

LEGAL PRACTITIONERS ACT

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SCHEDULE:

PART I

ADMISSION OF ADVOCATES

Admission of
advocates

6. Every person who applies to be admitted and enrolled as an advocate shall produce to the satisfaction of the High Court proof that—

- (a) he is a fit and proper person to be admitted as an advocate; and
- (b) he is of or above the age of twenty-one years; and
- (c) he—

- (i) has been admitted as a barrister in England, Northern Ireland or the Republic of Ireland or as an advocate in the Court of Session of Scotland, and at the date of the petition is still enrolled to practise as a barrister in England, Northern Ireland or the Republic of Ireland, or as an advocate in Scotland; or
- (ii) has been admitted to practise as an advocate in any Division of the Supreme Court of the Republic of South Africa or of the mandated territory of South-West Africa or in the High Court of Southern Rhodesia, and at the date of the petition remains enrolled as an advocate of such Supreme Court or High Court; or
- (iii) Possesses the qualifications which will entitle him to be admitted as—
 - (A) barrister in England, Northern Ireland or the Republic of Ireland, or as an advocate in the Court of Session of Scotland; or
 - (B) an advocate of any Division of the Supreme Court of the Republic of South Africa, the mandated territory of South-West Africa, or the High Court of Southern Rhodesia; or
- (iv) has satisfied all the requirements for a degree of Bachelor of Laws of the University of Botswana, Lesotho and Swaziland or any university established in place thereof; or
- (v) has been or is entitled to be, admitted to practise as an attorney of the Courts of Lesotho under this Act;

and thereupon the High Court shall, unless cause to the contrary is shown to its satisfaction, admit and enrol that person as an advocate.

PART II—ADMISSION OF ATTORNEYS

Admission
of attorneys

7. Every person who applies to be admitted and enrolled as an attorney shall produce to the satisfaction of the High Court proof that—

- (a) he is a fit and proper person to be admitted as an attorney; and

(b) he is of or above the age of twenty-one years; and

(c) he —

- (i) is an attorney or solicitor of any of the Courts of Record in London, Belfast or Dublin or a Writer to the Signet or a solicitor or law agent admitted to practise in the Court of Session of Scotland and that he is not under any order of suspension in any such courts respectively;
- (ii) is an attorney in any Division of the Supreme Court of the Republic of South Africa or the mandated territory of South-West Africa or in the High Court of Southern Rhodesia, and that at the date of the petition he remains enrolled an attorney of such a Court and is not under any order of suspension in such a Court; or
- (iii) has been or is entitled under this Act to be admitted as an advocate of the Courts of Lesotho and has passed the practical examination referred to in paragraph (a) of subsection (4) of section **thirty-four**; or
- (iv) has passed the examinations prescribed by the Chief Justice under paragraph (b) of subsection (2), and the practical examination referred to in paragraph (a) of subsection (4), of section **thirty-four** and has complied with the provisions of this Act relating to service under articles and his application for admission and enrolment is made within a period of two years from the date of completion of the articles or within such further period as the High Court may allow in terms of subsection (3) of section **eighteen**;

and thereupon the High Court shall, unless cause to the contrary is shown to its satisfaction, admit and enrol that person as an attorney.

PART III—ARTICLES OF CLERKSHIP

8. (1) The term for which a person who is desirous of being admitted as an attorney, and is not exempted from service under articles by virtue of subsection (2), is required to be bound by, and duly serve under, articles shall be determined in accordance with Part I of the Schedule to this Act. Term of articles

(2) No advocate and no person who has at any time been admitted to practise as an attorney or solicitor of any of the Courts of Record in London, Belfast, Dublin, or as a Writer to the Signet or a solicitor or law agent in the Court of Session of Scotland or an attorney in any Division of the Supreme Court of the Republic of South Africa or the mandated territory of South-West Africa or in the High Court of Southern Rhodesia shall be required to serve articles in Lesotho.

Information to be placed before the Law Society by persons intending to become articulated

9. Every person intending to serve an attorney under articles shall produce to the Law Society —

- (a) his birth certificate or, if no birth certificate is available evidence of the date and place of his birth and of his parentage; and
- (b) a certificate to the satisfaction of the Law Society that he is a fit and proper person and that he has —
 - (i) passed the Cambridge Overseas School Certificate or the matriculation examination conducted and controlled by the Joint Matriculation Board of the University of South Africa or an examination certified by the Permanent Secretary for Education to be equivalent or superior thereto; or
 - (ii) satisfied all the requirements for a degree (not being an honorary degree) at a University within Lesotho or for a degree approved by regulations made under paragraph (a) of subsection (2) of section **thirty-four** (not being an honorary degree) at a University outside Lesotho.

Articles to be lodged with the Law Society

10. (1) A duplicate original of all articles of clerkship shall be lodged with the Law Society within one month of the date of the articles, together with a duplicate original affidavit testifying to the signatures and date thereof.

(2) On production of a certificate from the Registrar that the fee prescribed under the provisions of paragraph (f) of subsection (1) of section **thirty-four** has been paid and on production of the original articles of clerkship and affidavit attesting the signatures and dates, the Law Society upon being satisfied that the articles are in order and that no objection exists against the registration thereof, shall endorse upon the original articles a certificate to the effect that the provisions of this section have been complied with.

