

## THE ATTORNEYS' ADMISSION EXAMINATION (2012 Issue)

*(Last revision November 2011)*

*In this examination candidates must have a sound knowledge of substantive law and be able to apply it regarding matters covered by this syllabus.*

### **2012 EXAMINATION DATES**

21 & 22 February 2012  
21 & 22 August 2012

The registration fee is currently: First paper R114,00 (incl VAT), Second, Third and Fourth papers R57,00 (incl VAT) per paper.

### **THE EXAMINATION SYSTEM**

The guidelines for the admission examination are set out in section 14 of the Attorneys Act.

### **THE EXAMINATION FORMAT**

**Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answer book during this period.**

#### **First paper (section 14 (1) (a))**

High court procedure; magistrates court procedure; motor vehicle accident claims; and criminal procedure.

This paper is written on the first day of the examinations from 09:00 to 12:15.

#### **Second paper (section 14 (1) (c))**

The administration of deceased estates, drafting of wills, succession.

This paper is written on the first day of the examinations from 14:00 to 16:15.

**Third paper (section 14 (1) (c))**

The practice, duties, ethics and functions of an attorney

This paper is written on the second day of the examinations from 09:00 to 11:15.

**Fourth paper (section 14 (1) (b))**

Bookkeeping for attorneys

This paper is written on the second day of the examinations from 14:00 to 16:15.

**EXAMINATION CRITERIA**

A candidate who attains 50% or more in a paper will not have to attend an oral, except if a special reason exists for calling a candidate to an oral. Candidates who achieve between 40% and 49% in any of the papers will be permitted to do an oral in respect of that paper. Candidates who attain less than 40% in any of these papers will not be given an oral and will fail the paper concerned.

**REMARK**

Candidates who are dissatisfied with their marks in any section of the examination may have their paper remarked before orals are conducted if:

1. they apply in writing for a remark to the Law Society concerned within one week of the results of the examination becoming available;
2. they pay a remark fee equivalent to twice the fee payable for the section of the examination in which the remark is requested. If the remark is successful in that the status changes (e.g. failed and after remark is eligible for an oral) this fee will be refunded.

**REGULATIONS**

1. A candidate may complete the four phases of the examinations in any sequence. Ideally the papers should be completed simultaneously (see rule 3(2) in the Government Gazette of 8/1/88).
2. Some candidates are uncertain about whether, having successfully completed a certain part of the examination, they may in the oral be examined on the part completed previously when they attempt the next paper at a later stage and are called for an oral. This is unlikely but possible. The golden thread of ethics runs through the whole examination and it can never be considered finished before the whole examination has been completed. Questions concerning ethical matters and questions concerning the rules of a specific law society may be asked at all times.

### **COMPOSITION OF THE PAPERS**

1. Section 14 of the Act prescribes the appointment of examiners.
2. Examiners and experts in the various fields set the papers. Moderators, appointed from the ranks of the examiners, check, discuss and approve these papers.

### **PRACTICAL ORIENTATION**

Although the emphasis in the examination is on practical aspects, this can never be totally separated from a thorough knowledge of the law, the Acts with regulations and the rules of court.

### **ALLOCATION OF MARKS**

The allocation of marks is a good indication of the detail required. Do your planning for each section accordingly.

### **GENERAL**

1. Unless you are informed to the contrary, all questions should be answered with reference to the "latest" rules, legislation etc.
2. Do not spend two hours on one section of a three-hour paper consisting of four questions; it is futile to attain 80% in two questions and only 20% in the other two questions. Determine beforehand the amount of time needed for each question and keep to your timing.
3. Copies of previous papers and answers are available from the Legal Education and Development [L.E.A.D] Section of the Law Society of South Africa (Mr Siphon Mdluli at (012) 441 4611).

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## GUIDE TO THE NATURE AND SCOPE OF THE ATTORNEY'S ADMISSION EXAMINATION (SYLLABUS)

### 1. INTRODUCTION

1.1 In terms of s14 of the Attorneys Act 53 of 1979, examinations are conducted in respect of:

**s 14 (1) (a) of the Act:** High court, magistrates court, criminal procedure and motor vehicle accidents.

**s 14 (1) (b) of the Act:** Practical attorney's bookkeeping.

**s 14 (1) (c) of the Act:** The practice, functions and duties of an attorney including administration of estates.

1.2 At present the examination is conducted as follows:

*First paper:* High court, Magistrates court, Motor vehicle accidents, and Criminal procedure. This paper is set as a three hour paper and counts 100 marks.

*Second paper:* Administration of estates. This paper is set as a one and a half hour paper but two hours are allowed for completing it to allow candidates to read the questions carefully before answering them. This paper counts 100 marks.

