

LEGAL PRACTICE COUNCIL**NOTICE 2685 OF 2024****NATIONAL OFFICE**

851 River View Park Street
Riverview Office Park
Halfway Gardens
Midrand
1685
Tel: 010 001 8500



**PRACTICAL VOCATIONAL TRAINING (PVT) STRUCTURED COURSEWORK PROGRAMME FOR CANDIDATE
LEGAL PRACTITIONERS (CANDIDATE ATTORNEYS) IN TERMS OF REGULATION 6(10)
OF THE LEGAL PRACTICE ACT
(FOR THE 2025 PVT STRUCTURED COURSEWORK PROGRAMME ONWARDS)**

1. **Background**

Following the Legal Education Forum held in July 2022, and the Legal Education Colloquium held in November 2023, it was resolved that candidate attorneys sitting for the competency-based examinations required an examinations curriculum that would serve as a guide on what to prepare and focus on for the examinations. The curriculum and syllabus document is prepared in terms of Regulation 6(10) of the Legal Practice Act, as well as the approved Norms and Standards guidelines published by the LPC in November 2020.

In order to be admitted as an attorney, a candidate will need to complete the PVT contract with their principal (previously called articles); complete the 150-notional or 400-notional hour PVT structured coursework programme through an LPC-accredited training provider; and pass the four competency-based, admission examinations. This document deals with the latter two requirements (being the PVT structured coursework, and the examinations).

Regulation 6(10) provides that:

- (10) The programme of structured course work referred to in sub-regulation (1)(a) and (b) must be standardised and uniform throughout the Republic and comprise the following modules:
- (a) constitutional practice;
 - (b) professional legal ethics;
 - (c) personal injury claims;
 - (d) high court practice;
 - (e) magistrate's court practice;
 - (f) criminal court practice;
 - (g) labour dispute resolution;
 - (h) alternative dispute resolution;
 - (i) attorneys' bookkeeping;

Executive Committee: Ms Janine Myburgh – Chairperson, Adv. Kennedy Tsatsawane SC - Deputy Chairperson, Ms Kathleen Matolo-Dlepu, Mr Miles Carter, Mr Priyesh Daya, Adv. Brenton Joseph SC, Mr Pritzman Busani Mabunda, Executive Officer: Ms. Charity Nzuza

- (j) wills and estates;
 - (k) matrimonial law;
 - (l) legal costs;
 - (m) drafting of contracts;
 - (n) information and communication technology for practice, and associated aspects of cyber law; and
 - (o) introduction to practice management.
2. The LPC-accredited training providers are required to provide training and assessment of all of the abovementioned modules in the 150-notional hour and 400-notional hour PVT structured coursework programme. If a candidate successfully completes all the abovementioned modules (attendance and assessment as required), the candidate will be entitled to receive the certificate confirming their successful completion, and their competence in the abovementioned modules.
3. The examinations are provided for in **Rule 21 Competency-based examinations or assessments [section 95(1)(n) read with section 26(1)(d), (2) and (3)]**
- 21.1 *A person wishing to qualify to be admitted and enrolled as a legal practitioner will be required to have passed a competency based assessment in terms of this rule 21, read with any rule made by the Council or the National Forum concerning levels of competence required for the admission and enrolment of legal practitioners.*
- 21.2 *The assessment of a person wishing to be admitted and enrolled as an attorney shall comprise assessment at least in relation to-*
- 21.2.1 *the practice and procedure in the High Court and in courts established under the Magistrates' Courts Act, 32 of 1944;*
 - 21.2.2 *the practice and procedure relating to the winding up and distribution of the estates of deceased persons;*
 - 21.2.3 *the practice, functions, and duties of an attorney, including the ethical duties of an attorney;*
 - 21.2.4 *a knowledge of accounting necessary for the keeping of accounting records referred to in section 87 of the Act, and compliance with accounting rules published by the Council from time to time.*
4. **Currently the four examination papers cover the following modules:**
- Paper 1 (Court Practice and Procedures):** High Court Practice, Magistrates' Court Practice, Criminal Court Practice, and Personal Injury Claims.
- Paper 2 (Wills and Estates):** Wills and Estates
- Paper 3 (Attorneys' Practice and Legal Ethics):** Constitutional Practice, Professional Legal Ethics, Labour Dispute Resolution, Alternative Dispute Resolution, Matrimonial Law, Legal Costs, Drafting of Contracts, Information

and Communication Technology for Practice, and associated aspects of Cyber Law, and Introduction to Practice Management.

Paper 4 (Attorneys' Bookkeeping): Attorneys Bookkeeping

5. The profession, stakeholders, and interested persons are requested to consider the proposed revised curriculum and examination syllabus and provide comment by no later than **16 October 2024**. All comments must be sent to the following email address: comments@lpc.org.za.

Signed at Midrand on **5 August 2024**



Ms C Nzuza

Executive Officer: Legal Practice Council

PAPER 1: COURT PRACTICE AND PROCEDURES (High Court Practice, Magistrates' Court Practice, Criminal Court Practice, Personal Injury Claims)

MODULES	CURRICULUM AND COURSE CONTENT	READING LISTS
<p>High Court practice Reg 6 (10)(d)</p> <p>The principles of drafting apply to all Courts both civil and criminal and to all ADR, tribunals and other formal forums.</p>	<p>Introduction to the High Court High Court jurisdiction and courts of similar jurisdiction Superior Courts Act 10 of 2013. Uniform Rules of Court (the Rules).</p> <p>There will be emphasis on those rules that are in regular use in practice; such rules will be set out in the reading list. Practice Directives in the High Court. Only practice directives specifically identified in the reading lists will be examined. Candidates will not be expected to be familiar with the directives in each of the provincial and local divisions of the high court.</p> <p><u>Mediation</u></p>	<p>PRINCIPAL WORKS:</p> <ul style="list-style-type: none"> • Erasmus: Superior Court Practice Vol 2 ("Erasmus") • Hussain: Practical Drafting Skills • Hussain: Trial Advocacy: The Art of Persuasion • Lexis Practical Guidance: online • Marnewick: Litigation Skills for South African Lawyers • Morris: Technique in Litigation 6th Edition • Schmidt & Others: Law of Evidence • Zefferdt & Paizes: The South African Law of Evidence <p>To avoid prolixity, for the detail on the law of evidence see the module on Magistrate's Court Practice. For example remember the parol evidence rule: <i>KPMG Chartered Accountants (SA) v Securefin Ltd and Another</i> 2009 (4) SA 399 (SCA) ([2009] 2 All SA 523) at para [39].</p>

	<p>The impact of and compliance with Rule 41A of the Uniform Rules of Court.</p> <p><u>Contingency Litigation:</u> Contingency litigation and how to decide whether to take a matter on contingency. How to charge contingency fees. How to carry out a risk analysis when requested to take a matter on contingency.</p> <p><u>Case management:</u> Case Management in practice. Candidates must know how to refer a matter to case management, the process and procedures in case management. Section 60 in Part VI: Commitment of legal practitioner to an effective court process.</p> <p><u>Certification:</u> How the trial certification process works. How to discern triable issues.</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. Candidates must acquire the following skills: How to obtain all the relevant facts and documents How to carry out an effective fact analysis * 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, how to achieve the purpose of the conference and how to draft the agenda. * How to carry out a proof analysis. What is meant by "proof of a fact" and how to discharge the onus. * How to carry out witness and documentation analysis. * How to prepare chronology documents.</p> <p><u>Discovery:</u> * Latest developments on how to obtain, preserve and present relevant</p>	<p>COMPULSORY READING MATERIAL "The ethics of the hopeless case", by Owen Rogers, in the Advocate magazine, December 2017 especially the summary at pages 50 and 51.</p> <p>1. GENERAL</p> <p>1.1. <i>Character of application proceedings</i> Rule 6; Form of notice of motion: <i>Mynhardt v Mynhardt</i> 1986 (1) SA 456 (T) at 458H – I.</p> <p>1.2 <i>Ex parte applications</i> See the section under the corresponding heading in ethics: Herbstein & Van Winsen p290 <i>Mynhardt v Mynhardt</i> 1986 (1) SA 456 (T) at 458H – I <i>Mahomed NO & others v NDPP</i> 2002 (4) SA 366 (W) at 373B-374B. Rules <i>nisi</i></p> <p>1.3 <i>Disputes of fact in application proceedings</i> The distinction between motion proceedings and actions: <i>Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd</i> 1949 (3) SA 1155 (T); <i>Soffiantini v Mould</i> 1956 (4) SA 150 (E); <i>Metallurgical and Commercial Consultants v Metal Sales Co</i> 1971 (2) SA 388 (W). Referral to trial or to oral evidence: <i>Metallurgical and Commercial Consultants v Metal Sales Co supra</i>; <i>Kalil v Decotex (Pty) Ltd and Another</i> 1988 (1) SA 943 (A) at 981D-E; <i>Lekup Prop Co No 4 (Pty) Ltd v Wright</i> 2012 (5) SA 246 (SCA) at para [32] <i>Hotz v University of Cape Town</i> 2017 (2) SA 485 (SCA) at para [29]. <i>Director-General, Department of Rural Development and Land Reform, and Another v Mwelase and Others</i> 2019 (2) SA 81 (SCA) at para [64] <i>Murray NO and Others v Humansdorp Co-Operative Ltd</i> 2023 (3) SA 66 (SCA) at paras [21] to [23]</p> <p>1.4 <i>Approach to disputes of fact in applications for final relief:</i> <i>Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd</i> 1984 (3) SA 623 (A) at 634E-635D.</p>
--	---	---

	<p>documentation including Electronic Documents. What is meta data and how to use it to authenticate documents. * The concept of narrow discovery and proportionality. * How to prepare trial bundles. The importance of sequencing.</p> <p><u>Trial or hearing</u> Case Concept: how to proceed with the hearing and discharge the onus. * 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> <p><u>Heads of Argument.</u> * When are heads required. * What are "main heads of argument". * What are Short or Concise heads. * What are Comprehensive heads. * How to draft heads of argument</p> <p>Appeal procedures Enforcement of judgments and orders Execution of process Superior Courts Act 10 of 2013 section 43 Uniform Rules of Court: rules 45, 45A, 46, 46A</p> <p>The following rules in the Uniform Rules of Court will not be examined. If candidate legal practitioners, candidate attorneys or pupils ever need to use the rules below, the rules can be mastered in practice by reading and applying the rule.</p> <p>Provisional sentence Rule 8 Administrative archiving Rule 37B Referral of particular matters for investigation by referee Rule 38A Legal assistance to indigent people Rule 40 Interpleader</p>	<p><i>Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd</i> 1957 (4) SA 234 (C) at page 235</p> <p>1.5 Character of trial and motion proceedings Uniform Rules of Court The vital aspect of jurisdiction <i>Standard Bank of SA Ltd v Mpogo</i> 2021 (6) SA 403 (SCA) <i>South African Human Rights Commission v Standard Bank of South Africa Ltd and Others</i> 2023 (3) SA 36 (CC)</p> <p>2. INSTITUTING APPLICATIONS General provisions</p> <p>2.1 <i>Notice of motion and founding affidavit</i> Rule 6 and commentary thereon on Erasmus and Harms Important to set out the whole case in the founding affidavit: <i>Advertising Regulatory Board NPC and Others v Bliss Brands (Pty) Ltd</i> 2022 (4) SA 57 (SCA) at para [39]. See also <i>Esau v Minister of Co-op Governance & Traditional Affairs</i> 2021 (3) SA 593 (SCA) ([2021] 2 All SA 357; [2021] ZASCA 9) at para [60].</p> <p>- Annexures to affidavits (numbering and reference to content) - pleadings and evidence: <i>Mostert v FirstRand Bank t/a RMB Private Bank</i> 2018 (4) SA 443 (SCA) ([2018] ZASCA 54) at paras [13]; <i>Fischer and Another v Ramahlele and Others</i> 2014 (4) SA 614 (SCA) ([2014] 3 All SA 395; [2014] ZASCA 88) at para [13] affirmed by the <i>Constitutional Court in Public Protector v South African Reserve Bank</i> 2019 (6) SA 253 (CC) (2019 (9) BCLR 1113; [2019] ZACC 29) at para [234].</p> <p>- Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002 - Applications that raise constitutional issues Rule 16A ▪ <i>Shaik v Minister of Justice and Constitutional Development</i> 2004 (3) SA 599 (CC) at para [24].</p> <p>2.2 <i>Joinder under rule 10A and Joinder of respondents</i> - Who must be joined? - Joint and several liability</p> <p>2.3 <i>Service generally Rule 4</i></p>
--	---	--

	<p>Rule 58 Sworn translators Rule 59 Translation of documents Rule 60 Authentication of Documents Executed Outside the Republic for Use Within the Republic Rule 63 Destruction of documents Rule 64 Tariff of court fees Rule 67 Tariff for sheriffs Rule 68 Tariff of fees and allowances for intermediaries in proceedings other than criminal proceedings Rule 68A Advocates' fees in civil matters in the provincial and local divisions of the supreme court Rule 69 Taxation and tariff of fees of attorneys Rule 70 Repeal of rules Rule 71</p> <p>Candidates will not be required to draft advice on evidence in the examinations.</p> <p style="text-align: center;">Drafting Legal Documents – Pleadings and Motions</p> <p><u>Drafting pleadings</u></p> <p>a) Drafting on one's own without precedents and AI. b) Understand and apply rules 18 and 22 of the Uniform Rules. c) How to establish a "cause of action" or "defence" from a set of facts or instructions. d) Particulars of claim and a plea in contract, delict and divorce. The focus is on contract and delict. e) The correct lay-out of pleadings with proper paragraph numbering, appropriate spacing, font types, use of headings and point first drafting. f) No pleading may be vague: each pleading must disclose a cause of action or a defence and must be</p>	<p>Candidates should know the essential requirements and procedure involved in applications for substituted service Rule 4(2) Proceedings against firms, etc. Rule 14 Change of parties Rule 15 Substituted service Edictal citation (rules 5 and 63) Attachment to found or confirm jurisdiction</p> <p>3. URGENT APPLICATIONS Rule 6(12): <i>Luna Meubel Vervaardigers (Edms) Bpk v Makin</i> 1977 (4) SA 135 (W); <i>Cape Killarney Property Investments (Pty) Ltd v Mahamba</i> 2000 (2) SA 67 (C) paras [6] and [20].</p> <p>4. ANSWERING AND REPLYING AFFIDAVITS Content and form Points <i>in limine</i> Late filing, barring and condonation - Rule 26 - Rule 27 Raising new matters in the replying affidavit – not normally permitted However, see <i>Mostert v FirstRand Bank t/a RMB Private Bank</i> 2018 (4) SA 443 (SCA) ([2018] ZASCA 54) at paras [13] to [15]</p> <p>5. ADDITIONAL AFFIDAVITS Leave required Form and content</p> <p>6. DISCOVERY IN MOTION PROCEEDINGS Obligation to put up evidence on which party intends to rely Rules 35(12) and (14) Non-application of Promotion of Access to Information Act 2 of 2000 Cf <i>Arena Holdings (Pty) Ltd t/a Financial Mail v South African Revenue Service and Others</i> [2023] ZACC 13; 2023 (8) BCLR 905 (CC) at paras [147] to [150] and [155] to [157] and [170] to [172], Authentication of documents Rule 63</p> <p>7. OBJECTIONS TO PROCESS OR PLEADINGS Failure to deliver pleadings - barring Rule 26 Extension of time periods Rule 27 Amendments Rule 28 Irregular proceedings Rule 30 <i>Afrocentrics Projects and Services (Pty) Ltd t/a Innovative Distribution v State Information Technology Agency (SITA) SOC Ltd and Others</i></p>
--	---	---

