



UNIVERSITY OF THE
WITWATERSRAND,
JOHANNESBURG

**What knowledge-building is required by the admission exams for
attorneys? An analysis with Legitimation Code Theory**

**A Research Report submitted in partial fulfilment of the requirements of
the M. Ed Course, University of the Witwatersrand**

by

Thulani Nkosi

0420176x

Ethics Clearance Protocol number: 2023ECE025M

Supervisor: Prof Lee Rusznyak

2024

ABSTRACT

The Legal Professional Council is required to satisfy itself that every candidate legal practitioner seeking admission into the legal profession is duly qualified to be so admitted. Candidates with an LLB degree can be admitted into the legal profession if they pass an admission exam. The admission exam consists of four papers that aim to test the core skills, competencies, and abilities that every legal practitioner should demonstrate before they are permitted to practice law. However, concerns have been expressed recently about the competence of newly admitted attorneys. While much blame has been put at the door of university preparation programmes, not much focus has been on the demands and requirements of the admissions examination. This is the gap that this study seeks to address. The main aim of this study is to analyse the knowledge-building expectations of the 2020 attorneys' admission exam. The study employs a document analysis approach and investigates how the knowledge-building required by an admission examination correlates to the experiences and perceptions of five legal candidates completing their internship at a law firm in South Africa. Tools from Legitimation Code Theory (LCT) are used as an analytic framework. I consider how questions require students to shift between different strengths of semantic gravity (SG). I also analyse how candidates must shift between everyday and legal, structural forms and discourses. The study's findings revealed that candidates were examined on three main areas of law: their understanding and explanation of legal knowledge, their application of legal knowledge, and, to a minimal extent, their grasp of legal ethics. The questions required them to work with knowledge in various ways, such as shifting context dependence between the specific facts of a case and relevant statutes and case precedents. The study also found that legal candidates were required to draw on academic, legal and everyday discourses and shift between them. The analysis reveals specific gaps in the admission exam. These pertain to inadequate testing of ethics and legal research and insufficient opportunities for candidates to justify or motivate their legal advice or legal opinions. Given previous outcries about the quality and competencies of legal practitioners, it is crucial for the Legal Practice Council to attend to the gaps identified and for those who mentor and train candidate legal practitioners to ensure they gain experience in these knowledge-building activities.

Keywords: Attorneys' admission exams, cumulative knowledge-building, Legitimation Code Theory, semantic gravity, Context-dependence, Shifts in discourse.

DECLARATION

I declare that this Research study is my own work. It has not been submitted before for any other degree or examination at any other University. All the work taken directly from other works has been cited accordingly and a list of references has been provided.



University of the Witwatersrand, September 2024

Acknowledgements and dedications

I would like to direct my sincere gratitude to my supervisor: Prof Lee Rusznyak for her professional guidance, support, and critique of previous drafts of this report. I particularly wish to thank the Prof for those intensive write-a-thons, without which this report would never have happened. In those write-a-thons, as pressured as they were, I learned a lot about this study and LCT.

I also wish to acknowledge the contributions made by the candidate legal practitioners who agreed to participate in this study.

I dedicate this study to my family, both present and those who have departed. To them all, I say I do not know how to be here because, as you know, no Nkosi has ever been here before. I do not know how to produce a research report of this kind because no Nkosi has ever undertaken such a task before. I do not know how to do any of this. No Nkosi from the house of our great grandfathers uKhokh' uLuthwane no Khokh' u Josaya, the house of our grandfather uMkhul' Maganga has been here or done any of this before. I do not take being here for granted for I know in various ways, bo Nkosi you made a way. My journey has been one of firsts. I pray I am not the last and that those who come after me will go and do far beyond what I have been able to do.

That said, this study is in memory of my late uncle Thabo Daniel Nkosi who died with his boots on (literally) that fateful morning of 05 January 2024. Ngithi nje we Mfo, sengath' ungawathol' amakhekhe eshumi la uya khona.