Articles to be lodged with the Registrar

11. (1) The original articles of clerkship shall in every case within two months of the date of the articles be lodged together with an affidavit testifying to the signatures and date thereof and where they were executed, and the necessary fees prescribed under paragraph (a) of subsection (1) of section **thirty-four**, with the Registrar who shall thereupon register the articles:

Provided that no such articles shall be accepted by the Registrar for registration unless the articles have been duly endorsed by the Law Society as required under the provisions of section **ten**.

(2) If those articles are not registered within that period of two months, the service shall, subject to any relief which the High Court may grant under section **eighteen**, be reckoned to commence only on the date of the registration.

Cession to be lodged with the Law Society

12. (1) The original and a duplicate original of each cession of articles, shall within one month of the date thereof, be lodged with the Law Society.

(2) Every such cession shall be accompanied by an original affidavit and a duplicate original affidavit by the cedent as to the due and proper service and as to the date on which the articulated clerk left his service, and by an original affidavit and duplicate original affidavit by the cessionary as to the date on which the articulated clerk entered his service.

(3) Upon production of the original and duplicate original cession and affidavits and upon production of a certificate from the Registrar that the fee prescribed under the provisions of paragraph (f) of subsection (1) of section **thirty-four** has been paid, the Law Society shall if satisfied that the cession is in order and that no objection exists to the cession, endorse upon the original cession a certificate to the effect that the provisions of this section have been complied with, and that the cession has been approved.

(4) If the attorney, under whom an articulated clerk has served, has died, or for any other reason discontinued practice, cession of the articles of the articulated clerk shall be deemed to have been validly executed if it is signed on behalf of the attorney by his legal representative or the Law Society, and a certificate under the hand of the legal representative or the Law Society containing the particulars set forth in subsection (2) shall be deemed to be an affidavit referred to in that subsection and subsection (3).

13. (1) Every cession of articles, duly endorsed by the Law Society in terms of subsection (3) of section **twelve** shall, within two months of the date of the articles, be lodged with the Registrar, together with an affidavit in like form as in subsection (2) of section **twelve** prescribed, and the fees prescribed under paragraph (a) of subsection (1) of section **thirty-four** and the Registrar shall thereupon register the cession.

Cession to be lodged with the Registrar

(2) No such cession shall be registered after that period of two months without an order of the High Court.

14. Articles registered in Southern Rhodesia, the Republic of South Africa or the mandated territory of South-West Africa under the law for the time being in force in those countries for the registration of articles may, by leave of the High Court after lodging documents with the Law Society in like manner as is provided in section **twelve** be ceded to an attorney practising in Lesotho if the articulated clerk has served not less than one year of such articles in such other country, and any period so served in such a country shall then be accepted as a portion of the term required to be served under the provisions of section **eight**.

Cession of articles registered outside Lesotho

15. The terms of deeds of articles of clerkship and deeds of cession of articles of clerkship may be amended by the parties thereto with the prior written consent of the Law Society.

Amendment of articles and cessions

16. (1) No attorney shall have or retain any clerk under articles unless the attorney is actually practising the profession of attorney either on his own account or as a partner in a firm of attorneys and has practised as such continuously for a period of three years.

Only practising attorneys to have articulated clerks

(2) Service by any clerk under articles to an attorney for and during the whole or any part of the time that the attorney is not practising his profession either on his own account or as a partner in a firm of attorneys shall not be deemed to be good or sufficient service for the purposes of this Act.

Restriction
on number
of articted
clerks

17. No attorney shall at any time have more than two articted clerks:

Provided that on the death or retirement from practice of a member of a firm his surviving or remaining partner may take cession of the articles of any clerk who has been articted to his partner so deceased or retiring, although that surviving or remaining partner may at the time have as many clerks articted to him as are by law allowed.

Powers of
the High
Court

18. (1) Where any person articted to an attorney has not served under the articles strictly in accordance with the provisions of this Act, the High Court upon being satisfied that the irregular service was occasioned by sufficient cause, and that the service, though irregular is substantially equivalent to regular service, and that the Law Society has had due notice of the application, may subject to the provisions of Part I of the Schedule, at any time during the currency of the articles, or subject to the provisions of subsection (3), within two years of the completion of the articles, condone the irregular service upon such conditions as it may deem fit and treat it as though the service in question had been regular and in conformity with the provisions of this Act.

(2) When any articted clerk wishes to absent himself from the office of the attorney to whom he is articted for any period exceeding six weeks in any one year, the High Court, upon being satisfied that the contemplated absence is occasioned by sufficient cause, and that the Law Society and that attorney have had due notice of the application, may permit the articted clerk to absent himself from that office:

Provided that any time during which the articted clerk is so absent shall be added to the period for which the articted clerk is bound to serve under articles.

(3) The High Court may, on the application of any person made within two years from the date of the completion of his articles of clerkship referred to in section **eight**, allow such further period as it may deem fit after the expiration of two years from the completion of his articles of clerkship, within which the applicant may apply for admission as an attorney under subparagraph (iv) of paragraph (c) of section **seven** and, if that further period is allowed, the High Court may, in its discretion, impose such conditions as it may deem fit including a condition relating to the service of further articles.

(4) Where articles of clerkship are or have at any time been cancelled or abandoned before completion thereof, the High Court may, in its discretion, on the application of the person who served under those articles and subject to such conditions as the High Court may impose, order that, for the purposes of this Act,

the whole or such part of the period served under those articles, as the High Court deems fit, be added to any period served by that person under articles entered into after the first mentioned articles were cancelled or abandoned and any period so added shall, for the purposes of this Act, be deemed to have been served under the last-mentioned articles and continuously with any period served thereunder.