	<p>based on the peculiar facts of your case.</p> <p>g) 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.</p> <p>h) Candidates must be able to draft a Special Plea and know when and how to draft a Special Plea.</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 understand what is a provisional order, interim order, a rule nisi, and a final order.</p> <p>d) Candidates must learn to draft founding, answering and replying affidavits.</p> <p>e) 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>f) Candidates must know how to index and paginate court files.</p> <p>g) Candidates must know how to prepare draft orders.</p> <p>h) Candidates must know how to draft interdicts.</p> <p><u>Managing Fact:</u></p> <p>a) How to obtain relevant facts.</p> <p>b) What are the sources of fact.</p> <p>c) Obtaining documents including electronic documents.</p> <p>d) How to preserve documents.</p> <p>e) Obtaining witness statements.</p> <p>f) Carrying out <i>in loco</i> inspections: how to record the evidence.</p> <p>g) How to obtain and preserve relevant exhibits: what is Visual Evidence and how to use it.</p>	<p>[2023] ZACC 2; 2023 (4) BCLR 361 (CC) especially at para [30]</p> <p>Non-compliance with Rules Rule 30A</p> <p>Vexatious proceedings and abuse of process</p> <p><i>PFC Properties (Pty) Ltd v Commissioner for the South African Revenue Services and Others and Brita De Robillard NO and Another v PFC properties (Pty) Ltd and Others</i> [2023] ZASCA 111</p> <p>Applications to strike out</p> <p>Security for costs</p> <p>8. PARTICIPATION BY OTHER PARTIES</p> <p>Intervention applications</p> <p>Rule 12</p> <p>Joinder and consolidation</p> <p>Rule 10</p> <p>Third party procedures</p> <p>Rule 13</p> <p>Interpleaders</p> <p>Rule 58 and commentary thereon in Erasmus</p> <p>Curators</p> <p>Rule 57</p> <p>9. AFTER PLEADINGS CLOSE</p> <p>Heads and practice note</p> <p>Set down</p> <p>Hearing</p> <p>Settlement and/or withdrawal Rule 41</p> <p>10. ORDERS</p> <p>Interim and final orders</p> <p>The <i>functus officio</i> doctrine</p> <p>Rescission Rule 42, Rule 31(2)(b), Common law requirements</p> <p>Candidates are particularly required to understand the differences between applications in terms of Rule 31, Rule 42 and the common law.</p> <p><i>Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)</i> 2003 (6) SA 1 (SCA) at para [12], <i>HLB International (South Africa) (Pty) Ltd v MWRK Accountants and Consultants (Pty) Ltd</i> 2022 (5) SA 373 (SCA) at para [19] and <i>Ingosstrakh v Global Aviation Investments (Pty) Ltd and Others</i> 2021 (6) SA 352 (SCA) at para [21]</p> <p>Claims for interest Sections 1, 2, 2A and 4 of the Prescribed Rate of Interest Act 55 of 1975. Cf <i>Da Cruz v Bernardo</i> 2022 (2) SA 185 (GJ) at paras [17] to [62]</p> <p>HOW TO EXECUTE JUDGMENTS</p>
--	---	---

	<p><u>Analysing Fact.</u></p> <p>h) Candidates must demonstrate logical sequencing of facts and documents and the use of chronology documents.</p> <p>i) Candidates must demonstrate their ability to analyse facts: only relevant facts must be obtained, retained and presented at a hearing; only facts that are admissible, in terms of the rules of evidence, can be relied on.</p> <p>j) Candidates must demonstrate that any version of facts on which they intend to rely, must be probable in the circumstances of the case.</p> <p>k) Candidates must know that they cannot rely in court on a version that is improbable, implausible or impossible.</p> <p>l) Candidates must be able to work out what facts support their client's version and what facts do not support their client's version.</p> <p><u>Working out the case concept (or theory of the 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>Candidates will need and know the following:</u></p> <p>* Candidates will know how to analyse three sets of affidavits in motion matters.</p> <p>* Candidates will know how to grasp findings of facts on affidavits, including the <i>Plascon-Evans</i> test. The <i>Plascon-</i></p>	<p>Rule 45 Execution - general and movables</p> <p>45A Suspension of orders by the court</p> <p><i>BP Southern Africa (Pty) Ltd v Mega Burst Oils & Fuels (Pty) Ltd & A Similar Matter</i> 2022 (1) SA 162 (GJ)</p> <p><i>MEC, Dept of Public Works v Ikamva Architects</i> 2022 (6) SA 275 (ECB) ([2022] 3 All SA 760) at paras [81] to [93]</p> <p>46 Execution – immovable property</p> <p>46A Execution against residential immovable property</p> <p><i>Bestbier and Others NNO v Nedbank Ltd</i> 2023 (4) SA 25 (SCA) especially at paras [8] to [15]</p> <p>11. COSTS</p> <p>Ordinary rule of costs</p> <p>Costs in interlocutory applications</p> <p>Punitive costs</p> <p>The <i>Biowatch</i> rule</p> <p>12. PARTICULAR KINDS OF APPLICATIONS</p> <p>12.1. <i>Default judgment / Judgment by confession</i></p> <p>Rule 31 and commentary thereon in Erasmus</p> <p>Rule 26; and see paras 15 and 20 below.</p> <p><i>Havenga v Parker</i> 1993 (3) SA 724 (T).</p> <p>Relevance of the National Credit Act, 2005</p> <p>Special requirements for declaring property specially executable</p> <ul style="list-style-type: none"> - Form of notice of motion - Content of affidavits - Service requirements - Sale in execution values (Rule 43A) <ul style="list-style-type: none"> • <i>Jaftha v Schoeman; van Rooyen v Stoltz & Others</i> 2005 (2) SA 140 (CC) • <i>Standard Bank of South Africa Ltd v Saunderson & Others</i> 2006 (2) SA 264 (SCA) • <i>Gundwana v Steko Development & Others</i> 2011 (3) SA 608 (CC) • <i>Nkata v FRB</i> 2016 (4) SA 257 (CC) • <i>Nkola v Argent Steel Group (Pty) Ltd t/a Phoenix Steel</i> 2019 (2) SA 216 (SCA) at paras [11] and [14] • <i>NPGS Protection and Security Services CC v Firststrand Bank</i> 2020 (1) SA 494 (SCA) <p>12.2. <i>Eviction applications</i></p> <p>Difference between commercial and residential evictions</p> <p>Requirements under PIE</p> <ul style="list-style-type: none"> - Municipal joinder - Service - Risk of homelessness
--	--	--

	<p><i>Evans</i> test is best understood by asking the question: what are the probabilities concerning the allegations in the respective affidavits bearing in mind the undisputed facts ?</p> <p>* Candidates need good literacy skills to pass exams.</p> <p>* Candidates are not allowed access to the internet during the exams.</p> <p>* Candidates must not rely on AI, like ChatGPT, when drafting legal documents. To draft well requires personal agency not the crutch of an AI programme or a set of precedents.</p> <p>* Candidates will be examined and need to draft pleadings and affidavits without the assistance of the internet during the exams.</p> <p>* Most importantly, candidates must understand and apply the ethical precepts discussed in the article by Judge Owen Rogers in the reading list under the title: "The ethics of the hopeless case", Owen Rogers, Advocate December 2017.</p> <p>Candidates will apply the principles of drafting set out below. The principles commence with a grasp of the facts and end with the case concept.</p> <p>Writing involves thinking. There is a method in this. Candidates must apply their minds before putting pen to paper.</p> <p>The importance of remaining within the case pleaded <i>City of Cape Town v Sanral</i> 2015 (3) SA 386 (SCA) ([2015] 2 All SA 517; 2015 (5) BCLR 560; [2015] ZASCA 58) at para [10] on page 397</p> <p>Candidates will learn to think before they ink. <i>University of South Africa v Socikwa and Others</i> (J 675/23; J 680/23) [2023] ZALCJHB 172 (7 June 2023) especially at paras [1], [4] and [45]</p>	<p>- Process</p> <p><i>Grobler v Phillips and Others</i> 2023 (1) SA 321 (CC) <i>Stay At South Point Properties (Pty) Ltd v Mqulwana and Others (UCT intervening as amicus curiae)</i> [2023] ZASCA 108 at paras [11], [18] and [19]</p> <p>12.3. <i>Summary judgment</i> Rule 32 (as amended) <i>FirstRand Bank Ltd t/a First National Bank v Moonsammy t/a Synka Liquors</i> 2021 (1) SA 225 (GJ) <i>Firststrand Bank Ltd v Shabangu</i> 2020 (1) SA 155 (GJ)</p> <p>12.4. <i>Interdicts</i> (LAWSA, vol 11, paras 389 to 428 and 429 to 435) <i>Interdicts and mandamenten van spolie</i> <i>Ngqukumba v Minister of Safety and Security and Others</i> 2014 (5) SA 112 (CC) 2014 (2) SACR 325; 2014 (7) BCLR 788; [2014] ZACC 14</p> <p>Interim interdicts: Candidates are particularly required to understand the distinctions between: (a) applications for final relief; (b) applications for interim relief; (c) rules <i>nisi</i>; and (d) orders operating as interim interdicts, and to be able to draft appropriate prayers and draft orders illustrating same. <i>Saharawi Arab Democratic Republic v Owners & Charterers of The Cherry Blossom</i> 2017 (5) SA 105 at paras [49] – [50]. <i>Camps Bay Residents and Ratepayers Association v Augoustides</i> 2009 (6) SA 190 (WCC) at paras [7] – [8].</p> <p>12.5. <i>Insolvency</i> (LAWSA Volume 11 paras 199 to 365) Candidates are required to know: (a) The essential requirements and differences between; and (b) The procedures and requirements involved in the following applications: Sequestration; Friendly sequestration; Surrender; Rehabilitation; Liquidation; <i>Afgri Operations Ltd v Hamba Fleet (Pty) Ltd</i> 2022 (1) SA 91 (SCA)</p>
--	--	---

		<p>Business rescue;</p> <ul style="list-style-type: none"> - Purpose - Requirements - Process, service and publication - Ending business rescue <p>12.6. <i>Applications for Anton Piller (search & seizure) orders</i> Erasmus, Anton Piller Type Orders See the Notice of Motion in the Practice Directives for the Gauteng Divisions</p> <p>12.7. <i>De lunatico inquirendo, curators ad litem, ad personam and bonis</i> Rule 57.</p> <p>12.8. <i>Rule 43 procedures</i> Rule 43 <i>Du Preez v Du Preez</i> 2009 (6) SA 28 (T) paras [3] to [6] <i>TS v TS</i> 2018 (3) SA 572 (GJ) see the court order on 573 <i>E v E</i> 2019 (5) SA 566 (GJ)</p> <p>12.9. <i>Reviews</i> Rule 53. Sections 3, 5, 6, 7 and 8 of the Promotion of Administrative Justice Act 3 of 2000. <i>Van Zyl v Govt of the RSA</i> 2008 (3) SA 294 (SCA) at paras [54] and [55]</p> <p>12.10. <i>Interpleaders</i> Rule 58.</p> <p>12.11. <i>National Credit Act</i> National Credit Act sections 65, 86, 88, 129 and 130; <i>Collett v First Rand Bank</i> 2011 (3) SA 585 (SCA); <i>Nedbank v National Credit Regulator</i> 2011 [4] All SA 131 (SCA); <i>Rossouw v First Rand Bank</i> [2011 All SA 56 (SCA); <i>Sebola v Standard Bank</i> 2012 (5) SA 142 (CC); <i>Kubyana v Standard Bank</i> 2014 (3) SA 56 (CC).</p>
<p>Magistrates' Courts Practice Reg 6 (10)(e)</p>	<p>Introduction to the Magistrates' Courts and their jurisdiction</p> <p>Candidates must have knowledge of the rules in the Magistrates' Courts and how the rules are the same in some instances and how the rules differ in other instances from the powers and functions in the High Court.</p>	<p>PRINCIPAL WORKS:</p> <ul style="list-style-type: none"> • Erasmus: Superior Court Practice Vol 2 • Hussain: Practical Drafting Skills • Hussain: Trial Advocacy: The Art of Persuasion • Jones & Buckle: Civil Practice of the Magistrates' Court in South Africa Vol 1 and 2 • Lexis Practical Guidance: online • Marnewick: Litigation Skills for South African Lawyers

	<p>Pleadings, motions, and discovery Trial practice and courtroom advocacy Appellate practice and procedure Enforcement of judgments and orders</p> <p>The following Magistrates' Courts rules will not be examined. If candidate legal practitioners, candidate attorneys or pupils ever need to use the rules below, the rules can be mastered in practice by reading and applying the rule.</p> <p>14A Provisional sentence 34 Fees of the Sheriff 34A Tariff of fees and allowances for intermediaries in proceedings other than criminal proceedings 43B Enforcement of foreign civil judgments 59 Assessors 68 Oath of office for interpreter 69 Repeal of rules and transitional provisions</p>	<ul style="list-style-type: none"> • Morris: Technique in Litigation 6th Edition • Schmidt & Others: Law of Evidence • Zeffertt & Paizes: The South African Law of Evidence <p>COMPULSORY READING MATERIAL "The ethics of the hopeless case", by Owen Rogers, in the Advocate magazine, December 2017 especially the summary at pages 50 and 51.</p> <p>1. GENERAL</p> <p>1.1. <i>Character of Action Proceedings</i></p> <ul style="list-style-type: none"> - When to bring an action - Difference from application proceedings - Matters that must be brought by way of action - Requirements of pleadings <p>1.2 <i>Onus</i></p> <p>1.3 <i>Jurisdiction</i> Magistrates' Courts Sections 26, 28, 29, 30, 45, 46(2) and 110 of the Magistrates' Courts Act 32 of 1944 <i>South African Human Rights Commission v Standard Bank of South Africa Ltd and Others</i> 2023 (3) SA 36 (CC) at paras [1] and [31] and paras [42] to [45]. The Constitutional Court dismissed the appeal against, explained the decision in, <i>Standard Bank of South Africa Ltd v Mpongo</i> 2021 (6) SA 403 (SCA).</p> <p>2. THE PLEADING PHASE OF ACTIONS</p> <p>2.1. <i>Instituting Actions</i></p> <ul style="list-style-type: none"> - Rule 5 – Summons - Rule 6 – Pleadings: Commentary on Rule in <i>Jones & Buckle</i> - Rule 7 – Amendment of summons: Commentary in <i>Jones & Buckle</i> <p><i>Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and Others</i> [2023] ZASCA 112 at paras [20] to [23]</p> <ul style="list-style-type: none"> - Rule 15 – Declaration: Commentary in <i>Jones & Buckle</i> <p>2.2. <i>Parties</i></p> <p>2.2.1. <i>Intervention, joinder, and consolidation of actions</i></p> <ul style="list-style-type: none"> - Rule 28 – Commentary on Rule 28 in <i>Jones & Buckle</i>. <p>2.2.2. <i>Third party procedure</i></p>
--	--	--