Abbreviations and acronyms

CHE	Council for Higher Education
GCB	General Council of the Bar
LCT	Legitimation Code Theory
LLB	Legum Baccalaureus / Bachelor of Laws
LSSA	Law Society of South Africa
PLS	Practical Legal Studies
PVT	Practical Vocational Training
SALDA	South African Law Dean's Association
SG	semantic gravity

List of Figures

Figure 1. Illustrative profiles and semantic ranges	33
Figure 2. Diagram depicting kinds of knowledge examined in the exam	48
Figure 3. Semantic gravity profiles in the 4 Parts of the admission exam	54 – 55
Figure 4. Graphs depicting shifts in discourse, Everyday to Legal	64
Figure 5. Graphs depicting shifts in discourse, Legal to Everyday	65

List of Tables

Table 1. Semantics translation device	33
Table 2. Table showing knowledge-building work	53

Contents

ABSTRACT.....	2
DECLARATION	3
Acknowledgements and dedications.....	4
Abbreviations and acronyms.....	5
List of Figures	7
List of Tables	7
Contents	8
Chapter 1: Background and motivation for the study	11
1.1 Introduction	11
1.2 The Legal Practice Council's mandate to assess the competence of legal practitioners.....	12
1.3 Concerns about poorly prepared legal practitioners	14
1.4 Problem Statement.....	16
1.5 Purpose Statement and Rationale for the Study	16
1.6 Research Questions.....	16
1.7 Significance of the Study.....	17
1.8 Researcher positionality statement	17
1.9 Structure and layout of the study.....	18
Chapter 2: Literature review.....	20
2.1 Introduction	20
2.2 The problem of poorly prepared legal practitioners entering the legal profession.....	20
2.3 Admission exams as an indicator of competence for legal practice in South Africa	22
2.4 Knowledge-building and assessment in the admission exam	27
2.5 Gaps in the literature	28
2.6 Summary of the chapter	29
Chapter 3: Conceptual and analytical framework	30
3.1 Introduction	30
3.2 What is emphasised as a basis for achievement in Legal Practice Council examinations?	30

3.3 How do the Legal Practice Council examinations require prospective lawyers to work with legal knowledge?.....	31
3.4 Shifts in semantic gravity.....	34
3.5 Summary of the chapter.....	35
Chapter 4 Research Methodology	36
4.1 Introduction	36
4.2 Data collection.....	36
4.2.1 Document analysis	36
4.2.2 Survey questionnaire.....	37
4.3 Participants	38
4.4 Sampling of Participants.....	38
4.5 Data analysis.....	39
4.6 Ethical considerations	40
4.7 Limitations of the study.....	40
4.8 Summary of chapter.....	41
Chapter 5: Findings: Knowledge-building work required by the Admissions exam ...	42
5.1 Introduction	42
5.2 General description of the papers	42
5.3 Focus of the question papers	43
5.4 Understanding and explaining legal knowledge	44
5.4.1 Articulating candidates' knowledge of legal concepts and principles	44
5.4.2 Candidates' knowledge of legal statutes and legal precedents.....	45
5.5 Candidate's knowledge of ethical underpinnings	46
5.6 Applying knowledge in legal practice.....	47
5.6.1 Drawing up of legal documents.....	47
5.6.2 Giving and motivating legal opinion.....	48
5.7 Conducting legal-based research.....	49
5.8 Patterns across the four parts of the examination	51
5.9 Correlation between knowledge-building and candidates experiences	53
5.10 Summary of the chapter	55
Chapter 6: Knowledge-building through the attorneys' admission examination	56
6.1 Introduction	56
6.2 Shifts in context dependence	56

6.3 Experiences of candidates currently engaged in Practical Vocational Training	63
6.4 Shifts in discourse	65
6.5 Shifts in discourse: Experiences of candidates engaged in Practical Vocational Training	68
6.6 Justification of legal advice or opinions given.....	69
6.7 Justification of legal advice or opinions given: Experiences of candidates engaged in Practical Vocational Training	71
6.8 Summary of chapter	71
Chapter 7: Discussion and Conclusion	72
7.1 Introduction	72
7.2 Main findings	72
7.3 Answering the research questions	73
7.4 Gaps and recommendations	74
7.5 Conclusion and implications of the findings.....	75
8. REFERENCES	76
APPENDIX A1: ATTORNEYS'ADMISSION EXAM PAPER PART 1	81
APPENDIX A2: ATTORNEYS'ADMISSION EXAM PAPER PART 2	85
APPENDIX A3: ATTORNEYS'ADMISSION EXAM PAPER PART 3.....	88
APPENDIX A4: ATTORNEYS'ADMISSION EXAM PAPER PART 4	90
APPENDIX B1: Letter to the Director, SERI Law Clinic	92
APPENDIX B2: Invite to candidates to participate in study.....	94
APPENDIX B3: Survey questionnaire	96
APPENDIX C: Ethics clearance certificate.....	100