19. Subject to the provisions of section **eighteen** every clerk articted to an attorney shall, during the whole term of service specified in the articles of clerkship, be and continue to be in the actual service of that attorney and in the office and under the direct personal supervision of that attorney or his partner or partners or manager being an attorney:

Continuous
service
under
articles

Provided that —

- (a) that clerk shall receive a salary of not less than thirty rand a month from the date on which he has passed any of the examinations referred to in the regulations made under paragraph (c) of subsection (2) of section **thirty-four** or from the expiration of the first three years of his articles of clerkship, whichever happens last, until the expiration of the period of articles;
- (b) those articles may, with the mutual consent of that attorney and clerk, be ceded as herein-before provided to any other attorney who may be willing and competent to accept cession;
- (c) in the event of death, insanity, insolvency, conviction for crime, imprisonment for debt, suspension, striking off the rolls or discontinuance of practice of the attorney under whom the clerk is serving, or other similar and sufficient cause, the High Court may, notwithstanding the provisions of section **seventeen**, direct that the articles be ceded to any other attorney who may be competent and willing to receive the articted clerk under cession as aforesaid;

and all service completed under this proviso shall be good and effectual for the purposes of this Act.

20. (1) No person who may become bound under articles of clerkship to any attorney shall, during his term of service, without the written consent of the Law Society previously had and obtained, hold any office for remuneration or engage in any business whatsoever other than that of clerk to that attorney and his partner or partners, if any, in the practice and employment of an attorney, nor shall such a person during the term of that service, have any pecuniary interest in the practice and employment of an attorney.

Articted
clerk not to
engage in
other
business, and
when
articted
clerk may
appear in
court

(2) In the event of any contravention of subsection (1), the articles shall be null and void **ab initio**, and service thereunder shall be ineffectual, unless the High Court for good cause shown, condones the contravention.

(3) Any articulated clerk who —

- (a) has, in terms of section **nineteen**, become entitled to payment of the salary referred to in that section; or
- (b) being bound in terms of the Schedule to serve articles for a period of three years, has served at least two years of his articles; or
- (c) has satisfied all the requirements for the examination prescribed by regulations made under paragraph (b) of subsection (2) of section **thirty-four** and has served at least one year of his articles;

shall be entitled to appear in any Subordinate Court and before any board, tribunal or similar body in or before which his principal is entitled to appear instead of and on behalf of that principal who shall be entitled to charge the fees for the appearance as if he himself had appeared.

PART IV—ADMISSION OF PERSONS PRACTISING IN CERTAIN COUNTRIES

Admission
of persons
practising in
certain
countries
or
territories

21. Notwithstanding the provisions of this Act, but subject to the provisions of section **thirty**, a person who has been admitted and enrolled as a barrister, advocate, solicitor or attorney of the courts of any country or territory (other than the United Kingdom, the Republic of Ireland, the Republic of South Africa, the mandated territory of South-West Africa and Southern Rhodesia) approved for the purposes of this section in any regulations made under paragraph (e) of subsection (2) of section **thirty-four** may be admitted and enrolled as an advocate or attorney in Lesotho upon satisfying the High Court that —

- (a) he is a fit and proper person to be so admitted and enrolled; and
- (b) he has been admitted and enrolled as a barrister, advocate, solicitor or attorney, as the case may be, in a country or territory approved as aforesaid and that no proceedings are pending to have him struck off the rolls of barristers, advocates, solicitors or attorneys, as the case may be, or to suspend him from practise.

PART V—ADMISSION OF NOTARIES

Admission
of notaries

22. The High Court may, upon application made in the manner prescribed by this Act, admit and enrol as a notary an attorney who produces proof that —

- (a) he is an attorney, admitted to practise as such in the courts of Lesotho, whether before or after the date of commencement of this Act; and
- (b) he has not at any time been struck off the roll or suspended from practice, and that no proceedings are pending to strike his name off the roll or to suspend him from practice, and
- (c) either —
 - (i) he has been admitted to practise as a notary public by any Division of the Supreme Court of the

Republic of South Africa or of the mandated territory of South-West Africa or by the High Court of Southern Rhodesia, and at the date of the petition remains enrolled as a notary public in such a Court and is not under any order of suspension in such a Court; or

- (ii) he has passed the practical examination referred to in paragraph (b) of subsection (4) of section thirty-four.

PART VI—ADMISSION OF CONVEYANCERS

23. The High Court may upon application made in the manner prescribed by this Act admit and enrol as a conveyancer an attorney who produces proof that — Admission of conveyancer

- (a) he is an attorney admitted to practise as such in the courts of Lesotho whether before or after the date of commencement of this Act; and
- (b) he has not at any time been struck off the roll or suspended from practice, and that no proceedings are pending to strike his name off the roll or to suspend him from practice; and
- (c) either —
 - (i) he has been admitted to practise as a conveyancer by any Division of the Supreme Court of the Republic of South Africa or the Supreme Court of the mandated territory of South-West Africa, or by the High Court of Southern Rhodesia and at the date of the petition remains enrolled as a conveyancer in such a Court and is not under any order of suspension of such a Court; or
 - (ii) he has passed the practical examination referred to in paragraph (c) of subsection (4) of section thirty-four.