*Third paper:* General attorney's practice. This paper is set as a one and a half hour paper but two hours are allowed for completing it to allow candidates to read the questions carefully before answering them. The paper counts 100 marks.

*Fourth paper:* Attorney's bookkeeping. This paper is set as a one and a half hour paper but two hours are allowed for completing it. The paper counts 100 marks.

1.3 A candidate may complete the four papers of the examination in any sequence. Ideally the papers should be completed simultaneously (see rule 3(2) in the Government Gazette of 8/1/88).

1.4 In general terms, candidates are tested in the written paper on their ability to draft and record matters related to the fields of law set out above. It is obvious that they cannot be tested without also testing their ability to apply the relevant substantive law. The written test is fundamental to the success or failure of the candidate. Candidates who have to present themselves for oral examinations will be tested on their verbal presentation of legal knowledge. Special attention is given to the practical application of the particular fields of law, and to candidates' knowledge and insight into the ethical standards applicable to an attorney's practice.

The examinations are conducted with a view to establishing whether candidates meet these standards. Examination questions may be set with more than one object in view. In a single question, candidates may be tested on their knowledge of the rules and practice in the courts in whose jurisdiction they are examined and, simultaneously, they may be tested on their ability to examine and analyse facts placed before them, to apply the substantive law to the facts and to draft documents logically and coherently based on the facts that are relevant.

Similarly, a question may test the ability of the candidates to find the applicable law by using facilities such as encyclopaedias, textbooks, journals, indices and the like, and to reduce such material into an effective letter, opinion or argument before a court or other tribunal. Candidates are also expected to have a reasonable practical knowledge of proper procedure to be applied in a well-run office.

## **2. NATURE OF THE EXAMINATION: OBJECTIVES**

The content of the syllabus and the nature of the examination aims at ensuring that candidates have certain skills and experience. The level expected is that of a newly admitted attorney in a general medium-sized firm. This implies the following.

- 2.1 Candidates must have a general understanding of the role of the attorney as a practitioner and an officer of court, of the role of the legal profession in society, of the ethics of the profession and an ability to recognise conflicts of interest and ethical difficulties. Candidates will be required to know the rules of the law society of the province in which they are being examined, in as far as they relate to professional conduct.
- 2.2 Candidates must be competent and have adequate experience in the basic skills and techniques of attorneys and for that purpose
- can handle facts and can apply legal principles to factual situations;
  - can research legal problems and use properly the sources of law;
  - have knowledge of the practical aspects of advocacy (the arguing of elementary cases before courts and tribunals and the effective presentation of written legal arguments), which shall include the knowledge of negotiation (eg to settle the terms of an agreement, out of court settlements, finalising disputes without recourse to the courts), the preparation for and the conduct of a trial in the high court, the magistrates court and other tribunals, the gathering and preparation of evidence and the procedures relating to the calling of witnesses in civil and criminal courts;
  - understand office procedures and routines, including the keeping of attorney's books and the preparation and rendering of bills of cost and accounts and can administer the affairs of clients;
  - are experienced in the drafting of documents (straightforward contracts, wills, pleadings, opinions, briefs to counsel and, in particular, pleadings in the magistrates court and, where relevant, in the high court);
  - can communicate effectively with clients, colleagues and officials orally and in writing.

The above objectives presuppose that candidates have adequate knowledge of the relevant principles and provisions of substantive law.

## **3. ANALYSIS OF VARIOUS PAPERS**

The various papers test the following skills and knowledge.

**3.1 Paper 1 : Court procedure****High court**

The practical application of the High Court Act and rules.

The ability to draft notices of motion, affidavits and causes of action for a summons, and other notices and documents in respect of which no prescribed forms exist; draft instructions to counsel on pleadings; conduct all types of proceedings in the high court and write letters and opinions.

**Magistrates court**

The practical application of the Magistrates Court Act and rules.

The ability to draft applications, affidavits, summons, pleadings and other notices and documents except where prescribed forms exist; conduct all types of proceedings in the magistrates court and write letters and opinions.

**Motor vehicle accidents**

Candidates should know all aspects of the Multilateral Motor Vehicle Accidents Fund Act 93 of 1989 (as amended), as well as The Road Accident Fund Act 56 of 1996 the regulations promulgated in terms of this Act, as well as the case law, concerning the rights of injured persons and dependants and the procedure relating to the formulation, computation and institution of claims against the Fund. As candidates are aware, significant changes to the relevant legislation are pending but are not yet effective. Candidates must ensure that they are aware of the changes as when they come into operation, questions relating thereto may be included in future examination papers.

**Criminal procedure**

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

The procedure relating to a criminal trial, including applications for bail, the procuring of evidence and a general working knowledge of the Criminal Procedure Act with emphasis on ss 3, 6, 20, 23, 24, 26, 27, 30, 34, 35, 37, 39, 40, 49, 50, 54, 55, 56, 57, 59, 60, 62, 65, 66, 73, 103, 112, 113, 114, 115, 123, 124, 150, 195, 196, 201, 217, 220 and 297.