		<p>- Rule 28A - Commentary in <i>Jones & Buckle</i>. 2.2.3. <i>Proceedings against non-juristic persons as a matter of procedural convenience</i> - Rule 54 – Commentary in <i>Jones & Buckle</i>.</p> <p>2.3. <i>Competent Responses to Particulars of Claim</i> - Notice of intention to defend - Calling for pre-pleading discovery - Objections that pleadings are irregular: Rule 60A</p> <p>- Exceptions: Rule 19 <i>Ocean Echo Properties 327 CC and Another v Old Mutual Life Assurance Company (SA) Ltd</i> 2018 (3) SA 405 (SCA) at paras [9] and [10]. - Pleas and special pleas: Rule 17 and the common law (case law) <i>Fairvest Property Holdings v Valdimax CC t/a Fish & Chips Co and Others</i> 2020 (3) SA 202 (GJ) paras [21] to [26]</p> <p>Commentary in <i>Jones & Buckle</i> - Claims-in-reconvention: Rule 20 - Commentary on Rules 21 to 22 in <i>Jones & Buckle</i> - Failure to respond, barring and default judgment: Rule 21B - Commentary in <i>Jones & Buckle</i></p> <p>2.4. <i>Note on pleadings in general</i> - Remember: generally the principles of pleadings in the High Court apply to the Magistrates' Courts:</p> <p>2.5. <i>Close of Pleadings and Set Down</i></p> <p>2.6. <i>Changes to Pleadings/amendments</i></p> <p>2.7 THE FOLLOWING NEWLY GAZETTED RULES IN 2022 REQUIRE PARTICULAR ATTENTION: note this is the introduction to case management in the Magistrates' Courts 2.7.1 Rule 22A – Meeting between parties to prepare for pre-trial conference or trial 2.7.2 Rule 25 – Judicial Case Management and pre-trial Conference 2.7.3 Rule 38 – Security by execution creditor 2.7.4 Rule 54 – Proceedings against non-juristic persons as a matter of procedural convenience (mentioned above) 2.7.5 Rule 60 – Non-compliance with rules and court orders, including time limits and errors</p> <p>3. PREPARATION FOR TRIAL 3.1. <i>Further particulars</i> - Rule 16 – Commentary in <i>Jones & Buckle</i></p>
--	--	--

		<p>3.2. <i>Discovery</i></p> <ul style="list-style-type: none"> - Notice to discover and discovery affidavits: Rule 35 - Rule 23 – Commentary in <i>Jones & Buckle</i> - Different kinds of discovery - Consequences of a failure to discover - Applications to compel <p>3.3. <i>Inspection, Examination and Experts</i></p> <ul style="list-style-type: none"> - Rule 24 – Commentary in <i>Jones & Buckle</i> <p>4. SPECIAL PRE-TRIAL PROCEDURES</p> <p>4.1. <i>Meeting between parties to prepare for pre-trial conference or trial</i></p> <ul style="list-style-type: none"> - Rule 22A - Commentary in <i>Jones & Buckle</i> <p>4.2. <i>Offer to Settle</i></p> <ul style="list-style-type: none"> - Rule 18 - Commentary in <i>Jones & Buckle</i> <p>5. CONDUCT OF CIVIL TRIALS</p> <p>5.1. <i>Trial Procedure</i></p> <p>Rule 29 - Commentary in <i>Jones & Buckle</i></p> <p>5.2. <i>Discontinuing a Trial</i></p> <ul style="list-style-type: none"> - Withdrawal, dismissal and settlement - Rule 27 - Commentary in <i>Jones & Buckle</i> - Postponements and other mid-trial applications <p>5.3. <i>Costs</i></p> <ul style="list-style-type: none"> - Rule 33 - Commentary in <i>Jones & Buckle</i> <p>5.4. <i>Interest</i></p> <ul style="list-style-type: none"> - Sections 1, 1, 2A and 4 of the Prescribed Rate of Interest Act No 55 of 1975 - Cf <i>Da Cruz v Bernardo</i> 2022 (2) SA 185 (GJ) at paras [17] to [62] <p>5.5. <i>Judgments and orders</i></p> <p>6. AFTER JUDGMENT</p> <p>6.1. <i>Rescission and variation of judgments</i></p> <ul style="list-style-type: none"> - Rule 49 - Commentary in <i>Jones & Buckle</i> <p>6.2. <i>Appeals</i></p> <ul style="list-style-type: none"> - Rules 50 and 51 - Commentary in <i>Jones & Buckle</i> - Sections 83 and 84 of the Magistrates' Courts Act - <i>Caterham Car Sales & Coachworks Ltd v Birkin Cars (Pty) Ltd</i> 1998 (3) SA 938 (SCA) at paras [36] to [38]. - Harms, <i>LTC Heads of argument in courts of appeal</i>, Advocate 2009 <p>7. LAW OF EVIDENCE</p>
--	--	--

		<p>7.1. <i>The burden of proof and duty to begin (in civil cases only)</i></p> <ul style="list-style-type: none"> - Schmidt & others Chapters 2 and 9 - Zeffertt & Paizes chapters 3 and 5.1-5.3 <p>7.2. <i>The assessment/weight of evidence</i></p> <ul style="list-style-type: none"> - Schmidt & others Chapter 3.1 - Zeffertt & Paizes chapter 5 <p>7.3. <i>Real evidence and documentary evidence</i></p> <ul style="list-style-type: none"> - Schmidt & others Chapters 10 and 11 - Zeffertt & Paizes chapters 19, 20 and 21 <p>7.4. <i>Oral evidence</i></p> <ul style="list-style-type: none"> - Schmidt & others Chapter 9 - Zeffertt & Paizes chapter <p>7.5. <i>Relevance and admissibility</i></p> <ul style="list-style-type: none"> - Schmidt & others Chapter 13 - Zeffertt & Paizes chapter 7 <p>7.6. <i>Hearsay evidence</i></p> <ul style="list-style-type: none"> - The Law of Evidence Amendment Act 45 of 1988, § 3 - Schmidt & others Chapter 18 - Zeffertt & Paizes chapter 13 <p>7.7. <i>Admissions (civil cases only)</i></p> <ul style="list-style-type: none"> - Schmidt & others Chapter 7 - Zeffertt & Paizes pp. 475-499 <p>7.8. <i>Opinion evidence</i></p> <ul style="list-style-type: none"> - Schmidt & others Chapter 17 - Zeffertt & Paizes chapter 10 <p><i>Schneider NO and Others v AA and Another 2010 (5) SA 203 (WCC) at 211J – 212B</i></p> <p>7.9. <i>Similar fact evidence (civil cases only)</i></p> <ul style="list-style-type: none"> - Schmidt & others Chapter 15 - Zeffertt & Paizes chapter 9 <p>7.10. <i>Character evidence (civil cases only)</i></p> <ul style="list-style-type: none"> - Schmidt & others Chapter 16 - Zeffertt & Paizes chapter 8 parts C and D <p>7.11. <i>Privilege</i></p> <ul style="list-style-type: none"> - Schmidt & others Chapter 20 - Zeffertt & Paizes chapter 17 <p>7.12. <i>Parol evidence</i></p> <ul style="list-style-type: none"> - Schmidt & others Chapter 1 - Zeffertt & Paizes chapter 11
--	--	--

		<p><i>KPMG Chartered Accountants (SA) v Securefin Ltd and Another</i> 2009 (4) SA 399 (SCA) ([2009] 2 All SA 523) at para [39].</p> <p>7.13. <i>The leading of witnesses</i> - Schmidt & others Chapter 9.2.4.1 - Zeffertt & Paizes chapter 24</p> <p>7.14. <i>Cross-examination</i> - Schmidt & others Chapter 9.2.4.2 - Zeffertt & Paizes chapter 24</p> <p>7.15. <i>Re-examination</i> - Schmidt & others Chapter 9.2.4.3 - Zeffertt & Paizes chapter 24</p> <p>7.16. <i>Examination by the court</i> - Schmidt & others Chapter 9.2.4.4 - Zeffertt & Paizes chapter 24</p>
Personal Injury Claims Reg 6 (10)(c)	<p>Introduction to personal injury law. How to plead a claim in Delict.</p> <ul style="list-style-type: none"> • Wrongfulness • Fault • Causation • Damages <p>Road Accident Fund law. Consumer protection law. A module on medical negligence claims. Pleadings and defences allowed under the law of Delict. Pleadings must comply with the rules of the High Court and Magistrates' Courts set out under Regs 6 (10)(d) and 6 (10)(e) below. Section 60 in Part VI of the Code of Conduct concerning RAF matters. Trial preparation, practice, and settlement are part of High Court and Magistrates' Court curricula. The practice directives peculiar to personal injury cases, including RAF claims.</p>	<p>Road Accident Fund Act 56 of 1996</p> <p><i>Access to court – time bar</i> <i>Engelbrecht v RAF</i> 2007 (6) SA 96 (CC)</p> <p><i>Causation</i> <i>Road Accident Appeal Tribunal v Gouws</i> 2018 (3) SA 413 (SCA) <i>Nonkwali v Road Accident Fund</i> 2009 (4) SA 333 (SCA) at para [8]</p> <p><i>Claimants</i> <i>RAF v Vogel</i> 2004 (5) SA 1 (SCA) <i>Du Plessis v RAF</i> 2004 (1) SA 359 (SCA) <i>RAF v Ngubane</i> 2008 (1) SA 432 (SCA) at para [12]</p> <p><i>Contingency</i> <i>Ronald Bobroff & Partners Inc v De La Guerre</i> 2014 (3) SA 134 (CC) <i>Masango v RAF</i> 2016 (6) SA 508 (GJ) <i>TM obo MM v MEC for Health, Mpumalanga</i> 2023 (3) SA 173 (MM)</p> <p><i>Hit and run</i> <i>Geldenhuys & Joubert v Van Wyk; Van Wyk v Geldenhuys & Joubert</i> 2005 (2) SA 512 (SCA)</p> <p><i>Pedestrian</i> <i>RAF v Monjane</i> 2010 (3) SA 641 (SCA)</p> <p><i>Prescription</i></p>

		<p><i>Road Accident Fund v Mdeyide (Minister of Transport Intervening)</i> 2008 (1) SA 535 (CC)</p> <p><i>RAF v Masindi</i> 2018 (6) SA 481 (SCA) at paras [19] to [21]</p> <p><i>Jones v Road Accident Fund</i> 2020 (2) SA 83 (SCA)</p> <p><i>Van Zyl NO v Road Accident Fund</i> 2022 (3) SA 45 (CC) – mental incapacity</p> <p><i>Road Accident Fund</i></p> <p><i>RAF v Legal Practice Council</i> 2021 (6) SA 230 (GP)</p> <p><i>Single vehicle collision</i></p> <p><i>Road Accident Fund v Abrahams</i> 2018 (5) SA 169 (SCA) at especially para [13]</p> <p><i>Tribunal</i></p> <p><i>Road Accident Appeal Tribunal v Gouws</i> 2018 (3) SA 413 (SCA)</p>
<p>Criminal Court Practice Reg 6 (10)(f)</p>	<p>Introduction to criminal law and procedure</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 & ensure witness presence in court. * How to engage prosecution and client in plea bargaining. * How to do bail applications. * How to plead effectively, including when to make a Plea explanation. * Candidates must know how to draft statements in terms of Section 112 and 115. * How to attend trial and pre-trial conferences. * How to cross-examine state witnesses. * How to present your client's version to a state witness. * How to lead evidence in chief and the decision to call your client. * How to manage experts in criminal cases * How to present argument 	<p>PRINCIPAL REFERENCES:</p> <ul style="list-style-type: none"> • Criminal Procedure Act 51 of 1977 (CPA) • The Constitution of the Republic of South Africa, 1996 <p>ADDITIONAL REFERENCES:</p> <ul style="list-style-type: none"> • Du Toit, et al <i>Commentary on the Criminal Procedure Act</i> <p>Section 60 in Part VI: Commitment of legal practitioner to an effective court process.</p> <p>The Stalingrad defence is inappropriate. It is a violation of the rule of law.</p> <p><i>Zuma v Downer and Another</i> (788/2023) [2023] ZASCA 132 (13 October 2023) especially at paras [6], [11] and [28] to [30]</p> <p>1. GENERAL</p> <p><i>Right to legal representation</i></p> <ul style="list-style-type: none"> - Constitution Section 35(3)(f) and (g) - CPA Section 73 <p><i>Arrest</i></p> <ul style="list-style-type: none"> - Constitution Section 14, 35(1)(d), 35(2)(a) and 35(4) - CPA Sections 39–53 - <i>Mahlongwana v Kwatinidubu Town Committee</i> 1991 (1) SACR 669 (E) - <i>Minister of Safety and Security v Sekhoto and Another</i> 2010 (1) SACR 388 (FB)

