



**COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA ON THE
LEGAL PRACTICE ACT (28/2014) (AS AMENDED): PROPOSED REVISED
CURRICULUM & EXAMINATION SYLLABUS**

The LSSA has considered the proposed revised Practical Vocational Training (PVT) programme for candidate legal practitioners (candidate attorneys) that was published for comment in Government Gazette 51050, and wish to comment as follows:

1. GENERAL COMMENTS

After gathering feedback from various stakeholder, it is clear that, while there is broad support for the proposed programme, additional refinement is necessary to achieve the desired outcomes.

The programme, in its current format, needs adjustments with reference to the curriculum, course content and reading lists. Suggested improvements include:

- 1.1 Reviewing the specific topics, as identified below, to ensure that the curriculum and course content remain relevant to candidate legal practitioners and to remove topics that are irrelevant or not ordinarily encountered in practice.
- 1.2 Removing outdated reading material and providing more specific page references with regard to lengthy volumes and legislation.
- 1.3 Providing a structured programme that remains applicable and relevant over time and can easily be updated each year with the latest developments.

2. MAGISTRATES' COURTS PRACTICE (MCP)

- 2.1 The proposed reading list is very extensive, considering that the target audience consists of candidate attorneys (CAs) who often have little or no practical experience.
- 2.2 There is limited guidance on which specific sections of the reading material should be studied. For instance, while Jones and Buckle, an extremely important resource, is referenced, it is also a lengthy volume of work. It is unreasonable to expect CAs to study both volumes.

- 2.3 We are concerned that some of the reading material will be inaccessible to CAs. Many CAs may have limited or no access to the prescribed and suggested readings and texts, especially those from previously disadvantaged groups and those attempting the admission exams before they attend any form of training at the Schools or Courses. It appears that CAs might be expected to purchase certain texts at high cost, which inadvertently may lead to gatekeeping. To address this, it is recommended that the LPC makes the reading material available on its website to ensure accessibility for all CAs.
- 2.4 The syllabus omits certain areas of practice. A basic example is executions and collections proceedings - especially section 65 proceedings, which often comprise the majority of matters CA's deal with in civil court during their PVT period. Default judgments and the procedures etc are also not dealt with.
- 2.5 It appears that the reading list caters predominantly for pupils rather than candidate attorneys.
- 2.6 The reading list does not, insofar as insolvency practice is concerned, refer to the most recent or most applicable case law when training on principles.
- 2.7 Matrimonial law refers for example to custody of children; the correct reference is parental rights and responsibilities – is the reading list up to date with current practices?
- 2.8 If the reading list is to streamline which areas are to be examined, then a CA should not be required to know the practice directives of courts for the purposes of examination, taking into consideration that practice directives are not uniform across all courts and deal with the operational requirement of each specific court.

3. LABOUR LAW

- 3.1 Overwhelmingly, the daily practicalities of labour dispute resolution are to be found in the Labour Relations Act (LRA) with a few sections of the Basic Conditions of Employment Act (BCEA) and the Employment Equity Act also pertinent. It is thus important for students to know about the specific areas of the BCEA, but not the entire Act. In addition, many of these areas are dealt with by HR staff and not labour lawyers.
- 3.2 Similarly, the Employment Equity Act is basically divided into two distinct areas - the prohibition of unfair discrimination, which is dealt with up to section 11, and affirmative action, which is dealt with from then on. The second part is essentially administrative and it seems highly unlikely that CAs, newly admitted practitioners or practitioners who do not specialise in labour law, will ever have to deal with this. Once again, this is usually the focus of the employer's HR department.
- 3.3 The same applies to the suggestion that the Occupational Health & Safety Act, the Unemployment Insurance Act and the Compensation for Occupational Injuries & Diseases Act ought to be part of the curriculum. These are hardly ever encountered in a law practice that does not specialise in labour law, and even then, relatively seldom.
- 3.4 We have difficulty in understanding how apparently the entire LRA is part of the curriculum (including the parts that are seldomly or never used) and yet a few specific topics, all of

which are dealt with in the LRA, have been pertinently mentioned, presumably because they are thought to be especially important. If such clauses are not considered especially important, it is unclear why they have been highlighted.