PART VII—TRUST ACCOUNTS, CONDUCT OF PRACTITIONERS AND DISCIPLINARY PROCEEDINGS

24. (1) Every practising attorney, notary or conveyancer having an office within Lesotho shall open and keep a separate trust account, at a bank within Lesotho in which he shall deposit all moneys held or received by him in connection with his practice within Lesotho on account of any person; and he shall further keep proper books of account containing particulars and information as to moneys received, held or paid by him for or on account of any person. Trust account

(2) The Law Society may by itself or through its nominee and at its own cost, inspect the books of account of any such attorney, notary or conveyancer to satisfy itself that the provisions of subsection (1) are being observed:

Provided that if it is found upon such an inspection that the attorney, notary or conveyancer has not complied with

the provisions of subsection (1), the reasonable cost of the inspection shall be paid by the attorney, notary or conveyancer.

(3) No amount standing to the credit of such a trust account in the bank shall form part of the assets of the attorney, notary or conveyancer concerned and no such amount is liable to attachment at the instance of any creditor of the attorney, notary or conveyancer:

Provided that any excess, remaining after payment of the claims of all persons whose moneys have, or should have, been deposited in the trust account, shall be deemed to form part of the assets of that attorney, notary or conveyancer.

- (4) (a) Upon application made by the Law Society and upon good cause shown, the High Court may prohibit any such attorney, notary or conveyancer from operating in any way his trust account and may appoint a **curator bonis** to control and administer the trust account with such rights, duties and powers, in relation thereto, as the Court may deem fit.
- (b) Upon the death or insolvency or the assignment of his estate by an attorney, notary or conveyancer having an office within Lesotho or in the event of an attorney, notary or conveyancer who has an office within Lesotho being struck off the roll or being suspended from practice or being declared by a court of competent jurisdiction to be incapable of managing his own affairs, or abandoning his practice, the Master may, upon application made by the Law Society or by any person having an interest in the trust account of the attorney, notary or conveyancer, appoint a **curator bonis** to control and administer the trust account with such of the rights, duties and powers prescribed by regulations made under paragraph (d) of subsection (2) of section **thirty-four** as the Master may deem fit.
- (c) Any person aggrieved by a decision of the Master under paragraph (b) may, within thirty days after the decision became known to him or such extended period as may be allowed by the High Court for good cause shown, appeal against that decision to the High Court which may confirm or vary the decision of the Master or give such other decision as in its opinion the Master ought to have given.
- (d) Nothing in this subsection or in subsection (3) contained shall be construed as preventing any attorney, notary or conveyancer, who was practising in partnership with an attorney, notary or conveyancer referred to in paragraph (b) of this subsection, from continuing to operate on the trust account of the partnership in the absence of an order to the contrary issued by the High Court.
- (5) A bank at which an attorney, notary or conveyancer having an office within Lesotho keeps the trust account shall not,

by reason only of the name or style by which the account is distinguished, be deemed to have knowledge that the attorney, notary or conveyancer is not entitled absolutely to all moneys paid or credited to the trust account:

Provided that nothing in this subsection contained shall relieve a bank from any liability or obligation under which it would be apart from this Act.

(6) Notwithstanding anything in subsection (5) contained a bank at which the attorney, notary or conveyancer keeps the trust account shall not, in respect of any liability of the attorney, notary or conveyancer to the bank, not being a liability arising out of or in connexion with that account, have or obtain any recourse or right, whether by way of set-off, counter-claim, charge or otherwise, against moneys standing to the credit of the trust account.

(7) Nothing in this section contained shall be construed so as to —

- (a) deprive a bank of any right existing at the time when this Act comes into operation;
- (b) take away or affect any just claim, lien, counter-claim right of set-off or charge of any kind which an attorney, notary or conveyancer may, at common law or under any statute, have against or upon any moneys held or received by him on account of any person.

(8) Any attorney, notary or conveyancer who contravenes subsection (1) is guilty of an offence and is liable on conviction to a penalty of a fine not exceeding five hundred rand or imprisonment for a period not exceeding eighteen months and further, is guilty of unprofessional conduct and liable to be struck off the roll or suspended from practice.

(9) For the purposes of this section "bank" means a commercial bank or other banking institution designated by the Chief Justice by notice in the *Gazette* as a bank for the purposes of this section.

25. (1) Every practising attorney, notary or conveyancer or firm of practising attorneys, notaries or conveyancers (hereinafter in this section referred to as the attorney) shall once in each calendar year or at such other times as the Law Society may require furnish to the Law Society a certificate by an accountant approved by the Law Society. Such accountant shall be appointed by the attorney at his expense. The certificate shall state —

Accountant's
certificate

- (a) whether or not he has carried out an audit or has merely made an examination in terms of this section;
- (b) whether or not he is satisfied by an examination, to the extent that he considered necessary, of the books of account, bank statements and system of bookkeeping employed by the attorney concerned for the period of twelve months (or for such lesser period as the attorney has been practising) terminating at the date to be specified in the certificate, that —
 - (i) the attorney has kept for the period under review

and is keeping proper books in such manner as to enable him to comply with the provisions of this Act;