	<p>* How to present sentencing options and evidence in mitigation.</p> <p>* Understand that the onus is on the state and how that onus is discharged</p> <p>In particular candidates must have a practical understanding of what is entailed with regard to:</p> <p>Bail: Chapters 9 and 10 of the CPA. Section 35(1)(f) of the Constitution, 1996.</p> <p>The charge: ss 80 to 104 of the CPA</p> <p>The plea: ss 105 to 122 of the CPA How pleas are drafted (form and content) and plea and sentence agreements</p> <p>Conduct of proceedings: ss 144 to 146 and Chapter 22 of the CPA</p> <p>Discharge applications at the close of the State's case: section 174 of the CPA</p> <p>Competent verdicts: Chapter 26 of the CPA</p> <p>Sentencing: Chapter 28 and 29 of the CPA</p> <p>Appeals and reviews: Chapters 30 and 31 of the CPA (sections 302-324) Chapter 24 evidence</p> <p>Private prosecutions: s 7 of Chapter 1 of the CPA Section 8(5) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 and section 426 of the Companies Act 61 of 1973 read with section 224 of the Companies Act 71 of 2008 and section 63 (1)(i) of the Legal Practice Act 28 of 2014.</p> <p>National Prosecuting Authority Act 32 of 1998 Representations in terms of section 22 How to make representations</p>	<p>Bail</p> <ul style="list-style-type: none"> - Constitution Section 35(1)(f) - Chapter 9 and 10 of the CPA - CPA Sections 307 and 309 - <i>S v Dlamini</i>; <i>S v Dladla and others</i>; <i>S v Joubert</i>; <i>S v Schietekat</i> 1999 (4) SA 623 (CC) (1999 (2) SACR 51; 1999 (7) BCLR 771; [1999] ZACC 8) <i>S v Mabena and another</i> 2007 (1) SACR 482 (SA) paras [3] to [7] <i>S v Viljoen</i> 2002 (2) SACR 550 (SCA) ([2002] 4 All SA 10; [2002] ZASCA 81) paras [10] to [15] <i>S v Botha and another</i> 2002 (1) SACR 222 (SCA) (2002 (2) SA 680; [2002] 2 All SA 577; [2001] ZASCA 146) paras [2] to [21] <i>S v Bruintjies</i> 2003 (2) SACR 575 (SCA) ([2003] ZASCA 4) paras [4], [5] and [8] to [10] <p>2. CRIMINAL TRIAL</p> <p>2.1. Indictments and charges</p> <ul style="list-style-type: none"> - General Sections 80 – 104 of the CPA <i>S v Wannenburg</i> 2007 (1) SACR 27 (C) at 32J - 34C <i>S v Whitehead and others</i> 2008 (1) SACR 431 (SCA) para [10] o CPA Chapter 14, particularly sections 54 & 55 & 144 o <i>Shabalala and Others v Attorney-General of Transvaal and Another</i> 1995 (2) SACR 761 (CC) (1996 (1) SA 725; 1995 (12) BCLR 1593; [1996] 1 All SA 64; [1995] ZACC 12) - Joinder of Persons and Counts o CPA Sections 81, 155, 156, 157 - Splitting of Charges o CPA Sections 336, 83 - Particulars of Offence o CPA Sections 84, 85, 86–92, 104 <p>Representations</p> <p>Section 22 of the National Prosecuting Authority Act 32 of 1998</p> <p><i>National Director of Public Prosecutions v Zuma</i> 2009 (2) SA 277 (SCA) (2009 (1) SACR 361; 2009 (4) BCLR 393; [2009] 2 All SA 243; [2009] ZASCA 1) at paras [15] and [16], read with paras [23] to [26] and especially paras [35] to [38]. Consider also the remarks in para [44].</p> <p>2.2. Pleas</p> <ul style="list-style-type: none"> - Ordinary Pleas
--	---	--

		<p>o Constitution Section 35(3)(h)</p> <p>o CPA Sections 105, 106, 112, 113, 114, 115, 116, 117</p> <p>Inclusive of how pleas should be drafted (form and content) and plea and sentence agreements - section 105A</p> <p><i>S v Esterhuizen and others</i> 2005 (1) SACR 490 (T)</p> <p>- Exceptional Pleas</p> <p>o CPA Sections 57, 77, 79, 109, 85</p> <p>- Autrefois Acquit and Convict</p> <p>o Constitution Section 35(3)(m)</p> <p>o CPA Sections 106 and 324</p> <p>- Unreasonable delay/ permanent stay</p> <p>o CPA Sections 168 and 342A</p> <p>o <i>Sanderson v Attorney-General, Eastern Cape</i> 1998 (1) SACR 227 (CC)</p> <p>o <i>Director of Public Prosecutions, Transvaal v Mtshweni</i> 2007 (2) SACR 217 (SCA)</p> <p>o <i>Magmoed v Janse Van Rensburg and Others</i> 1993 (1) SACR 67 (A)</p> <p>o <i>S v Basson</i> 2004 (1) SACR 285 (CC)</p> <p>o <i>S v Basson</i> 2007 (1) SACR 566 (CC)</p> <p>2.3. <i>The conduct of the trial</i></p> <p>- Conduct</p> <p>Sections 144 - 146 and Chapter 22 of the CPA</p> <p>- Discharge: CPA section 174</p> <p><i>Commentary on the Criminal Procedure Act</i> by Du Toit <i>et al</i></p> <p><i>S v Lubaxa</i> 2001 (2) SACR 703 (SCA) (2001 (4) SA 1251; [2002] 2 All SA 107) paras [8] to [23]</p> <p>- Specific issues around admissibility of evidence</p> <p>Entrapment</p> <p>▪ Section 252A of Act 51 of 1977</p> <p>Law of Evidence Amendment Act 45 of 1988, section 3</p> <p><i>Kapa v The State</i> (CCT 292/21) [2023] ZACC 1; 2023 (4) BCLR 370 (CC); 2023 (1) SACR 583 (CC) (24 January 2023)</p> <p>Admissions and confessions</p> <p>▪ Constitution Sections 35 and 36</p> <p>▪ CPA Sections 217 to 220</p> <p>o Unlawfully obtained Evidence</p> <p>▪ <i>Key v Attorney-General, Cape Provincial Division and Another</i> 1996 (4) SA 187 (CC)</p> <p>▪ <i>Director of Public Prosecutions, Western Cape v Killian</i> 2008 (1) SACR 247 (SCA)</p> <p>▪ <i>S v Mthembu</i> 2008 (2) SACR 407 (SCA)</p>
--	--	---

		<ul style="list-style-type: none"> ▪ <i>S v Tandwa and Others</i> 2008 (1) SACR 613 (SCA) ▪ <i>S v Shaik and Others</i> 2008 (1) SACR 1 (CC) - Trial-within-a-trial <p>2.4. <i>Conclusion of the trial</i></p> <ul style="list-style-type: none"> - Competent Verdicts <ul style="list-style-type: none"> o CPA Chapter 26 - Previous Convictions: CPA Chapter 27 - Procedure of Judgment o CPA Sections 152, 274, 275–299 o <i>S v Lubaxa</i> 2001 (2) SACR 703 (SCA) <p>3. SENTENCING</p> <p>3.1. <i>Principles of sentencing</i></p> <p>Chapter 28 and 29 of the CPA</p> <p>Sections 51-53 of the Criminal Law Amendment Act 105 of 1997</p> <p><i>S v Malgas</i> 2001 (1) SAR 469 (SCA)</p> <p><i>S v Karolia</i> 2006 (2) SACR 75 (SCA)</p> <p><i>S v Mthimkulu</i> 2013 (2) SACR 89 (SCA)</p> <p>3.2. <i>Types of sentences</i></p> <ul style="list-style-type: none"> - Section 276 - Imprisonment - Committal to a treatment centre - Fine - Correctional supervision - Sentencing of juveniles o Sections 290 and 297 of the Code o Suspension of sentence of various conditions o Conditional/unconditional postponement of sentence o Caution and discharge <p>3.3. <i>Sentencing discretion</i></p> <ul style="list-style-type: none"> - Mandatory minimum sentencing: Criminal Law Amendment Act 105 of 1997 - <i>S v Malgas</i> 2001 (1) SACR 469 (SCA) - Mitigating and aggravating factors <p>4. APPEALS AND REVIEWS</p> <p>4.1. REVIEW</p> <ul style="list-style-type: none"> - Constitution Section 35(3)(o) - CPA Chapter 30 <ul style="list-style-type: none"> (i) the difference between appeals and reviews (ii) powers of the court on appeal and review <p><i>R v Dhlumayo</i> 1948 (2) SA 677 (A) at 705-706</p> <p><i>S v Rabie</i> 1975 (4) SA 855 (A)</p>
--	--	---

		<p><i>S v Van Aswegen</i> 2001 (2) SACR 97 (SCA) ([2001] ZASCA 61) – all evidence to be taken into account</p> <p><i>S v S</i> 1999 (1) SACR 608 (W) ([1999] 4 All SA 16) – review</p> <p><i>S v Bogaards</i> 2013 (1) SACR 1 (CC) (2012 (12) BCLR 1261; [2012] ZACC 23) – paras [37] and [41]</p> <p>4.2. APPEAL</p> <ul style="list-style-type: none"> - Constitution Section 35(3)(o) - CPA Chapters 30 and 31 - From Lower Courts <ul style="list-style-type: none"> o CPA Sections 309 and 310 o Magistrates' Courts: Rule 67 - From the High Courts <ul style="list-style-type: none"> o CPA Sections 315–322 <p>5. THE ADMISSIBILITY/ INADMISSIBILITY OF RELEVANT EVIDENCE</p> <p>5.1. Hearsay evidence</p> <ul style="list-style-type: none"> - Common law exceptions - The Law of Evidence Amendment Act 45 of 1988 <p>5.2. The parol evidence rule</p> <ul style="list-style-type: none"> - Hoffmann & Zeffertt, chapter 14 <p><i>KPMG Chartered Accountants (SA) v Securefin Ltd and Another</i> 2009 (4) SA 399 (SCA) ([2009] 2 All SA 523) at para [39].</p> <p>5.3. Similar fact evidence (SFE) (SCH – CHP 7) (ZEF – CHP 9)</p> <ul style="list-style-type: none"> - Rationale for the exclusion of SFE - Rule for the admissibility of SFE: the Makin formulation & the Boardman formulation <p>5.4. Character evidence (SCH – CHP 6) (ZEF – CHP 8)</p> <ul style="list-style-type: none"> - Introduction to character evidence - Character in criminal cases <ul style="list-style-type: none"> o Sections 197, 211 of the CPA - Character in civil cases <p>5.5. Opinion evidence (SCH – 8)(ZEF – CHP 10)</p> <ul style="list-style-type: none"> - The Hollington rule - Opinion of a lay person - Expert witness <p><i>Menday v Protea Assurance Co Ltd</i> 1976 1 Sa 565 (E)</p> <p><i>Coopers (SA) Pty Ltd v Deutsche Gesellschaft Fur Schadlingsbekampfung Mbh</i> 1976 3 Sa 352 (A)</p> <p><i>Schneider NO and Others v AA and Another</i> 2010 (5) SA 203 (WCC) at 211J – 212B</p>
--	--	--

		<p>5.6. <i>Previous consistent statements</i> (PCS) (SCH – CHP 9) (ZEF – CHP 14)</p> <ul style="list-style-type: none"> - Reason for the exclusion of previous consistent statements - Exceptions to the general rule <ul style="list-style-type: none"> o To rebut a suggestion of recent fabrication o Complainant in a sexual case o Identification <p>6. EVIDENCE</p> <p>6.1. <i>Confirmation or cautionary rules in regard to:</i></p> <ul style="list-style-type: none"> (i) Single witnesses: Section 208 of the CPA; (ii) Evidence of identification: <i>S v Mthetwa</i> 1972 (3) SA 766 (A) at 768A—C (iii) Complaints in matters of a sexual nature: <i>S v Jackson</i> 1998 (1) SACR 470 (SCA); (iv) Children; (v) Confessions: Section 209 of the CPA; (vi) Accomplices; (vii) Traps <p>See, generally, the commentary on the cautionary rule dealt with in <i>Commentary on the Criminal Procedure Act</i> by Du Toit <i>et al</i> under Section 208 of the CPA</p> <p>6.2. <i>Presumptions</i></p> <ul style="list-style-type: none"> (i) Onus (on criminal cases in respect of defences pleaded); (ii) Particular presumptions <ul style="list-style-type: none"> (a) Drugs and Drug Trafficking Act 140 of 1992; (b) The CPA; (c) Sections 65(3) and (4) of the National Road Traffic Act 93 of 1996; (iii) The effect of Section 35 read with Section 36 of the Constitution, 108 of 1996, and statutory presumptions. <i>S v Coetzee and others</i> 1997 (3) SA 527 (CC). <p>6.3. Admissions and confessions</p> <ul style="list-style-type: none"> (i) Sections 217—220 of the CPA; (ii) The effect of Section 35 read with Section 36 of the Constitution on admissions and confessions. <p>6.4. <i>Documentary evidence</i> Section 212, particularly ss 212(1), (4), (8), (9), (11) and (12); and Sections 213, 221, 233, 234 and 236 of the CPA.</p> <p>6.5. <i>Mental capacity of accused persons</i> Chapter 13 of the CPA; Criminal Law Amendment Act 1 of 1988.</p>
--	--	--

		<p>6.6. Search and seizures Sections 20-22 of the CPA</p> <p>6.7. <i>Entrapment</i> Section 252A of the CPA. Case law references in the commentary (Du Toit <i>et al</i>), including:</p> <p>6.8. <i>The status of evidence illegally obtained</i> (Having regard to Sections 35 and 36 of the Constitution and the commentary under Section 225 of the CPA in Du Toit <i>et al</i>)</p> <p>6.9. <i>Unreasonable delay / Permanent stay</i> Sections 168 and 342A of the CPA</p> <p>7. LEGISLATION</p> <p>7.1. Constitution of the Republic of South Africa, 1996 Sections 35 and 36</p> <p>7.2. The Law of Evidence Amendment Act 45 of 1988 (Hearsay) <i>Kapa v The State</i> 2023 ZACC 1</p> <p>7.3. Accused's right of access to information contained in the State brief / Police docket (Having regard to the provisions of Sections 35 and 36 of the Constitution.) <i>Shabalala and others v Attorney General, Transvaal and another</i> 1996 (1) SA 725 (CC) (1995 (2) SACR 761 (CC))</p> <p>7.4. Preservation, confiscation, restraint and forfeiture orders Sections 34 and 35 of the CPA</p>
--	--	---

PAPER 2: WILLS AND ESTATES

MODULES	CURRICULUM AND COURSE CONTENT	READING LISTS
Wills and Estates Reg 6 (10)(j)	Introduction to Wills and Estates Wills The Wills Act 7 of 1953 The Trust Property Control Act 57 of 1988.	Legislation The Wills Act 7 of 1953 <i>Van der Merwe v The Master and Another</i> 2010 (6) SA 544 (SCA) <i>Delport v Le Roux</i> 2022 ZAKZD 51 Intestate Succession Act 81 of 1987