**3.2 Paper 2: Estates**

A general working knowledge of the Administration of Estates Act and its regulations including the drafting of estate accounts, drafting and execution of wills, including testamentary trusts, the application of the law of testate and intestate succession, a knowledge of the principles of estate duty and capital gains tax relating to deceased estates and a rudimentary knowledge of estate planning.

**3.3 Paper 3: General attorney's practice**

Professional ethics figure very prominently in this section. This term means all the rules of professional conduct appertaining to an attorney in his professional life - as an officer of court, in his relationship with his client, colleagues (including those at the Bar) and his staff - also extra-professionally while he remains in the profession.

**Sources:**

*ALS Practice Manual*, Butterworths (contains inter alia Attorneys Act and Regulations, Attorneys Fidelity Fund Act and law societies' rules)

*Law Society Rules*

Lewis - *Legal Ethics*, Juta & Co 1982

**Optional reading:**

Lewis & Kyrou's, *Handy Hints on Legal Practice*, South African Edition by I M Hoffmann, Butterworths

The second broad subject that is included in this section is the drafting of the following documents.

- Deeds of sale - movable and immovable goods
- Partnership agreement
- Suretyship - reference to relevant Act
- Acknowledgement of debt
- Cession and assignment
- Option
- Sale of business
- Lease of fixed property
- Letter of demand
- Pledge
- Cancellation of agreement

The paper on general practice does not stand in complete isolation to the content of other papers in the examination. For example, a question on ethics may relate to a situation arising during litigation and the legal opinion may be one relating to magistrate's court procedures.

Finally, the purpose of the paper is to cover subjects or topics that do not strictly belong to any other sections on which the examination is conducted, but are very important in an attorney's practice.

The following are the prescribed Acts and Regulations.

***Attorneys Act and Regulations including Chapter II on the Attorneys Fidelity Fund***

***Stamp Duties Act***, who must stamp, how to stamp, when to stamp, penalty stamps, effect of non-stamping

***Prescription Act***, terms of prescription, stay of prescription, extinctive and acquisitive prescription

***Alienation of Land Act 68 of 1981***, only sections 2 and 28(2)

***Matrimonial Property Act 88 of 1984***, especially s15

***VAT Act***, liability for and payment of VAT, VAT implications of various contracts, VAT and the drafting of agreements

***Insolvency Act***, proving of claims and selected sections relating to the appointment of trustee/liquidator

***Close Corporations Act***, selected sections covering procedures for registering a CC and amending founding statement, sale of shares, change of members, personal liability

**Companies Act**, selected sections regarding formation of company, transfer of shares, **ss19/20, s44, s112 and ss76/7**

**Trust Property Control Act**, procedure for registering a trust, difference between ordinary trust and discretionary trust

**Justices of the Peace and Commissioners of Oaths Act**, how to take the oath, pledge documents

**Contingency Fees Act 66 of 1997**

**National Credit Act**

**Consumer Protection Act 2008**

### 3.4 **Paper 4: Attorney's bookkeeping**

This entails a test in respect of the practical skills necessary for the keeping of attorney's books of account.

Candidates must show a thorough knowledge of the concept of trust money and of the essential requirements of the modern double entry bookkeeping system as applied to attorney's bookkeeping, the functions of the various books of account and must have sufficient practical knowledge of the supervision of bookkeeping to enable them to maintain the books of account required in an attorney's office. They must be able to apply accepted measures, controls and ethical standards to bookkeeping and financial matters.

Questions on VAT are included in this paper.

Please note: No bookkeeping paper will be provided in the answer books. Candidates must draw the necessary columns for the various books of account required. Pocket calculators may be brought along and utilised for this paper.

## 4. **LEGISLATION**

Apart from the other relevant Acts already mentioned above, the undermentioned additional Acts including rules and regulations where applicable, are relevant in all papers but particularly in Attorneys' Practice.

- Apportionment of Damages Act, 34 of 1956
- Justices of the Peace and Commissioners of Oaths Act, 16 of 1963
- National Credit Act No 34 of 2005
- Credit Agreements Act, 75 of 1980 (in as far as it relates to the recovery of goods and the payment of monies owing)
- Conventional Penalties Act, 15 of 1962
- Trust Property Control Act 57 of 1988
- Prescription Act, 68 of 1969
- Attorneys Act, 53 van 1979
- Insolvency Act, 24 of 1936
- Divorce Act, 70 of 1979
- Matrimonial Property Act, 88 of 1984
- Maintenance Act, 23 of 1963
- Constitutional Act, 1996