- (ii) monies received by such attorney on account of any person were deposited regularly and promptly in the trust banking account kept by such attorney in terms of this Act;
- (c) the date to which such books appear to have been written up and the date to which it appears that they were last balanced and whether or not it appears that the attorney during the period specified in paragraph (b) above complied with the provisions of sub-section (5) of this section;
- (d) that he has compared the list of balances shown on trust account in the ledgers of the said attorney at the closing date of the period covered as specified in paragraph (b) above and also at least one other date during the said period to be selected by him, with the respective ledger accounts;
- (e) whether or not on each of the dates referred to in paragraph (b) above the total of the balances standing to the credit of the trust banking account kept by the attorney in terms of this Act together with any trust monies which were according to such books of account, held by such attorney in cash on hand (which monies he has satisfied himself were deposited in the said trust banking account on the first banking day following each such date on which it might reasonably be expected that such monies would be banked) was sufficient to cover all amounts which according to the books of account were on those dates due to the trust creditors of such attorney and agreed exactly or was in excess of the total of such last mentioned amounts;
- (f) that he has made an examination of the trust bank statement of such attorney for a period of a week, or such longer period as he considers necessary in any particular case, following each such date and that such examination did not reveal that any negotiable instruments deposited in the said trust banking account had not been met except in circumstances which appeared to him to be satisfactory.

(2) The certificate to be furnished in terms of this section shall be sent direct by the accountant to the Law Society within six months of the annual closing of the books of the attorney concerned or within such other period as the Law Society may require and a copy thereof and of any report made in terms of subsection (4) shall be sent by the accountant to the attorney concerned.

(3) In any case where the Law Society is satisfied that it is not practicable to obtain the services of an accountant approved as aforesaid for the issuing of such a certificate it may

in lieu thereof accept such other evidence of the requirements set out in subsection (1) of this section as it may deem sufficient.

(4) Every accountant who has made or commenced an examination in terms of this section shall without delay report direct to the Law Society upon the following matters:

- (a) the fact that it has come to his notice (if such be the case) that at any date the total of the balances shown on trust account in the ledgers of the attorney exceeded the amount of the funds available in the trust banking account kept by the said attorney in terms of section **twenty-four** of this Act together with any trust monies held by such attorney in cash on hand according to the books of account;
- (b) the fact that it has come to his notice (if such be the case) that any trust account in the ledgers of the attorney is or has been in debit;
- (c) the tenor of any material queries concerning the books or entries which he has raised with the attorney and which have not been dealt with to his satisfaction.

(5) Every practising attorney shall extract a list of his trust account balances at intervals of not more than three calendar months and shall keep the lists of balances for not less than three years from the dates on which such balances were extracted.

(6) An attorney, notary or conveyancer who has failed to furnish the certificate within the time specified in subsection (1) shall cease to act or practise as such attorney, notary or conveyancer and shall not again act or practise as such until he shall have furnished such certificate.

(7) An attorney, notary or conveyancer who contravenes subsection (1) or acts or practises as such attorney, notary or conveyancer in contravention of subsection (6) shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or in default of payment to imprisonment for a period not exceeding twelve months.

26. (1) Every notary shall keep a protocol containing a chronologically arranged and consecutively numbered file of the minutes of all deeds passed before him and a register in the form set out in Part II of the Schedule to this Act which shall contain an entry in chronological order of every deed passed before him. Such entry shall be made by the notary when the deed is passed before him, and he shall subscribe thereto a declaration in the form set out in the said Schedule. The word 'deed' in this section shall not be construed so as to include —

Notaries to
keep
protocols
and
examination
of protocols

- (a) any certificate by a notary public to the effect that —
 - (i) a document was signed before him;
 - (ii) the meaning of a document or part thereof was explained to the parties thereto;
 - (iii) a copy of a writing was compared by him with the original and is correct; and

(b) any notarial act or certificate of noting, presentation or protest of a bill of exchange or promissory note.

(2) Every notary shall neatly and securely to the satisfaction of the examiner of protocols (hereinafter in this section referred to as the examiner) cause all minutes of deeds passed before him, together with an index of those minutes to be bound in chronological order and numbered consecutively in volumes of equal and convenient size.

(3) A notary shall not alter or mutilate any minutes filed in his protocol or extract therefrom, save in so far as may be required by any law or practice in force.

(4) The minutes of deeds passed before a notary shall be written, typed, or printed on good, strong, and durable paper of foolscap size, in good and durable ink and to the satisfaction of the examiner. No carbon copies shall be filed in the protocols.

(5) Every notary shall be obliged to keep his protocol in safe custody under lock and key, and, wherever possible, in a fire-proof safe so as also to guard against a violation of the secrecy of its contents or against any alteration or mutilation thereof or any extraction therefrom, and shall take such other reasonable precautions, for the safe custody thereof as may be necessary.

(6) Every notary commencing or recommencing practice shall, within one month thereafter, give written notice to the examiner of his full name and business address and every notary who changes his address shall, within one month thereafter, give notice thereof with full particulars of the new address.

(7) Every notary shall, if he leaves Lesotho with the intention to cease practice or if he be removed from the roll or suspended or otherwise retire from practice and his executor or other representative shall, in the event of his death, lodge his protocol with the Registrar or as may otherwise be required by law. When a notary has so ceased, or otherwise retired from practice, he, his executor or other representative shall notify the examiner. In the event of a notary having ceased to practise or having no protocol at the time fixed for the examination thereof he shall deliver to the examiner of protocols a certificate to that effect.