	<p>Drafting Wills. Using plain language, avoid old precedents. Taking instructions, what one needs to know to draft a will. Proper consultation. The role of sound literacy skills. Interpreting (archaic) Wills. Capacity to benefit under a Will Incompetency of a person involved in the execution of a Will to inherit and the maxim of “de bloedige hand erft niet”. Formalities and the Execution of Wills - Section 2(1)(a) Amendments of Wills - Section 2(1)(b); Codicils The Court’s overriding discretion regarding the validity of wills - (Section 2(3))</p> <p>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.</p> <p>Drafting liquidation and distribution accounts Administration of Estates Act 66 of 1965</p> <p>Estate duty. Estate Duty Act 45 of 1955. What to do when the validity of a will is contested. Drafting wills and trusts and estate administration Intestacy and inheritance law Estate planning and tax considerations Ethics and professional responsibility in wills and estates practice</p>	<p>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.</p> <p>Administration of Estates Act 66 of 1965 Estate Duty Act 45 of 1955 The Trust Property Control Act 57 of 1988</p> <p>National Health Act 61 of 2003</p> <p>PRINCIPAL WORKS</p> <ul style="list-style-type: none"> • Jamneck & Rautenbach <i>The Law of Succession in South Africa</i>, 3rd Edition, (2017) Oxford University Press, Cape Town • Lexis Practical Guidance <i>Trusts Wills and Estates</i>, online LexisNexis <ul style="list-style-type: none"> • Testamentary Succession in General • <i>Ngubane v RAF</i> 2022 (5) SA 231 (GJ) especially at para [27] • Formalities and the Execution of Wills, Amendments of Wills, and Incorporation by Reference • Capacity to make a will and to witness a will • Capacity to Benefit under a Will or on Intestacy • Invalidity of Wills Generally: Mistake, Fraud, Duress and Undue Influence; Revocation and Revival • Custody and Registration of Wills • Appointment of Heirs and Legatees: Dies, Conditions • Vesting • Substitution • Legacies • Accrual • Interpretation: Principles <ul style="list-style-type: none"> ◦ Canons of Construction and Presumptions ◦ Specific Words and Phrases • Intestate Succession <p><i>Wilkinson and Another v Crawford NO and Others</i> 2021 (4) SA 323 (CC) (2021 (6) BCLR 618; [2021] ZACC 8) at paras [1] to [12], [23], [31] to [33], and especially paras [67] to [78]</p>
--	---	---

PAPER 3: ATTORNEYS PRACTICE AND PROFESSIONAL LEGAL ETHICS

MODULES	CURRICULUM AND COURSE CONTENT	READING LISTS
Professional Legal Ethics Reg 6 (10)(b)	<p>Introduction to legal ethics and professional responsibility</p> <p>Lewis Golden Rule: all legal practitioners must avoid conduct which could damage their reputation as honourable people and honourable lawyers.</p> <p>The seven universal ethical principles</p> <p>The current Code of Conduct of 29 March 2019 applicable to attorneys: Section 3 in Part II of the general provisions in the Code of Conduct.</p> <p>Section 56 in Part VI: Scope and limits of legitimate cross-examination especially in the Magistrates' Courts.</p> <p>Section 60 in Part VI: Commitment of legal practitioner to an effective court process.</p> <p>Conflicts of interest, legal privilege, and confidentiality.</p> <p>What to do when client's instructions amount to "a hopeless case".</p> <p>How fiduciary duties are based on the principles and precepts of ethics.</p> <p>Consider:</p> <p><i>Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and Others</i> [2023] ZASCA 112 at paras [26] to [28]</p>	<p>Legal Practice Act 28 of 2014: ss 33 - 35 ("LPA")</p> <p>The South African Legal Practice Council Code of Conduct in terms of s 36(1) of the LPA</p> <ul style="list-style-type: none"> - Part I: Definitions - Part II: Code of Conduct: General Provisions - Part III: Conduct of Attorneys - Part VI: Conduct of legal practitioners and candidate legal practitioners in relation to appearances in court and before tribunals - Part VII: Conduct of legal practitioners not in private practice. <p><i>University of South Africa v Socikwa and Others</i> (J 675/23; J 680/23) [2023] ZALCJHB 172 (7 June 2023)</p> <p><i>Freedom Under Law v Judicial Service Commission and Another</i> (550/2022) [2023] ZASCA 103; [2023] 3 All SA 631 (SCA) (22 June 2023)</p> <p>All legal practitioners and candidate legal practitioners have their essential ethical duties enumerated in the Code of Conduct published in March 2019.</p> <p>Candidate attorneys are required to know those parts of the Code that relate to all legal practitioners and specifically to attorneys. Candidate attorneys will be assessed accordingly.</p> <p>Principles governing the hopeless case</p> <p>"The ethics of the hopeless case", Owen Rogers, Advocate December 2017</p> <p><i>Motswai v Road Accident Fund</i> 2013 (3) SA 8 (GSJ) at paras [26]-[37]</p> <p><i>University of South Africa v Socikwa and Others</i> (J 675/23; J 680/23) [2023] ZALCJHB 172 (7 June 2023)</p> <p><i>Freedom Under Law v Judicial Service Commission and Another</i> (550/2022) [2023] ZASCA 103; [2023] 3 All SA 631 (SCA) (22 June 2023)</p>

		To exercise the duty of care and skill Code of conduct section 18.14
Constitutional Practice Reg 6 (10)(a) [Including Aspects of Customary Law]	<p>Introduction to Constitutional Law What is “the rule of law” How the Constitution is transformative in nature Jurisdiction of our courts to hear constitutional matters: the 2013 change to the jurisdiction of the Constitutional Court. Rules and Directives: Constitutional Court. Eleven ways to the Constitutional Court. Advising clients about their Constitutional rights, duties and obligations. Advising clients on the Constitutional Court’s stance on legal standing Advising clients on the remedies that can be awarded by the Constitutional Court 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. Candidates must be up to date with case law from the Constitutional Court and the Supreme Court of Appeal to within one week before their exams.</p> <p>1. GENERAL 1.1. Historical approach to customary law - Law of Evidence Amendment Act 1988 s 1(1), (2)</p> <p>1.2. Customary law under the constitution - The Constitution, sections 30, 31, 39, 211 o Alexkor Ltd and Another v Richtersveld Community and Others 2004 (5) SA 460 (CC) (2003 (12) BCLR 1301; [2003] ZACC 18) at para [51] o Bhe and Others v Magistrate, Khayelitsha and Others; Shibi v Sithole and Others; SA Human Rights Commission and Another v President of the RSA and Another 2005 (1) BCLR 1 (CC) 2005</p>	<p>Constitution of the Republic of South Africa, 1996 Rules of the Constitutional Court, 2003 Directives of the Constitutional Court</p> <p>1. GENERAL This course will prepare candidates to understand the principles, concepts and the procedure of Constitutional litigation.</p> <p>1.1. Access to the Constitutional Court - Superior Courts Act, sections 16 and 17 - Constitutional Court Rule 19 What is a “constitutional matter”? S v Boesak 2001 (1) SA 912 (CC) especially paras [10] to [15].</p> <p>1.2. The Bill of Rights, Constitutional matters & any other matter that raises an arguable point of law of general public importance which ought to be considered - Constitution, section 167(3)(b) & 167(6)(a) & (b) CC Rule 18. CC Rule 19. Jurisdiction of the Constitutional Court University of Johannesburg v Auckland Park Theological Seminary and Another 2021 (6) SA 1 (CC); 2021 (8) BCLR 807; [2021] ZACC 13 at paras [39] to [52]</p> <p>- Intervention in the Constitutional Court CC Rule 8. - Confirmation proceedings in the Constitutional Court Section 167(5) of Constitution. CC Rule 16.</p> <p>- The exclusive jurisdiction of the Constitutional Court CC Rules 14 to 1. Section 167(4) of Constitution</p> <p>Content and limitation of rights Chapter 2 of the Constitution, especially section 36. NM and Others v Smith 2007 (5) SA 250 (CC) especially paras [33] to [45].</p>

<p>o Shilubana and Others v Nwamitwa and Others 2009 (2) SA 66 (CC) (2008 (9) BCLR 914; [2008] ZACC 9)</p> <p>2. CUSTOMARY LAW IN THE COURTS</p> <p>2.1. Ascertainment and proof of African customary law</p> <ul style="list-style-type: none"> - Shilubana and Others v Nwamitwa and Others 2008 (9) BCLR 914 (CC) - Mayelane v Ngwenyama and Another (Women's Legal Centre Trust and Others as amici curiae) 2013 (8) BCLR 918 (CC) <p>2.2. Conflicts between common law and customary law: choice of law guidelines</p> <ul style="list-style-type: none"> - Section 211(3) of the Constitution <p>2.3. Conflict of laws between customary law systems</p> <ul style="list-style-type: none"> - Section 1(3) Law of Evidence Amendment Act <p>3. CUSTOMARY LAW INSTITUTIONS</p> <p>3.1. Traditional leadership – s 211 and 212 of the Constitution</p> <p>4. SPECIFIC CUSTOMARY LAW ISSUES</p> <p>4.1. Land</p> <ul style="list-style-type: none"> - Communal Land Bill of 2017 - Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA) <p>4.2. Customary marriage</p> <ul style="list-style-type: none"> - Registration, recognition & status, s 15 Constitution o Recognition of Customary Marriages Act 120 of 1998 sections 2, 3, 4, 8 & 10 o Mayelane v Ngwenyama and Another (Women's Legal Centre Trust and others as amici curiae) 2013 (8) BCLR 918 (CC) - Proprietary consequences o Gumedde v President of the Republic of South Africa and Others 2009 (3) SA 152 (CC) (2009 (3) BCLR 243; [2008] ZACC 23) o Ngwenyama v Mayelane and Another 2012 (10) BCLR 1071 (SCA) o Ramuhovhi v President of the Republic of South Africa 2016 (6) SA 210 (LT) 	<p>Government of the Republic of South Africa and Others v Grootboom 2001 (1) SA 46 (CC) especially paragraphs [39] to [46].</p> <p>1.3. Costs in Constitutional matters</p> <ul style="list-style-type: none"> - Biowatch Trust v Registrar Genetic Resources and Others 2009 (6) SA 232 (CC) paras [16] and [20] to [24] and [56] <p>2. SPECIFIC PROCEDURES</p> <p>2.1. Direct access applications</p> <ul style="list-style-type: none"> - Constitutional Court Rule 18 - Lesbian & Gay Equality Project v Minister of Home Affairs 2006 1 SA 524 (CC) par 39 Ashebo v Minister of Home Affairs and Others [2023] ZACC 16 at footnote 1 and paras [57] and [60] - Mazibuko v Sisulu 2013 6 SA 249 (CC) - SA Informal Traders Forum v City of Johannesburg; SA National Traders Retail Assoc. v City of Johannesburg 2014 4 SA 371 (CC) UDM v Speaker, NA 2017 (5) SA 300 (CC) (2017 (8) BCLR 1061; [2017] ZACC 21) at para [23] - Urgent applications Constitutional Court Rule 12 <p>2.2. Declaration of constitutional invalidity</p> <ul style="list-style-type: none"> - Constitution, section 172(2) - Constitutional Court Rules 15 and 16 - Director of Public Prosecutions v Mohamed 2003 (4) SA 1 (CC) at para [56] - Arena Holdings (Pty) Ltd t/a Financial Mail and Others v South African Revenue Service and Others [2023] ZACC 13; 2023 (8) BCLR 905 (CC) especially at paras [141], [147], [158] and [193] to [195] <p>2.3. Amicus curiae and joinder applications</p> <ul style="list-style-type: none"> - Constitutional amicus interventions in the High Court Uniform Rule 16A. Constitutional amicus interventions in the the SCA SCA Rule 16. - Constitutional Court Rules 5, 8 and 10 Ex parte Institute for Security Studies: In re S v Basson 2006 (6) SA 195 (CC) (2006 (2) SACR 350; [2005] ZACC 4) especially at paras [5] to [11] <p>3. CONSTITUTIONAL REMEDIES</p> <p>Minister of Health and Others v Treatment Action Campaign and Others (No 2) 2002 (5) SA 721 (CC) especially paras [96] to [114].</p>
--	---

<p>Ramuhovhi and Others v President of the Republic of South Africa and Others 2018 (2) SA 1 (CC); 2018 (2) BCLR 217</p> <p>Netshituka v Netshituka 2011 (5) SA 453 (SCA) ([2011] ZASCA 120)</p> <p>Mayelane v Ngwenyama and Another 2013 (4) SA 415 (CC); 2013 (8) BCLR 918 (CC)</p> <p>Holomisa v Holomisa and Another (CCT146/17) [2018] ZACC 40; 2019 (2) BCLR 247 (CC) (23 October 2018)</p> <p>MM v MN and Another 2013 (4) SA 415 (CC) (2013 (8) BCLR 918; [2013] ZACC 14)</p> <ul style="list-style-type: none"> - Disputes about validity - Change of marriage system <p>4.3. Succession</p> <ul style="list-style-type: none"> - Black Administration Act 38 of 1927 - Regulations for the Administration and Distribution of the Estates of Blacks (GN R200 of 1987) - Intestate Succession Act 81 of 1987 - Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009. - Himonga pp 158-185 - Mthembu v Letsela and Another 1998 (2) SA675 (T) - Mthembu v Letsela 2000 (3) SA 867 (SCA) - Bhe and Others v Magistrate, Khayelitsha and Others; Shibi v Sithole and Others; SA Human Rights Commission and Another v President of the RSA and Another 2005 (1) BCLR 1 (CC) - Gumede v President of the Republic of South Africa 2009 (3) SA 152 (CC) <p>4.4. Ownership of Property</p> <p>Communal ownership of land v Individual ownership</p> <p>. Interim Protection of Informal Land Rights Act 31 of 1996</p> <p>Section 1 - definitions "community"; "informal right to land"</p> <p>Section 2</p> <p>Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Ltd and Another 2019 (2) SA 1 (CC) (2019 (1) BCLR 53; [2018] ZACC 41)</p>	<p>Mwelase v Director General, Department of Rural Development & Land Reform 2019 (6) SA 597 (CC) at para [51].</p> <p>3.1. Declaration of invalidity, reading down, reading in & severance</p> <ul style="list-style-type: none"> - Hierarchy of remedies <p>Van Rooyen v The State 2002 (5) SA 246 (CC)</p> <ul style="list-style-type: none"> - Declarations of invalidity <p>S v Makwanyane 1995 (3) SA 391 (CC) par 151</p> <p>National Coalition for Gay and Lesbian Equality & Others v Minister of Home Affairs & Others 2000 (2) SA 1 (CC) par 73–76</p> <ul style="list-style-type: none"> - Reading down & Severance <p>Investigating Directorate: Serious Economic Offences & Others v Hyundai Motor Distributors (Pty) Ltd & Others: In re Hyundai Motor Distributors (Pty) Ltd v Smit NO & Others 2001 (1) SA 545 (CC)</p> <p>Lawyers for Human Rights & Another v Minister of Home Affairs & Another 2004 (4) SA 125 (CC)</p> <p>Coetzee v Government of the Republic of South Africa; Matiso & Others v Commanding Officer, Port Elizabeth Prison 1995 (4) SA 631 (CC) par [51]</p> <p>Minister of Home Affairs v National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) & Others 2005 (3) SA 280 (CC)</p> <p>National Coalition for Gay and Lesbian Equality & Others v Minister of Home Affairs & Others 2000 (2) SA 1 (CC) par 63-64</p> <ul style="list-style-type: none"> - Reading In <p>National Coalition for Gay and Lesbian Equality & Others v Minister of Home Affairs & Others 2000 (2) SA 1 (CC) par 67-68</p> <p>Khosa & Others v Minister of Social Development & Others; Mahlaule & Others v Minister of Social Development & Others 2004 (6) SA 505 (CC)</p> <p>Bhe & Others v Magistrate, Khayelitsha & Others; Shibi v Sithole & Others; SA Human Rights Commission & Another v President of the RSA & Another 2005 (1) SA 580 (CC)</p> <p>3.2. Retrospectivity and suspension of invalidity</p> <ul style="list-style-type: none"> - Nyathi v MEC of the Department of Health & Another 2008 (5) SA 94 (CC) - Matatiele Municipality & Others v President of the Republic of South Africa & Others 2007 (1) BCLR 47 (CC) par 96
--	--