- 3.5 It is unclear why moving an interdict in the Labour Court is specifically mentioned when other Labour Court litigation is not. Interdicts comprise a relatively small part of the Labour Court's case load. We note that reviews, which constitute the majority of the court's workload, have not been emphasized among the specially important topics.
- 3.6 It is also unclear why the students would be required to know the Labour Appeal Court (LAC) rules and not the CCMA rules. Hardly anyone who is not a labour law specialist will ever go to the LAC in their practising lives while even non-specialist lawyers are often in the CCMA. The CCMA rules are mentioned among the "Principle Works" but should be part of the curriculum and course content. The new Rules for the Labour Court and Labour Appeal Court, which were recently published, should form part of the reading material.
- 3.7 The organisational rights of trade unions and collective agreements, what they are and how they work, should be dealt with comprehensively, rather than merely referenced vaguely in the proposed curriculum.
- 3.8 The process of conciliation is mentioned, which is the only aspect of CCMA and bargaining council litigation from which legal practitioners are specifically excluded, yet nothing is said about the process of arbitration, unless that is meant to be found under "dispute resolution" while conciliation, for some reason, is not.
- 3.9 It is presumed that the reference to "dismissals" would include the processes involved in achieving fair incapacity and operational requirements dismissals, yet "disciplinary proceedings and hearings" are specifically mentioned, whereas the processes of counselling and consultation are not.
- 3.10 Under strikes it seems that all that is required is that the students be taught the procedural limitations of the right to strike. In practice, strikes obviously involve much more than that. It is suggested that the course should at least cover issues such as what a strike and a lockout is, the procedural and substantive limitations to the right to strike, the consequences of a protected strike, the consequences of an unprotected strike, picketing and the question of replacement labour. The question of dismissal for participating in an unprotected strike is most important and needs to be highlighted. One of the potential consequences of an unprotected strike is a Labour Court interdict, so that issue could conceivably be dealt with under this heading.
- 3.11 If permanent and temporary employees are to be specifically part of the curriculum, then labour broker employees should also be pertinently dealt with.

Principal Works

Workplace Law of 2015 is out of date. The most recent edition is from 2020, which is also out of date in some respects as labour law continues to develop at a greater rate than some other areas of law.

Grogan's Dismissal (2022) is more up to date but focuses on dismissal law. Dismissals account for around 80% of all labour law litigation (and therefore labour law practice).

It is unclear whether the **decided cases** are specified because they are considered to be the most important cases for a practically orientated labour dispute resolution course, but there are scores of cases that are not mentioned that will be of far more use to the practising labour lawyer than the ones that are mentioned under the heading of "Principle Works".

Specific examples of outdated or irrelevant caselaw:

- The *Mahlangu* case, for example, is no doubt socially important but COIDA, with which it pertinently deals, has not been part of the labour dispute resolution syllabus and the general discussion about discrimination is dealt with in many cases that have a more direct relationship with labour law practice.
- The *Chueu Incorporated* case relates to the suspension from practice of legal practitioners and does not pertain to labour law. Once again, the general principles involved can be gleaned from judgments that concern labour-related issues.
- The *Trenstar* judgment concerns the use of replacement labour during a lock-out, a topic that is not even mentioned in the curriculum section. It is also a topic that young practitioners will very seldomly encounter in labour law practice.
- The *Hamata* and *Dyantyi* cases deal with the right to legal representation at hearings, but *Hamata* deals predominantly with administrative law and *Dyantyi* deals with the right of a university student, not an employee, to representation. They deal with PAJA and not the LRA. There are more relevant cases that deal with the admin law/labour law issue.
- There is no doubt that the *Royal Bafokeng* judgment is important, but it makes no sense that it is the only judgment mentioned under the heading of "Dismissal." It also deals with a very particular set of circumstances that does not often arise in practice.
- The *Eskom* case has very little practical relevance and is largely about contract law.
- The *Growthpoint* case is about picketing, but the law related to picketing is not mentioned as part of the curriculum. It also concerns the jurisdiction of the High Court, another topic that appears not to be part of the proposed curriculum.
- The *Gunter* and *Twalo* cases both concern the Compensation for Occupational Injuries & Diseases Act, which has also been dealt with above.
- The *Mahlangu* case, which is dealt with in point 3 of this section above, has been mentioned twice as a "Principle Work".

In general, the case law mentioned appears to be somewhat randomly selected and often does not relate at all to the issues that a new practitioner would face in practice.

4. DRAFTING OF CONTRACTS

4.1 The following cases are also relevant to the Drafting of Contracts material, and should be considered:

- *Pam Golding Franchise Services v Douglas* (protectable interest in the context of restraints of trade);
- *Rinick Consultants v Smith*(ZAFSHC) 2013 at 175, *Ratlou v Man Financial Services* 2019 ZASCA, *Slabbert v MEC for Health* 2016 ZASCA (is a credit agreement an acknowledgement of debt);
- *Potgieter v Potgieter* 2011 ZASCA 181 (parole evidence rule)
- *Simplex v van der Merwe* 1996 (W) (letters of authority from the Master a prerequisite before any act on behalf of a trust is valid)
- *Ndlovu v Ngcobo & Bekker v Jika* 2003 (SCA) – the scope of the Pie Act
- *Brink v Humphries & Jewell (Pty) Ltd* 2005 (2) SA 419 (SCA) – pre-CPA decision which illustrates the importance of highlighting onerous clauses (this time in the context of a suretyship).

4.2 There are many tax cases that deal with the concept of substance over form, but they are often complex in nature. However, as basic introduction to substance over form as a prominent consideration in drafting of all contracts should be addressed, if possible. A key case here would be *Zandberg v Van Zyl* 1910 (AD).

5. ATTORNEYS' BOOKKEEPING

The proposed course content and reading list appear to lack a clear structure, resulting in business accounts and trust accounts being somewhat intertwined, rather than distinctly separated. A more effective approach would involve clearly defining the purpose of business books, what they consist of and the types of accounts one would find in a set of these books. The same applies to trust accounts.