(8) The examiner shall ensure that the protocol of a notary who dies or retires from practice shall on death or retirement (as the case may be) be lodged with the Registrar or otherwise dealt with as may be required by any other law in force.

(9) The Registrar-General of Lesotho or such other person as may be appointed by the Minister by name or office shall be the examiner of the protocols of notaries practising in Lesotho and shall personally make the examination required by this Act.

(10) The examiner shall, during each calendar year, examine the protocol of every notary who shall submit his protocol for such examination when so required:

Provided that fourteen days' written notice has been given by the examiner to the notary. The examination shall take place in the examiner's office.

(11) The examiner shall, at the conclusion of each examination, endorse a certificate on the notary's register duly recording his examination, and if all the minutes filed therein are correctly and properly stamped in accordance with law he shall certify to that effect, but if any minute therein liable to stamp duty be found unstamped or insufficiently stamped he shall forthwith take the necessary steps in accordance with law to have such minutes duly stamped and shall certify accordingly on such minutes.

(12) All knowledge obtained by the examiner in the course of an examination shall be regarded by him as information confidentially acquired in the course of his official duty and shall be treated by him accordingly.

(13) The examiner shall, on finding any material or serious omissions or defects in any protocol examined by him, or the minutes therein contained or any breach of duty or noncompliance with this Act on the part of a notary, record the same and particulars thereof in the certificate aforesaid, and shall immediately report the same to the Law Society.

(14) The examiner shall keep a register showing —

- (a) the names of the notaries whose protocols are subject to his examination;
- (b) the date of each examination made;
- (c) the numbers of the deeds examined;
- (d) copies of the certificates endorsed by him on examined protocols,

and in January each year shall render a return of the same examination carried out in the previous calendar year and certify to the Permanent Secretary for Finance that such examination has been duly completed and that all liability for stamp duty has been duly discharged in respect of the documents examined by him.

27. (1) No person, other than a legal practitioner, shall practise as such within Lesotho or in any manner hold himself out as or pretend to be, or make use of any words or any name, title, or addition or description implying or tending to the belief that he is an advocate, attorney, notary or conveyancer or is recognised by law as such. Offences

(2) No person shall orally or by means of any written or printed matter or in any manner whatsoever, directly or indirectly either for himself or for any other person, canvass, advertise or tout for, or make known his preparedness, or that of the other person, to undertake any work, whether for or without remuneration, in connexion with the administration or liquidation or distribution of the estate of any deceased or insolvent person, lunatic or person under other disability.

(3) No advocate, attorney, notary or conveyancer who has been struck off the rolls or suspended from practice shall, while he is struck off or suspended, continue to practise as an advocate, attorney, notary or conveyancer directly or indirectly by himself or in partnership or association with any other person.

(4) No attorney, notary or conveyancer shall, except with the prior written consent of the Law Society, employ in any capacity whatsoever any person who has been struck off the rolls or suspended from practice while that person is struck off or suspended.

(5) No attorney, notary or conveyancer shall make over, share or divide with any person other than a practising attorney, notary or conveyancer in Lesotho, or an attorney, solicitor, notary public or conveyancer outside Lesotho, either by way of partnership, commission or allowance or in any other manner, any portion whatsoever of his professional fees.

(6) A person who contravenes any of the provisions of this section is guilty of an offence and is liable on conviction to a penalty of a fine not exceeding two hundred rand for each offence:

Provided that it shall not be deemed to be a contravention of subsection (2) if —

- (a) any board of executors, or trust company (not being a private company within the meaning of the law relating to companies) —
 - (i) has in its name or title words indicating that its objects or functions include work in connexion with the administration, liquidation or distribution of any estate mentioned in subsection (2);
 - (ii) on signboards, nameplates, or notices exhibited on the premises in which it carries on business or on its stationery or on its usual annual almanacs or in any advertisements in the public press, or in its annual reports or any report of the proceedings at an annual general meeting, makes known by a simple statement to that effect that its objects or functions include any such work;
- (b) any person in reply to a direct inquiry voluntarily made of him by someone else makes known the preparedness of himself or some other person to perform any such work;
- (c) any shareholder or employee of a board of executors or trust company described in paragraph (a) above canvasses another shareholder or employee of the same board of executors or trust company on behalf of the board or company;
- (d) any attorney, notary or conveyancer or any commercial banking institution or any such board of executors or trust company indicates in any public notice required by law in connexion with the liquidation or administration of any estate, that he or it does any such work;
- (e) any legal practitioner indicates in such form as may have received the prior approval of the Law Society or any nameplate or signboard exhibited in or on the

premises in which he practises or on any of his stationery or professional documents that he does any such work.

(7) A legal practitioner who contravenes subsections (2), (4) or (5) is guilty of unprofessional conduct and is, in addition to the liability imposed by subsection (6), liable to be struck off the roll or suspended from practice.