	<p>4.5. Traditional Leadership - status, powers, administration Structures of traditional leadership - Constitution 1996, sec 211 & 212 - Traditional Leadership and Governance Framework Act 41 of 2003 Council for the Advancement of the SA Constitution and Others v Ingonyama Trust and Others 2022 (1) SA 251 (KZP)</p> <p>Traditional and Khoi-San Leadership Act 3 of 2019 - Sections 2; 3; 4; 11; 12 & 19 Shilubana and Others v Nwamitwa 2009 (2) SA 66 (CC) (2008 (9) BCLR 914; [2008] ZACC 9)</p>	<p>- Ex Parte Women's Legal Centre: In re Moise v Greater Germiston TLC 2001 (4) SA 1288 (CC) par 13 - Masiya v Director of Public Prosecutions, Pretoria & Another (Centre for Applied Legal Studies & Another, Amici Curiae) 2007 (5) SA 30 (CC) par 47-57 3.3. Interdicts, interim orders and supervisory orders - Black Sash Trust v Minister of Social Development and Others (Freedom Under Law NPC Intervening) 2017 (3) SA 335 (CC)</p> <p>3.4. Constitutional damages - Fose v Minister of Safety and Security 1997 (3) SA 786 (CC) paras [60] and [67] - Minister of Safety and Security & Another v Carmichele 2004 (3) SA 305 (SCA) - Minister of Safety and Security v Van Duivenboden 2003 (1) SA 389 (SCA) para [21] - President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd (Agri SA and Others, Amici Curiae) 2005 (5) SA 3 (CC)</p>
<p>Alternative Dispute Resolution Reg 6 (10)(h)</p>	<p>Introduction to alternative dispute resolution (ADR) The impact of Rule 41A of the Uniform Rules of Court Understand that courts expect actual compliance with Rule 41A and not mere lip service. Defining and understanding: - what is a conflict. Negotiation. Conciliation Mediation. Protection of Investment Act 22 of 2015, section 13. Arbitration. Arbitration Act 42 of 1965 and the International Arbitration Act 15 of 2017. The role of ADR in litigation.</p>	<p>PRINCIPAL WORKS: • Grogan, Workplace Law Juta (2015) chapter 20 • Ramsden McKenzie's Law of Building and Engineering Contracts and Arbitration Juta (2014) Tobie Wiese Alternative dispute resolution in South Africa, Negotiation, Mediation and Arbitration 2021 Juta</p> <p>1. INTRODUCTION 1.1. Distinction between adversarial proceedings and facilitative / consensus-building processes 1.2. Conflict management and dispute resolution - LSSA Manual on Alternative Dispute Resolution - Access to justice and social justice - Rights vs interest disputes - Rights vs position-based negotiation - Ethics involved in conciliation (conflicts of interest, confidentiality, mediator liability) - Drafting certificates, outcome reports, settlement agreements</p> <p>2. COURT-ANNEXED MEDIATION PROCESSES 2.1. Rule 41A, Uniform Rules of Court 2.2. Magistrates court</p>

		<ul style="list-style-type: none"> - Rules of Voluntary Court-Annexed Mediation, 2014 - Rules: Conduct of proceedings of Magistrate's Courts of South Africa, 2019 <p>2.3. Divorce Mediation</p> <ul style="list-style-type: none"> - Function of the mediator - Children's Act, Brownlee v Brownlee Gauteng Local Division 2008/25274 - Best interests of the child, parenting plan, maintenance, division of assets, Memorandum of Understanding <p>Mediation in Certain Divorce Matters Act 24 of 1987</p> <p>Centre For Child Law v TS and Others 2023 (6) SA 1 (CC)</p> <p>3. ARBITRATION</p> <p>3.1. Arbitration Agreements</p> <ul style="list-style-type: none"> - Jurisdiction <p>Dis-Chem Pharmacies Limited v Dainfern Square (Pty) Ltd & Others [2023] ZASCA 115 and the general principle in favour of pleading over and the consequences of failing to plead over in all adversarial litigation</p> <p>Close-Up Mining and Others v Boruchowitz NO and Another 2023 (4) SA 38 (SCA) especially at paras [10] to [16], [23] and [34] to [36]</p> <ul style="list-style-type: none"> - Competence-competence principle - Enforcement of arbitral awards: <ul style="list-style-type: none"> o Domestic - Arbitration Act 42 of 1965 o International - International Arbitration Act 15 of 2017 - Section 13 of the Protection of Investment Act 22 of 2015 <p>3.2. Role of chairperson (presiding officer) and participant</p> <p>3.3. Employment arbitration</p> <ul style="list-style-type: none"> - CCMA or bargaining council <ul style="list-style-type: none"> o Issues for mediation/ conciliation o Issues for arbitration - Private arbitration <p>3.4. Construction Arbitration</p> <ul style="list-style-type: none"> - Charter of Disputes - ICC recommendations - FIDIC & JBCC contracts
Labour Dispute Resolution Reg 6 (10)(g)	<p>Introduction to the Industrial Relations Framework.</p> <p>Identification of an employee.</p>	<p>PRINCIPAL WORKS</p> <ul style="list-style-type: none"> • Grogan, Workplace Law Juta (2015)

<p>Permanent employees. Temporary employees. Disciplinary Proceedings and Hearings.</p> <p>Unfair labour practices and Dismissals. Bargaining Agents, Forums and Collective Bargaining. Dispute resolution including disputes about collective agreements The process of conciliation. How to prepare and move an interdict in the labour court. How to differentiate between a sufficiently representative trade union, majority and minority unions How to determine the validity of an extension of a collective agreement to members not party to the collective agreement How to ensure a strike is protected</p> <p>Labour Relations Act 66 of 1995. Basic Conditions of Employment Act. Employment Equity Act 75 of 1997.</p> <p>Rules for the Conduct of Proceedings in the Labour Court (GN 1665 of 1996: GG 17495 of 14 Oct 1996)</p> <p>Rules for the Conduct of Proceedings in the Labour Appeal Court (GN 1666 of 1996: GG 17495 of 14 Oct 1996)</p> <p>The Occupational Health and Safety Act 85 of 1993 (OHSA) Unemployment Insurance Act 63 of 2001 (UIA) The Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA).</p>	<p>COIDA and domestic workers Mahlangu and Another v Minister of Labour and Others 2021 (2) SA 54 (CC) (2021 (1) BCLR 1; [2020] ZACC 24) at paras [71] to [107]</p> <p>Suspension Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and Others [2023] ZASCA 112 at paras [31] to [33]</p> <p>Strikes and lockouts National Union of Metalworkers of South Africa v Trenstar (Pty) Ltd [2023] ZACC 11; (2023) 44 ILJ 1189 (CC); 2023 (7) BCLR 814 (CC); [2023] 7 BLLR 609 (CC); 2023 (4) SA 449 (CC) at paras [47] and [48] Numsa obo Dhludhlu and Others v Marley Pipe Systems (SA) (Pty) Ltd 2023 (1) SA 338 (CC)</p> <p>Disciplinary proceedings Hamata v Chairperson, Peninsula Technikon Internal Disciplinary Committee 2002 (5) SA 449 (SCA) ([2002] ZASCA 44) at para [5] and the important nuances at paras [12] and [20] to [22] Dyantyi v Rhodes University 2023 (1) SA 32 (SCA) at paras [21] to [23]</p> <p>Dismissal Amcu v Royal Bafokeng Platinum Ltd 2020 (3) SA 1 (CC) at paras [102] to [126]</p> <p>Collective Bargaining and Organisational rights</p> <p>CCMA rules</p> <p>NUMSA v Bader Bop (Pty) Ltd & another [2003] 2 BLLR 103 (CC) Solidarity & others v Eskom Holdings Ltd (2012) 33 ILJ 464 (LC) Growthpoint Properties (Pty) Ltd v SACCWU (2010) 31 ILJ 2539 (KZD).</p> <p>The Occupational Health and Safety Act 85 of 1993 (OHSA) and the Unemployment Insurance Act 63 of 2001 (UIA)</p> <p>Gunter v Compensation Commissioner 2009 (30) ILJ 2341 (O). Twalo v Minister of Safety and Security and Another 2009 (30) ILJ 1578 (CK).</p>
--	---

		<p>Mahlangu and Another v Minister of Labour and Others 2021 (1) BCLR 1 (CC); [2021] 2 BLLR 123 (CC).</p> <p>Association of Mineworkers and Construction Union and Others v Chamber of Mines of South Africa and Others 2017 (3) SA 242 (CC)</p>
<p>Matrimonial Law Reg 6 (10)(k)</p>	<p>Taking instructions in detail. Advice on marriage and its consequences Ante-nuptial contracts Advice on out of community of property with or without the accrual system and marriage in community of property Divorce and its consequences Complying with Rule 41A Redistribution orders Drafting particulars of claim / defence. Drafting Rule 43 Applications. How to settle matrimonial disputes outside Court. ADR in Family Law. Advice on rights and duties concerning children, including: Birth and registration of births Recognition of the unborn child 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. Drafting particulars of claim and a plea. The Practice directives in the unopposed divorce court. A discussion on the judgment in B v B.</p> <p>The duty of a practitioner in all family matters to resolve disputes quickly and cheaply. That practitioners are not to adopt an adversarial approach in family law cases.</p> <p>Marriage and divorce law Spousal and child support Child custody and visitation rights Domestic violence and abuse Alternative dispute resolution in family law</p>	<p>Legislation</p> <p>Candidates must read the legislation listed below. Candidates are NOT required to memorise the contents of the legislation. Candidates will be assessed on their ability to understand and apply the legislation and regulations published in terms of that legislation. In the exams, candidates will be required to read the legislation provided in the question and demonstrate their ability to understand and apply the legislation and regulations.</p> <p>The case law below is part of the PVT curriculum BUT will not be examined.</p> <p>Births and Deaths Registration Act 51 of 1992 Child Justice Act 75 of 2008 Children's Act 38 of 2005 and Regulations Civil Union Act 17 of 2006 Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 Divorce Act 70 of 1979 EB (born S) v ER (born B) and Others; KG v Minister of Home Affairs and Others (CCT 364/21; CCT 158/22) [2023] ZACC 32 (10 October 2023) especially at paras [108], [109], [120] to [133], [145] and [149] Domestic Violence Act 116 of 1998 Domicile Act 3 of 1992 Hague Convention on International Child Abduction 72 of 1996 – repealed and re-enacted in Act 38 of 2005 Maintenance Act 99 of 1998 Maintenance of Surviving Spouses Act 27 of 1990 Marriage Act 25 of 1961 Matrimonial Property Act 88 of 1984 Mediation in Certain Divorce Matters Act 24 of 1987 Prevention and Combating of Trafficking in Persons Act 7 of 2013 Protection from Harassment Act 17 of 2011 Pottas v Plath 2022 (4) SA 301 (GJ) at para [1]</p>

		<p>Recognition of Customary Marriages Act 120 of 1998</p> <p>Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act 6 of 1989</p> <p>South African Citizenship Act 88 of 1995</p> <p>South African Passports and Travel Documents Act 4 of 1994</p> <p>Accrual system</p> <p>Honey v Honey 1992 (3) SA 609 (W) at 612 B – D</p> <p>Odendaal v Odendaal 2002 (1) SA 763 (W)</p> <p>ST v CT 2018 (5) SA 479 (SCA) at paras [33] to [36] and [39]</p> <p>EB (born S) v ER (born B) and Others; KG v Minister of Home Affairs and Others (CCT 364/21; CCT 158/22) [2023] ZACC 32 (10 October 2023) especially at paras [108], [109], [120] to [133], [145] and [149]</p> <p>Antenuptial contracts</p> <p>CB v DB 2023 (1) SA 381 (SCA) at para [7]</p> <p>EB (born S) v ER (born B) and Others, op cit.</p> <p>Damages claim based on adultery</p> <p>RH v DE 2014 (6) SA 436 (SCA)</p> <p>DE v RH 2015 (5) SA 83 (CC) confirmed on appeal</p> <p>Customary marriage</p> <p>Gumede v President of the Republic of South Africa 2009 (3) SA 152 (CC)</p> <p>Netshituka v Netshituka 2011 (5) SA 453 (SCA) at para [15]</p> <p>MM v MN and Another 2013 (4) SA 415 (CC)</p> <p>Muslim marriages</p> <p>Women's Legal Centre Trust v President of the Republic of South Africa and Others 2022 (5) SA 323 (CC)</p> <p>Change of matrimonial regime</p> <p>Sithole v Sithole 2021 (5) SA 34 (CC) at paras [47] and [50]</p> <p>Divorce</p> <p>Irretrievable breakdown of marriage</p> <p>Schwartz v Schwartz 1984 (4) SA 467 (A)</p> <p>Interpretation of divorce order concerning pension fund</p> <p>MN v FN 2020 (2) SA 410 (SCA)</p>
--	--	--

		<p>Old Mutual Life Assurance Company (SA) Ltd and Another v Swemmer 2004 (5) SA 373 (SCA)</p> <p>Maintenance Kruger NO v Goss 2010 (2) SA 507 (SCA)</p> <p>Best interests of the child J v J 2008 (6) SA 30 (C)</p> <p>Views of the children HG v CG 2010 (3) SA 352 (ECP)</p> <p>Redistribution orders GKR v Minister of Home Affairs 2022 (5) SA 478 (GP) DM v CM 2022 (6) SA 255 (GJ) at para [180]</p> <p>Adoption TT v Minister of Social Development 2023 (2) SA 565 (GJ) at paras [80] to [91]</p> <p>Births EJ and Others v Haupt 2022 (1) SA 514 (GP) Centre For Child Law v Director-General, Department of Home Affairs and Others 2022 (2) SA 131 (CC)</p> <p>Children FS v JJ 2011 (3) SA 126 (SCA) – very important case for many reasons – this case will feature in the candidates' examinations often For example: "the court pointed out that the present litigation had not been in any of the parties' interests. It endorsed the views expressed in MB v NB 2010 (3) SA 220 (GSJ) that mediation in family matters is a useful way of avoiding protracted and expensive legal battles, and that litigation should not necessarily be a first resort. (Paragraph [54].)"</p> <p>Martens v Martens 1991 (4) SA 287 (T) at 295 D-E the court held it is not bound by the decision of a foreign Court where the interests of minor children are at stake</p> <p>Removal of child to temporary safe care C v Dept of Health & Social Dev, Gauteng 2012 (2) SA 208 (CC)</p> <p>Rights of unmarried father FS v JJ 2011 (3) SA 126 (SCA)</p>
--	--	--

