with respect to the preparation of financial statements that present fairly and in accordance with Acceptable financial reporting framework in South Africa</p> <p>Rule 54.6.1. Records showing all assets and liabilities as required in terms of Section 87</p> <p>Rule 54.6.2 Records containing entries from day to day of all moneys received and paid by it on its own account</p>	In light of Rule 54 it seems as if the Legislature envisioned that an attorney's firm should go further than to do the mere bookkeeping of transactions (as described by Rule 54.6.2) they should further have accounting records which is in line with IFRS and IFRS for SME's (Rule 54.6) and Records showing all assets and liabilities (Rule 54.6.1). Practitioners need an understanding that there is a reporting standard; but are not expected to actually comply themselves. An accountant will prepare the books accordingly.
What is a Business?	Section 34(5)	This is still relevant and explains that a Legal Practitioner can act on their own account, as part of a juristic entity, Law Clinic, Legal Aid, State. It also gives the forms of business enterprise for the previously known "Advocates".
Difference between owner and Business		In this section we might take the opportunity to introduce the <u>Personal Finance Management</u> as suggested and perhaps include budgets, cash flow forecasts on a personal finance level. This will also reduce the risks associated with maintaining Trust Accounts.
The Bookkeeping Process		This is still very relevant and must be included in the curriculum as it explains the double entry bookkeeping system.
The Cash Book	<p>Rule 54.6.2 for recording Day to day transactions;</p> <p>Rule 54.8 Keeping Trust and Business accounts separate</p>	This is the starting point of all Cash transactions and must be explained to students

Annexure E

LEGAL PRACTITIONER'S ACCOUNTS MANAGEMENT

Balances Brought Down		This is the balancing of T-Accounts and will have to be explained to students to get an understanding of what is balance of an account at the end of the month. The current teaching of T-accounts is outdated and must be replaced with a more modern or relevant accounting system such as Excel using a debit and credit column.
Debit and Credits		This also needs to be explained as students will have to complete the double entry bookkeeping system which started with the Cash book.
Chapter 2 – Cash Book	Rule 54.6.2 ; Rule 54.14.13, Rule 54.14.14	
Basic cashbook principals, recording transactions		This is still very relevant as this is the first leg of the double entry bookkeeping system and the starting point of writing up transactions where movement of money is involved. We would however like to see that the notes make mention of the different types of deposits that we get, for example credit cards, perhaps discuss the do's and don'ts for cell phone banking, electronic payments and banking apps etc. Instead of cheques.
Balancing of cash books		Still relevant
Bank reconciliation statements and Supplementary Cash books		Still relevant for purposes of understanding why one needs to do this. But needs to be revised in the light of available software.
Extracting a list of Trust Creditors	Rule 54.15.1, Rule 54.14.8	This is very important to ensure that you always have enough money in your Trust Account to cover your liabilities towards clients. The current notes have to be revised to emphasise the importance of this.
Chapter 3 – Petty Cash		
How to record petty cash		This is still being used in practice and students should know how to implement internal controls to manage petty cash correctly. They require the theory.
Chapter 4 – Journals Chapter 6 – Transfer Journal and Transfer Procedures		

Annexure E

LEGAL PRACTITIONER'S ACCOUNTS MANAGEMENT

Transfer journals	Rule 54.14 Internal Controls- Rule 54.14.12	This is an important aspect of attorneys bookkeeping as the Trust moneys will now be transferred into your Business account and could create a Trust deficit if you are not careful.
Trust Journals		How to deal with Trust errors and with transactions where money should be transferred from one client to another within the practice
Fee Journals	Section 35	Fees will become even more important as we move forward under the LPA. Section 35 (which is not in effect yet) will prescribe tariffs for attorneys. Further we need to also include contingency fees and the practical working thereof under this heading. (Section 35(12)) We would also like to see a section on time management and the recording of time as a Legal Practitioner as well as how to deal with your time on Pro-Bono matters.
Chapter 5 - Ledgers		As these are the books of secondary entry, the practitioners need to understand this process to give effect to the double entry bookkeeping system and therefore this should also be kept in the curriculum.
Chapter 6 – Transfer Journals (as discussed under Chapter 4)		
Chapter 7 – Value Added Tax		This is still a very relevant topic and should be included in the curriculum as it also goes hand-in-hand with fees as well.
Chapter 8 - Investments	Section 86(3); section 86(4) and Section 55	Investments on behalf of the LPFF and for the client's benefit should still be discussed in detail and we would put a little more emphasis on the theory aspect thereof as well. Further with regards to Section 55 Investment Practices, I think we should discuss this in more detail in the notes and especially the FAIS requirements thereof.
Chapter 9 - Conveyancing		This is still a very relevant and important part of attorneys' practices and also the area where there is a lot of risk involved. The practical writing up of the accounts are still relevant as well

Annexure E

LEGAL PRACTITIONER'S ACCOUNTS MANAGEMENT

		as the theoretical aspect thereof. We intend to include due diligence for purposes of transferring funds and making payments to client. Avoids fraud.
Chapter 10 – Correspondent Transactions	Code of Conduct; Part III Conduct of Attorneys; Rule 12 Sharing of fees; Rule 14 Payment of commission; Rule 19	This will still need to be addressed in the notes however the notes have to be amended to reflect the current practice in appointing correspondents. In particular Practitioners need an understanding of how fees and disbursements are managed when a correspondent is engaged. Fee sharing and payment of commission as well as pro-bono work should be dealt with under this heading.
Chapter 11 - Theory		This chapter in the current curriculum discusses the theory surrounding all of the above, however we find that students hardly ever go through this chapter in preparation for the exam. We would prefer if the theory is included in the relevant sections before the practical writing up of the books are done for the specific topic.
Our Remarks		1. In our view the content of the curriculum is still very relevant to the Legal Practice act and complies with the Act and rules.
		2. It is our opinion that the current notes should be modernised and maybe be reorganised to some extent to get the students to buy into the fact that practitioner's accounts management is still relevant for purposes of conducting a practice.
We further propose the following be dealt with: a) Trust and Business concepts and the understanding thereof, which includes the identification of Trust and Business funds, transactions and ledger accounts.		3. It is further our opinion that the Assessment method should perhaps be changed. We would suggest that the written exam should place more emphasis on the theory part of the curriculum and then there should be an online assignment where students should

Annexure E

LEGAL PRACTITIONER'S ACCOUNTS MANAGEMENT

<ul style="list-style-type: none">b) The concepts of Value, (money, goods and services).c) Accounting for disbursements.d) Accounting to clients.e) The trust reconciliation statement.f) Compliance with the Act and Rules.g) Personal Injury and accident claims matters.h) Administration and collection matters.i) Litigation (high court and magistrates court) matters.		<p>write up a set of books in Excel by recording transactions as per case study which would be provided.</p> <p>This can be part of the formative assessment.</p>
--	--	---

Annexure F**APPEAL****AGAINST THE DECISION BY THE LEGAL PRACTICE COUNCIL
NOT TO GRANT THE APPLICANT ACCREDITATION AS A TRAINING INSTITUTION**

Name of Appellant (Applicant):

Date of application for accreditation:

Date of decision by the Legal Practice Council:

Attach the reasons given by the Legal Practice Council:

Attach the grounds for the appeal:

Date and signature of receipt by the Appeals Committee:

Appeal case number allocated upon receipt:

The Appellant (Applicant) will receive the decision of the Appeals Committee within twenty business days of the receipt of the appeal by the Appeals Committee.