(8) Save as provided in subsection (9), a person, not being a legal practitioner, who for or in expectation of any fee, gain or reward, direct or indirect, to himself or to any other person, draws or prepares or causes to be drawn or prepared any of the following documents —

- (a) any contract, deed or instrument relating to land or immovable property or to any right in or to land or immovable property other than conditions of sale or brokers' notes;
- (b) any will or other testamentary instrument;
- (c) any memorandum or articles of association or prospectus of any company;
- (d) any contract, deed or instrument relating to the creation or dissolution of any partnership or any variation of the terms thereof;
- (e) any instrument or document relating to or required or intended for use in any action, suit or other proceeding in a court of civil jurisdiction within Lesotho;

is guilty of an offence and is liable on conviction, in respect of each offence, to a penalty of a fine not exceeding two hundred rand, in default of payment, imprisonment for a period not exceeding six months:

Provided that the words "fee, gain or reward, direct or indirect" do not include or apply to —

- (i) the salary or emoluments of an employee if no fee, gain or reward is sought or obtained by his employer from the person on whose behalf the document was drawn or prepared; or
 - (ii) any commission or other remuneration to which any person is or may be entitled either by law or otherwise for services in his capacity as executor, administrator, trustee, curator, tutor, or guardian by virtue of his appointment as such by any court of law or under the provisions of any will or other testamentary instrument or as agent for any person holding such appointment.
- (9) The provisions of subsection (8) shall not apply to —
- (a) any person in the employ of a practising attorney, notary or conveyancer drawing or preparing or causing to be drawn or prepared any of those documents in the course of his employment and on behalf of his employer;

- (b) any person in the service of the Government drawing or preparing or causing to be prepared any of those documents in the course of his duty;
- (c) any trustee under the laws relating to insolvency or any executor, administrator or curator or any liquidator of a company drawing or preparing any such document in the course of his statutory duties and receiving such fees as may be allowed by law;
- (d) any practising advocate in so far as he would be entitled, but for the passing of this Act to draw or prepare any of those documents in the ordinary course of his profession.

Removal
from the roll

28. (1) The High Court may, for any reasonable cause shown, order the suspension or removal of any person from the roll.

(2) The Registrar shall refer to the Law Society any complaint of professional misconduct by any legal practitioner and the Law Society may take such action thereon as it shall deem fit.

(3) An application to suspend or remove from the roll may be made by the Law Society by way of motion to the High Court supported by affidavit or affidavits as to the facts on which the application is based:

Provided that the High Court may order that any question of fact shall be tried by pleadings and proof or otherwise as the Court may deem fit.

(4) No costs shall, in such an application, be awarded against the Law Society unless the High Court is satisfied that the Law Society has acted **mala fide** or unreasonably in bringing the application.

(5) The Law Society and the examiner of protocols shall not be subject or liable to any action or proceedings for damages on the ground of defamation in the **bona fide** execution of their duties and the taking of any steps under section **twenty-five** or this section or the institution of any proceedings under or purporting to be under the provisions of this section.

PART VIII — MISCELLANEOUS

Petition for
admission
and
enrolment

29. Any fit and proper person who possesses the qualifications prescribed in this Act may apply to the High Court upon written petition to be admitted and enrolled as a legal practitioner of the courts of Lesotho after serving a copy of such petition upon the Law Society as provided by section **thirty-one**.

Applicants
for admission
to supply
certain
information

30. Every person who applies to the High Court to be admitted and enrolled as a legal practitioner shall, in addition to such further information as the Law Society may require, furnish it with the following information —

- (a) that the person is a fit and proper person to be so admitted and enrolled;
- (b) if the person was a barrister or advocate or has been admitted as a solicitor or attorney in any court, that he

has not been struck off the roll of any court or suspended from practice by any court or judge thereof for improper or unprofessional conduct and that no proceedings are pending to strike him off such a roll or to suspend him from practice on any such ground.

31. (1) A copy of every petition for admission as a legal practitioner, together with copies of all affidavits, certificates and other documents or papers which are therein referred to or therewith connected, shall be served upon the Law Society not less than ten days before the hearing of the petition and the service may be effected personally or by registered post or by transmitting a copy to the Law Society through the Registrar.

Petition for admission to be served on the Law Society

(2) Upon production to the Law Society of the petition and affidavits, certificates and other documents or papers, and certificate from the Registrar that the fees prescribed in paragraph (f) of subsection (1) of section **thirty-four** have been paid, the Law Society shall advise the Registrar and the petitioner whether the provisions of this section have been complied with and also whether it has any objection to the applicant being admitted upon the petition, affidavits, certificates and other documents or papers.

(3) Pending his obtaining the advices of the Law Society in terms of subsection (2), it shall not be competent for such person to move the High Court for his admission:

Provided that, if the High Court is satisfied that the application is urgent and it is appropriate in any particular case to do so, it may reduce the period of notice which is to be given to the Law Society under this Act.

32. (1) The Registrar shall keep a roll of legal practitioners admitted to practise in terms of this Act and every person so admitted shall pay the prescribed fee for a certificate of admission and enrolment under the hand of the Registrar in the form prescribed under paragraph (c) of subsection (3) of section **thirty-four**.

Records to be kept by Registrar

(2) Such a roll shall be in the form of separate alphabetical lists, recording the names of advocates, attorneys, notaries public and conveyancers respectively admitted to practise under the Act or any prior law with the dates of the admission and the addresses of the legal practitioners.

(3) Whenever the High Court makes an order striking off the roll or suspending from practice any legal practitioner or, on the application of any legal practitioner, removing his name from the roll, the Registrar shall forthwith enter on the roll kept by him a note or minute of the order opposite the name of the legal practitioner concerned.

33. Advocates and attorneys whether entitled to practise as such at the commencement of this Act or admitted and enrolled in terms of this Act shall have a right of audience in the courts of Lesotho.