		– very important case for many reasons – this case will feature in the candidates' examinations often
Drafting of Contracts Reg 6 (10)(m)	<p>Introduction to contract law and principles of drafting contracts</p> <p>Principles of drafting contracts are similar to drafting pleadings, except: Must know the difference between essential, material and natural elements of a contract;</p> <p>Concentrate on advice re the underlying transaction. Due diligence is important. Focus on this.</p> <p>Types of contracts to consider:</p> <p>Sale of business;</p> <p>Sale of shares;</p> <p>Lease of immovable property;</p> <p>Lease of movable property, like motor vehicles;</p> <p>Partnership;</p> <p>Joint venture;</p> <p>Employment of an independent contractor.</p> <p>Cession;</p> <p>Delegation; and</p> <p>Assignment.</p> <p>Service Level Agreement</p> <p>Boilerplate clauses</p> <p>The impact of technology on contract drafting and the available software currently being used by attorneys.</p>	<p>Candidates are NOT required to memorise precedents of the contracts. Candidates must understand the principles of drafting and how to use precedents.</p> <p>Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA) ([2012] 2 All SA 262; [2012] ZASCA 13) at para [18]</p> <p>KPMG Chartered Accountants (SA) v Securefin Ltd and Another 2009 (4) SA 399 (SCA) ([2009] 2 All SA 523) at para [39].</p> <p>Christie's Law of Contract in South Africa 8th Edition</p> <p>Pacta sunt servanda</p> <p>Beadica 231 CC v Trustees, Oregon Trust 2020 (5) SA 247 (CC) at paras [41] and [58]</p> <p>Barkhuizen v Napier 2007 (5) SA 323 (CC) at paras [28] to [35] read with para [70]</p> <p>Mohamed's Leisure Holdings v Southern Sun Hotel Interests (Pty) Ltd 2018 (2) SA 314 (SCA) at para [30]</p> <p>Liberty Group Ltd and Others v Mall Space Management CC 2020 (1) SA 30 (SCA) at paras [27] to [31]</p>
Information and communication technology for practice, and associated aspects of cyber law Reg 6 (10)(n)	<p>Introduction to information and communication technology for legal professionals</p> <p>Awareness of cyberattacks.</p> <p>Security of personal information</p> <p>Protective risk management strategy.</p> <p>Awareness and protecting against fraudulent transfers out of the trust account.</p> <p>Data response plan.</p> <p>Chapter 1: Technology</p> <p>Chapter 2: Organisational processes</p> <p>Chapter 3: Staff training</p> <p>Responsibility for personal/commercial information.</p> <p>Specific cyber security tips.</p>	<p>International Bar Association's Cybersecurity Guidelines published in October 2018.</p> <p>See https://www.ibanet.org/LPRU/cybersecurity-guidelines.aspx</p> <p>The Guidelines cover the required information and communication technology for practice, and associated aspects of cyber law in detail. However, the Guidelines are for general information for practitioners. The Guidelines are not being examined.</p> <p>For examination purposes read the following:</p> <p>Electronic Communications and Transactions Act 25 of 2002, Chapter III, Part 1, sections 11 to 20.</p>

	<p>The future of artificial intelligence as a boon and a threat to legal practitioners.</p> <p>The use of technology in the legal industry, including electronic discovery and case management systems The legal framework for cyber law in South Africa, including the Electronic Communications and Transactions Act and the Protection of Personal Information Act</p> <p>Cybersecurity and data privacy considerations for legal professionals and their clients</p> <p>Ethical and professional considerations when using technology in practice</p> <p>Drafting policies and procedures for technology use in a law firm</p>	<p>Spring Forest Trading CC v Wilberry (Pty) Ltd t/a Ecowash 2015 (2) SA 118 (SCA)</p> <p>Aarifah Security Services CC v Jakoita Properties (Pty) Ltd and Others 2021 (5) SA 207 (GJ) at para [63]</p> <p>Compare and contrast:</p> <p>Global & Local Inv Advisors (Pty) Ltd v Fouche 2021 (1) SA 371 (SCA) ([2019] ZASCA 8) at paras [15] and [16]</p> <p>Hawarden v Edward Nathan Sonnenbergs Inc 2023 (4) SA 152 (GJ) especially as paras [1] to [4] and paras [63] to [97] and [108].</p> <p>This case deals with business email compromise.</p> <p>This case is on appeal. Candidates to read the appeal judgment when delivered.</p> <p>Consider paragraph [17] in Mosselbaai Boeredienste (Pty) Ltd v OKB Motors CC (Case no 1216/21) [2023] ZASCA 91 (09 June 2023).</p>
<p>Introduction to practice management Reg 6 (10)(o)</p>	<p>Overview of the legal profession in South Africa</p> <p>The transformative provisions of the LPA</p> <ul style="list-style-type: none"> - Attorneys - Advocates – referral and non-referral (section 34) - Distinction between practicing and non-practicing attorneys and advocates. <p>The role of the Legal Practitioners' Fidelity Fund</p> <p>Legal practice as a business</p> <p>The role of efficient management</p> <p>Business plan</p> <p>Marketing – ethical marketing</p> <p>Financial management</p> <ul style="list-style-type: none"> - Business - Personal <p>Administration</p> <ul style="list-style-type: none"> - The use of technology - Deploying the appropriate technology tools bearing in mind budgets <p>Risk management</p> <ul style="list-style-type: none"> • Risks in accounting • Cyber fraud • Business email compromise • Interception of payments from trust account 	<p>Legal Practice Act 28 of 2014</p> <p>See Chapters 2, 3 and 4</p> <p>Regulations 6 and 7 to the Legal Practice Act</p> <p>Rules to the Legal Practice Act</p> <p>Rules Part V</p> <p>Part VI</p> <p>Part VII</p> <p>Part VIII</p> <p><i>Hawarden v Edward Nathan Sonnenbergs Inc</i> 2023 (4) SA 152 (GJ) especially as paras [1] to [4] and paras [63] to [97] and [108]</p> <p>This case is on appeal.</p> <p>Candidates are expected to read the appeal judgment when it is delivered.</p>

	<ul style="list-style-type: none"> • Fake instructions affecting the trust account • FICA • RICA • FAIS compliance • Money laundering • Illegal funding <p>Personal and professional time management Starting a practice Introduction to digitising legal practice The attorney and insurance The role of AI</p>	
Legal Costs Reg 6 (10)(l)	<p>Introduction to legal costs and fee structures</p> <p>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:</p> <p>The concept of "legal costs"</p> <p>non-litigious matters civil litigious matters</p> <p>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 costs de bonis propriis wasted costs reserved costs / costs to stand over costs in the cause costs of the day all costs/costs/taxed costs</p>	<p>Costs in the normal course of litigation</p> <p>Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and Others [2023] ZASCA 112 at paras [37] and [38]</p> <p>Contingency fees Ronald Bobroff & Partners Inc v De La Guerre 2014 (3) SA 134 (CC) Masango v RAF 2016 (6) SA 508 (GJ) TM obo MM v MEC for Health, Mpumalanga 2023 (3) SA 173 (MM)</p> <p>Costs – punitive costs on scale as between attorney and client – discussion on the meaning of attorney and own client Moropa and Others v Chemical Industries National Provident Fund and Others 2021 (1) SA 499 (GJ) at paragraphs [80] to [90]. Public Protector v CSARS 2022 (1) SA 340 (CC) at para [33]</p>

	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 Attending Taxation Review of taxation Billing and timekeeping Retainers and fee agreements Fee disputes and collection Taxation of legal fees Ethics and professional responsibility in legal costs The role of tax consultants	
--	--	--

PAPER 4: ATTORNEYS BOOKKEEPING (INCLUDING TRUST ACCOUNT MANAGEMENT)

MODULES	CURRICULUM AND COURSE CONTENT	READING LISTS
Attorneys' Bookkeeping Reg 6 (10)(i)	Introduction to bookkeeping and accounting principles GENERAL The role of the LPFF Law firm financial management - Handling trust money in accordance with client instructions - The principle that funds held in trust do not belong to the firm/practice and an attorney is compelled to account for every cent - You must never have an overdrawn trust account - Under no circumstances can a trust account be used as a business or personal account. The trust account is not a piggybank. - Properly and accurately accounting for all trust account monies; client by client - Reconciling the trust account on a monthly basis	A sound understanding of Chapter 7 of the LPA. In particular Sections 84, 86, 87, 88 and 91. An understanding of: Part XII of the rules as gazetted. In particular Sections 54.6, 54.7, 54.8, 54.9, 54.10, 54.11, 54.12, 54.13, 54.14, 54.14.7.1, 54.14.7.2, 54.14.8, 54.14.9, 54.14.10 and 11, 54.14.12, 54.14.13, 54.14.14, 54.15, 54.16, 54.19, 54.20 Where must the records be kept in order to comply with the rule? What is an asset? What is a liability? What is income? What is an expense? What is a fixed cost? What is a variable cost?

	<p>Use recurring EFTs from the business account to pay the trust account bank charges and fees</p> <ul style="list-style-type: none"> - Interest on trust money - Reporting compliance. <p>Trust accounting and record keeping Candidates must learn that the following are the fundamental obligations:</p> <ul style="list-style-type: none"> - Deposit and/or receipt all trust money received into the trust bank account; - Hold it exclusively for the relevant client; - To be paid to that client or as the client directs; - Account properly to that client for such trust money; - Trust account records must be maintained which clearly disclose the position of the money in the trust account; software is available which will automatically display this information whenever the attorney or any regulatory authority requires it; - They must be kept in such a manner as to enable them to be conveniently and properly reviewed by the LPC and the LPFF; - They must be up to date, clearly show the amount of trust money held for each client; - As far as practicable, they must be secure against retrospective alteration or deletion. - Firms will need to have systems and controls in place to ensure compliance with these rules and the nature of those systems must be appropriate to the nature and volumes of client transactions dealt with and the amount of client money held or received. <p>Financial reporting and analysis Compliance with legal and regulatory requirements Technology tools for bookkeeping</p> <p>1. Introduction</p> <p>Differentiate between a Legal Practice and a Legal Practitioner. Differentiate between Bookkeeping and Accounting and the importance thereof in the Legal Profession.</p>	<p>What is a business expense? What is a private expense?</p> <p>Consider paragraph [17] in Mosselbaai Boeredienste (Pty) Ltd v OKB Motors CC (Case no 1216/21) [2023] ZASCA 91 (09 June 2023)</p> <p>1. Introduction</p> <p><u>Legislation</u> Section 34 of the Legal Practice Act 28 of 2014 Chapter 6 Part 1 of the Legal Practice Act 28 of 2014 Section 84 of the Legal Practice Act 28 of 2014 Section 87 of the Legal Practice Act 28 of 2014</p> <p>Financial Intelligence Centre Act 38 of 2001</p> <p><u>Rules</u> Rule 54.1, 54.6 and 54.7</p> <p><u>Caselaw</u> Supreme Court of Appeal Judgment of Hewetson v The Law Society of the Free State (948/2018) [2020] Cirota and Another v Law Society of Transvaal (3578) 1978 ZASCA 112 Law Society, Transvaal v Matthews 1989 (4) SA 389 (T) Law Society of the Northern Provinces v Letlhaka (42111/08) [2010] ZAGPPHC 640 Supreme Court of Appeal Judgment of Hewetson v The Law Society of the Free State (948/2018) [2020] Incorporated Law Society, Transvaal v K and others 1959 (2) SA 386 (T) Law Society, Cape v Koch 1985 (4) 379 Law Society of the Cape of Good Hope v Budricks 2003(2) SA 11 (SCA) at 171 I-J Law Society of Cape of Good Hope v Dippenaar (715/04) [2006] ZAWCHC 51 Law Society of the Northern Provinces v Mabunda and Another (LEGODI JP) [2019] ZAMPMBHC 8; 2734/2018</p> <p>2. Cashbooks (Books of Prime Entry for Cash/Banking transactions) and the respective Banking Accounts</p> <p><u>Legislation</u></p>
--	--	--

	<p>Acceptable financial reporting - International Financial Reporting Standards (IFRS). Legal Practitioners must have proficient numeracy skills. Financial Intelligence Centre Act (FICA). - Purpose of FICA? - Duties and obligations placed on a Legal Practice by the Act.</p> <p>Legal Practitioners' Fidelity Fund (LPFF). - Establishment of the fund. - The role of the LPFF. - Trust Account and Investment interest payable to the fund. - Trust Account bank charges. - Refundable audit fees. - Payment of unclaimed/unknown Trust monies.</p> <p>Opening a Legal Practice</p> <p><u>2. Cashbooks (Books of Prime Entry for Cash/Banking transactions) and the respective Banking Accounts</u></p> <p>Distinguish between Trust and Business transactions. Purpose of a Cashbook. - Trust Cashbook - Business Cashbook</p> <p>Recording of Trust and Business transactions in the applicable Cashbook. - Nature and purpose of a source document. - Use of T-accounts/columns.</p> <p>Opening of a Trust Banking Account in terms of sec 86(2) read with sec 63(1)(g) of the Act. - Interest earned on a sec 86(2) Trust Banking Account payable to the LPFF in terms of sec 86(5)(a) of the Act. - Trust bank charges recoverable from the LPFF in terms of sec 57(2)(a) of the Act. - Set-off Trust bank charges from interest earned on sec 86(2) Trust Banking Account, the balance to be paid to the LPFF. - VAT charged on Trust bank charges to be claimed from SARS by practitioner.</p>	<p>Section 57(2)(a) of the Legal Practice Act 28 of 2014 Section 63(1)(g) of the Legal Practice Act 28 of 2014 Section 86 (1) and (2) of the Legal Practice Act 28 of 2014 Section 86(5)(a) of the Legal Practice Act 28 of 2014</p> <p><u>Rules</u> Rule 54.8 and 54.14.7.2 Rule 54.9, 54.10 and 54.19 Rule 54.11 Rule 54.14.15 Rule 54.14.15.2 and 54.14.15.3 Rule 54.14.16.1 Rule 54.14.16.1 and 54.14.16.2 Rule 54.14.7.2 Rule 54.16 Rule 54.34 and 54.35.</p> <p>3. Bank Reconciliation</p> <p><u>Rules</u> Rule 54.14.3, 54.14.4 and 54.14.6 Rule 54.14.7.1</p> <p>4. Journals – Book of Prime Entry for Non-Cash/Non-Banking transactions</p> <p>5. Ledgers - Books of Secondary Entry</p> <p>6. Receiving Instructions from Clients who are not Legal Practitioners.</p> <p><u>Legislation</u> Section 86(3) of the Legal Practice Act 28 of 2014 Section 86(5)(a) of the Legal Practice Act 28 of 2014 Section 86(4) of the Legal Practice Act 28 of 2014 Section 86(5)(b) of the Legal Practice Act 28 of 2014</p> <p><u>Rules</u> Rule 54.10 Rule 54.11, 54.11.1 and 54.11.2 Rule 54.12 Rule 54.13 Rule 54.14.7.2, 54.17, 54.17.1, 54.17.2, 54.17.3 and 54.18</p>
--	--	--