Rights of advocates and attorneys

Fees,
regulations
and rules
of court

34. (1) The Chief Justice may, by notice in the *Gazette*, prescribe a scale of fees which shall be paid to the Registrar in respect of the following matters —

- (a) registration of articles of clerkship and cession of articles of clerkship;
- (b) admission as advocate, attorney, notary or conveyancer respectively;
- (c) enrolment as an advocate, attorney, notary or conveyancer respectively;
- (d) re-admission as an advocate, attorney, notary or conveyancer respectively;
- (e) re-enrolment as an advocate, attorney, notary or conveyancer respectively;
- (f) perusal by the Law Society of articles of clerkship, deeds of cession of articles of clerkship, petitions for admission as advocate, attorney, notary or conveyancer or for carrying out any of the other duties imposed upon the Law Society by this Act; and
- (g) certificates of admission and enrolment.

(2) The Chief Justice, after consultation with a committee consisting of a Law Officer, the Registrar and two legal practitioners nominated by the Law Society, may, by notice in the *Gazette*, make regulations for the purpose of determining and prescribing —

- (a) the degrees (not being honorary degrees) which shall be approved for the purposes of sub-paragraph (ii) of paragraph (b) of section **nine**;
- (b) what examination or examinations any person referred to in sub-paragraph (iv) of paragraph (c) of section **seven** shall be required to pass before being admitted and enrolled as an attorney under this Act;
- (c) the examinations which an articulated clerk is required to pass before being entitled to receive a salary in terms of paragraph (a) of the **proviso** to section **nineteen**;
- (d) the rights, duties and powers of a **curator bonis** appointed under paragraph (b) of sub-section (4) of section **twenty-four**; and
- (e) the countries or territories which shall be approved of for the purposes of section **twenty-one**.

GN 68/1967

(3) The Chief Justice may make rules of court prescribing —

- (a) the nature and form of the oath or oaths, affirmation or affirmations which shall be taken before admission and enrolment;
- (b) the fees payable on petitions, affidavits, certificates or documents used or required in connexion with any application under this Act;
- (c) the form of certificates and orders required to be given or produced under this Act; and

- (d) generally for carrying the purposes or provisions of this Act into effect.

(4) The Chief Justice may, after consultation with the Law Society appoint examiners for the purpose of conducting examinations in the knowledge of —

- (a) the practice and procedure of the different courts of Lesotho, such practical bookkeeping as may be necessary for the keeping of books of account, and the conduct and duties of the profession;
 - (b) the practice, function and duties of a notary; and
 - (c) the law, practice and procedure of conveyancing;
- and may prescribe what fees shall be paid by the candidates taking those examinations and what remuneration the examiners are to receive for examining the candidates.

35. (1) Subject to the provisions of subsection (2), references in this Act to the Law Society shall, until such time as a Law Society shall have been established, be construed as references to the [Attorney-General]. Transitional
LN 37/1970

(2) Until such time as a Law Society shall have been established, references in section **twenty-eight** of this Act to the Law Society shall be construed as references to the Committee constituted by or under the provisions of Part III of the Schedule to this Act.

(3) The Committee shall have all the powers and exercise all duties and functions of the Law Society under this Act.

36. The Legal Practitioners Proclamation, the Legal Practitioners (Temporary Provision) Law 1962, and the Legal Practitioners (Temporary Provision) Law (Amendment) Act, 1966 are hereby repealed. Repeal
P 93/1955
Law 4/1962
Act 7/1965

SCHEDULE

PART I

Provisions with Respect of the Length of Term of Articled Service

1. In the case of a person who has satisfied all the requirements for a degree referred to in sub-paragraph (ii) of paragraph (b) of section **nine**, the term shall be three years.

2. In the case of a person who has passed an examination (other than the practical examination) prescribed in regulations made under paragraph (b) of subsection (2) of section **thirty-four**, the terms shall be three years.

3. In the case of any other person, the terms shall be five years.

4. The period of service under articles which the clerk is required to serve shall be determined by the qualifications possessed by the clerk at the time the articles are entered into.

PART II

No. of Deed	Date of Execution	Nature of Description	By whom	In whose Favour	Consideration	Value of stamps on Minute	Value of stamps on Grosse

I declare the above to be the only deeds passed before me as Notary during the period fromto (or since my admission).

.....
NOTARY PUBLIC

Date

This protocol register was examined by me and compared with the minutes and was found (.....remarks.....).

Date

.....
EXAMINER OF PROTOCOLS

PART III

LN 37/1970

1. There is constituted a Committee which shall consist of —

(a) the [Attorney-General] or a Law Officer nominated by him who shall be Chairman:

Provided that if the [Attorney-General] and that Law Officer are for any reason not available the Committee shall be presided over by a fit and proper person appointed by the Chief Justice;

(b) not less than two and not more than four Legal Practitioners or other fit and proper persons appointed by the Chief Justice.

2. The Chairman and any two of its members may exercise all the powers and perform all the duties and functions of the Committee.

3. A member of the Committee (other than the [Attorney-General] and the Law Officer) shall hold and vacate office in terms of the instrument under which he is appointed, but may resign office by notice in writing to the Chief Justice; and a member who ceases to hold office shall be eligible for re-appointment. LN 37/1970

4. The Chief Justice may make rules with respect to the proceedings of the Committee, and matters incidental to or consequential on those proceedings.