	<p>- A Practice should never have an overdrawn Trust Banking Account.</p> <p>- Under no circumstances can a Trust Banking Account be used as a business or personal account. The Trust Banking Account is not a piggybank.</p> <p>Interaction between Trust Banking Account and Trust Cashbook.</p> <p>Opening of a Business Banking Account</p> <p>- Interaction between Business Banking Account and Business Cashbook.</p> <p>- How to calculate a balance.</p> <p>- Distinguish between an opening and a closing balance.</p> <p>- Purpose of a Petty Cashbook.</p> <p>- Withdrawal of petty cash from the Business Bank Account.</p> <p>- Recording of petty cash transactions.</p> <p>Petty cash verification.</p> <p>3. Bank Reconciliation</p> <p>The purpose of a Bank Reconciliation. Differentiate between</p> <p>- Trust Bank Reconciliation and</p> <p>- Business Bank Reconciliation.</p> <p>Reconciling items – Transactions which cause the difference between the cashbook and bank statement.</p> <p>- Transactions in the Cashbook but not on the Bank Statement.</p> <p>- Transactions on the Bank Statement but not in the Cashbook.</p> <p>- Bank Errors.</p> <p>- Firm Errors.</p> <p>The process to prepare a Bank Reconciliation.</p> <p>- Identifying the differences in transactions between the Cashbook and Bank Statement.</p> <p>- Preparing the Supplementary Cashbook and Bank Reconciliation Statement.</p> <p>- Preparing the Bank reconciliation Statement when the Bank Statement balance is not available.</p> <p><i>Note: EFT payments made by the practice from Trust Banking Account may</i></p>	<p>Rule 54.14.16.3</p> <p>Rule 54.14.16.4</p> <p>Rule 54.14.16.5</p> <p>Rule 54.14.7.3</p> <p>Rule 54.14.12</p> <p>Rule 54.14.14.1, 54.14.14.2 and 54.14.14.3</p> <p>Rule 54.14.15.2 and 54.14.15.3</p> <p>Rule 55</p> <p>7. Receiving instructions from Clients who are Legal Practitioners (Correspondents)</p> <p>8. Giving instructions to a Correspondent</p> <p>9. Value Added Tax (VAT)</p> <p><u>Legislation</u></p> <p>Value-Added Tax Act 89 of 1991</p> <p>10. Collection Commission</p> <p>11. The Trust Position</p> <p><u>Rules</u></p> <p>Rule 54.14.8</p> <p>Rule 54.15.1, 54.15.2 and 54.15.3.</p> <p>12. Business Transactions</p> <p>13. Miscellaneous</p> <p><u>Rules</u></p> <p>Rule 54.9</p> <p>Rule 54.14.10, 54.14.11, 54.19, 54.20, 54.21, 54.22, 54.23, 54.24, 54.25, 54.26, 54.27, 54.28, 54.29 and 54.30</p> <p>Rule 54.36.</p> <p>Rule 54.31, 54.32 and 54.33.</p>
--	---	--

	<p><i>not be post-dated. (This principle is similar to the previously used post-dated cheques)</i> Computerised Bank Reconciliations</p> <p><u>4. Journals – Book of Prime Entry for Non-Cash/Non-Banking transactions</u></p> <p>Definition and purpose of a Journal. - Transactions recorded in a Journal will not appear on the Bank Statement.</p> <p><u>Purpose and reason of different Journals.</u></p> <p>-<u>Trust Journal</u>: Transfer/movement of an amount from one Trust Ledger Account to another Trust Ledger Account. Rectify an error in the Trust Ledger. -<u>Business/General Journal</u>: Transfer/movement of an amount from one Business/General Ledger Account to another. -<u>Business/General Ledger Account</u>: Rectify an error in the Business /General Ledger. -<u>Fee Journal</u>: Debit fees for services rendered. Sharing of fees (allowance). -<u>Transfer Journal</u>: Transfer/movement of an amount from a client's Trust Ledger Account to the same client's Business Ledger Account to settle the debt; Rectify Trust Debit (shortfall); Rectify a Business Credit.</p> <p><u>5. Ledgers - Books of Secondary Entry</u></p> <p><u>Definition and purpose of a Ledger</u></p> <p>- Understanding of the double entry principle. - Transactions recorded in either a Cashbook or a Journal (First Entry) will thereafter be recorded (posted to) in the respective Ledger (Second Entry). Distinguish between a Ledger and a Ledger Account. The General Ledger and its Subsidiary Ledgers. - Definition and purpose of the General Ledger General Ledger Accounts consist of- Assets; Liabilities; Income;</p>	
--	--	--

	<p>Expenditure Capital (Owners' Equity); Drawings</p> <p>Definition and purpose of the Trust Ledger – Subsidiary Ledger Trust Ledger Accounts consist of: Clients' Trust Creditor Ledger Accounts; Investments</p> <p>Definition and purpose of Business Ledger – Subsidiary Ledger Business Ledger Accounts consist of: Clients' Business Debtor Ledger Accounts</p> <p>Balancing Ledger Accounts</p> <p><u>6. Receiving Instructions from Clients who are not Legal Practitioners.</u></p> <p><i>These instructions include matters covered in paper 1, paper 2, paper 3, conveyancing and notarial.</i> <i>Note: Candidates must understand that attending to the above instructions has a professional aspect and a financial aspect. Paper 4 deals with the financial aspect of a matter.</i></p> <p>Bookkeeping principles that are applicable when recording transactions while attending to the financial aspect. These include-</p> <p>Principle 1 - Receiving Trust money.</p> <ul style="list-style-type: none"> - Trust Money is money received from a client or on behalf of a client, pending the happening of a future event - the professional aspect of a matter to be finalised. - Handling trust money in accordance with client's instructions. - Money held in trust does not belong to the firm/practice and an attorney/trust advocate is compelled to account for every cent. - All trust monies received should be promptly deposited into the Trust Banking Account- to be held exclusively for the relevant client; to be paid to that client or as the client directs; and account 	
--	---	--

	<p>properly to that client for such trust money.</p> <ul style="list-style-type: none"> - Handling trust money in accordance with client instructions. <p>Principle 2 - Investment of Trust Money.</p> <ul style="list-style-type: none"> - Definition of investments. - Section 86(3) Investments: Definition of Section 86(3) Investment; Beneficiary of Section 86(3) Investment; How the Investment of funds are recorded in the books of account. - Section 86(4) Investments: Definition of Section 86(4) Investment; Beneficiary of Section 86(4) Investment; How the Investment of funds are recorded in the books of account. - Rule 55 – Investment Practices (does not enjoy protection by the LPFF): Shares and Unit Trusts. <p>Principle 3 - Paying disbursements on behalf of a client.</p> <ul style="list-style-type: none"> - When disbursements are paid from the Trust Banking Account. - When disbursements are paid from the Business Banking Account. - When disbursements are not immediately paid – <p>Non-Banking/Non-Cash Transaction - A Journal will be used.</p> <p><i>Note: A deposit which forms part of a purchase price in a conveyancing matter cannot be used to pay disbursements.</i></p> <p>Principle 4 - Mixed money (Composite amounts).</p> <ul style="list-style-type: none"> - Receiving of payment from a client who is already a business debtor when:- the amount paid in cash is more than the business debt; amount paid via EFT and the payment equal to business debt; amount paid via EFT and the payment is more than the business debt. <p>Once the professional aspect of a matter has been concluded the financial aspect of the matter should be finalised.</p> <p>To finalize the financial aspect of a matter the following 7 steps are to be followed-</p>	
--	---	--

	<p>Step 1 –Withdrawal of the investments and transferring/moving accrued interest to the respective beneficiaries. - Withdrawal of the sec 86(3) investment and transferring/moving interest to the sole beneficiary – 100% to the LPFF. - Withdrawal of the sec 86(4) investment and transferring/moving interest to the respective beneficiaries – 95% to the client and 5% to the LPFF.</p> <p>Step 2 - Receiving the bank guarantee amount - applicable in certain conveyancing matters.</p> <p>Step 3 - Debit/charge/invoice the client with fees. - <i>Candidates should understand that costs = disbursements plus fees and VAT thereon.</i> Note: Sec 34(5)(b) of the Act stipulates that fees may only be shared with another legal practitioner and thus sharing of fees (allowance) is not applicable here.</p> <p>Step 4 - Transfer/Movement of an amount from one client's Trust Ledger Account to another client's Trust Ledger Account. - In a conveyancing matter this step should be done to transfer/move the full purchase price from the purchaser's Trust Ledger Account to the seller's Trust Ledger Account.</p> <p>Step 5 - Pay any outstanding disbursements owed to service providers of the client.</p> <p>Step 6 - The Transfer Procedure to settle a client's business debt. - Calculating the amount to be transferred from trust to settle business debt. - Establishing the amount owed by the client to the practice.</p>	
--	---	--

	<p>- Establishing if the client has sufficient funds available on trust to settle the business debt.</p> <p>-The transfer procedure</p> <p>Step 6(a) - The non-banking/non-cash step.</p> <p>Step 6(b) - The banking/cash step</p> <p>Note: Monies due to the practice in respect of fees and disbursements and are still retained in trust, cannot accumulate in trust.</p> <p>Step 7</p> <p>- Accounting to the client</p> <p>- How to account to a client</p> <p>- Accounting Statement: When will a practice prepare an accounting statement; Elements that each accounting statement should contain: How to draft an accounting statement - prepared from the client's trust and business ledger accounts.</p> <p><u>7. Receiving instructions from Clients who are Legal Practitioners (Correspondents)</u></p> <p>Overview</p> <p>- There must be a jurisdictional reason why the instructing correspondent could not attend and finalise a matter.</p> <p>- Distinguish between an instructing and an instructed correspondent.</p> <p>Sharing of Fees (Allowance)</p> <p>- Sec 34(5)(b) of the Act allows a legal practitioner to share his/her fees (allowance) with another legal practitioner.</p> <p>- The maximum percentage to be shared between legal practitioners is 33.3% (also known as one third)</p> <p>How to record the transactions in the books of account.</p> <p>- The same principles under 6 above are applicable.</p> <p>Finalising the matter and account to correspondent</p> <p>- To finalize the financial aspect, the 7 steps under 6 above are applicable.</p> <p>Accounting Statement to correspondent</p>	
--	---	--

	<p>- See 6 above to prepare an accounting statement.</p> <p><u>8. Giving instructions to a Correspondent</u></p> <p>Roles of correspondents as in 7 above are now reversed. Receiving an Accounting Statement from the instructed correspondent and the recording thereof by using the following steps:</p> <p>Step 1 Record the EFT amount received.</p> <p>Step 2 Transfer/Move the collected amount by the correspondent to client.</p> <p>Step 3 Transfer/Move the costs of the correspondent from client.</p> <p>Step 4 Debiting the fees plus VAT shared with you (allowance)</p> <p>Step 5 The transfer procedure.</p> <p>Step 6 Account to client. - Accounting statement to your client. The use of a business journal in step 3.</p> <p><u>9. Value Added Tax (VAT)</u></p> <p>What is VAT? Who must register as a VAT Vendor?</p> <p>Output VAT - Definition - Calculation of output VAT –</p> <p>Input VAT - Definition - Calculation of Input VAT – - Input VAT items that cannot be claimed Calculation of VAT due to SARS/the practice.</p> <p><u>10. Collection Commission</u></p> <p>What is Collection Commission?</p>	
--	---	--

	<p>Calculation of Collection Commission.</p> <ul style="list-style-type: none"> - On an Attorney-Client scale. - On a Party-Party scale. <p>Recording Collection Commission in the books of Account.</p> <p><u>11. The Trust Position</u></p> <p>Set out the Trust Position – Also known as Trust Reconciliation.</p> <p>Differentiate between Trust Reconciliation and Trust Bank Reconciliation.</p> <p>Properly and accurately accounting for all trust account monies; client by client.</p> <p>Reconciling the trust account on a monthly basis.</p> <p><u>12. Business Transactions</u></p> <p>Writing off an amount owed by a client.</p> <p>Charging interest on overdue accounts.</p> <p>Depreciation.</p> <p>Indirect expenses.</p> <p>Rectify erroneously debited Fees + VAT.</p> <p>Discounts on client accounts.</p> <p>How to pay bail/fine.</p> <ul style="list-style-type: none"> - To be paid in cash from Business – make client a Business Debtor. - Cannot be paid in cash from Trust. - Apply Transfer Procedure <p>Finalize the matter without receiving a deposit on Trust.</p> <p><u>13. Miscellaneous</u></p> <p>How to rectify a Trust Debit (shortfall).</p> <p>How to rectify a Business Credit.</p> <p>The Suspense Account.</p> <p>Proceeds received in-</p> <ul style="list-style-type: none"> - Estate Late account. - Sequestration account. - Liquidation account. <p>How to rectify an error in a Trust/Business/General Ledger Account.</p> <p>Explain what costs consist of</p> <p>Distinguish in which account to receive-</p> <ul style="list-style-type: none"> - Attorney and client costs. - Party and party costs. <p>Updating and retention of financial records.</p> <ul style="list-style-type: none"> - Trust account records must be maintained which disclose clearly the position of the money in the trust 	
--	--	--

	<p>account. Software is available which will automatically display this information whenever the attorney/trust advocate or any regulatory authority requires it.</p> <ul style="list-style-type: none"> - They must be kept in such a manner as to enable them to be conveniently and properly reviewed by the LPC and the LPFF. - They must be up to date, clearly show the amount of trust money held for each client. - As far as practicable, they must be secure against retrospective alteration or deletion. - Firms will need to have systems and controls in place to ensure compliance with these rules and the nature of those systems must be appropriate to the nature and volumes of client transactions dealt with and the amount of client money held or received. <p>Reporting compliance.</p> <ul style="list-style-type: none"> - Trust accounting and record keeping. - Financial reporting and analysis. - Compliance with legal and regulatory requirements. - Technology tools for bookkeeping. - Reporting of dishonest or irregular conduct. <p>Closure of a Firm.</p>	
--	--	--