Chapter 1: Background and motivation for the study

1.1 Introduction

The admission of legal practitioners into the legal profession in South Africa has always been statutorily regulated. Both the current statute¹, and the previous statutes², provide for a dual system of study that consists of a professional degree, that is, the LLB degree offered by any one of the country's seventeen universities and a practical vocational training program coupled with a course on practical legal training which is administered by the Legal Practice Council (LPC). According to this dual system of study, universities provide legal education to prospective legal practitioners, whilst the Legal Practice Council, a national regulatory body with offices in all provinces of the country, is responsible for the practical training and the licensing of prospective legal practitioners to practice. This dual system of study is consistent with the training and admission of legal practitioners in many other jurisdictions.

Except to direct that a prospective legal practitioner must satisfy all the requirements of the LLB and that the course of study cannot be less than four or five years, the statute does not prescribe to the universities what the content or the quality of the LLB degree should be.³ This, argues Greenbaum (2016:468), was not an oversight but a deliberate decision informed by

The importance of academic freedom, motivated by recollections of a recent past in which the apartheid government had imposed its dictates on all (state-funded) higher education institutions and interfered with the autonomy of university teaching ...

The South African Qualifications Authority (SAQA) and the Council for Higher Education (CHE) National Review of LLB programme does, however, prescribe the exit level outcomes of the LLB degree (Swanepoel et al. 2008:101). The statute only prescribes how the vocational training of prospective legal practitioners should be conducted. Chief amongst those prescripts is the statute's mandate that the Legal Practice Council must set up rules, establish procedures, issue directives⁴, and conduct assessments to establish whether, in its opinion, a prospective legal practitioner who has undergone practical vocational training has attained an adequate level of competence for admission and enrolment as a legal practitioner.⁵ In other words, the

¹ As of 22 September 2014 the Legal Practice Act 28 of 2014 "hereinafter the Act" came in operation and repealed the different laws which applied in different parts of the Republic all regulating legal practitioners in a fragmented way.

² Attorneys, Notaries and Conveyancers Act 23 of 1934 and Attorneys Act 53 of 1979.

³ See section 26 of the Act.

⁴ See section 27 of the Act.

⁵ See section 28(1) and (2) of the Act.

Legal Practice Council is mandated to ensure that prospective legal practitioners are suitably skilled and well-prepared to enter the profession.

1.2 The Legal Practice Council's mandate to assess the competence of legal practitioners

Section 28(2) of the Legal Practice Act provides that the purpose of the assessments to be conducted by the Legal Practice Council “is to establish whether, in the opinion of the [Legal Practice Council], the person has attained an adequate level of competence as determined in the rules, for admission and enrolment as a legal practitioner.” In no uncertain terms, this section directs the Legal Practice Council to conduct assessments whose aim is to establish, to its satisfaction, if a prospective legal practitioner has attained an adequate level of competence. The mandate is essential because the duty placed on the Legal Practice Council to satisfy itself that prospective legal practitioners are appropriately skilled and sufficiently competent to be admitted into the profession is in keeping with the general role of regulatory bodies like the Legal Practice Council to act as gatekeepers and upholders of discipline and professional standards in regulated professions (Maloka 2015:2645).

Implementing the dictates of the statute, the Legal Practice Council decided that the best way in which it could conduct an assessment to establish if prospective legal practitioners had attained an adequate level of competence to qualify for admission into the profession was to subject them to a competency-based assessment. This is often referred to as an Admission or a Bar exam. To administer the competency-based assessment, the Legal Practice Council formulated rule 21, which regulates the competency-based assessment. Rule 21 provides that:

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.

The actual competency-based assessment mentioned in the rule consists, at least for attorneys, of four written examinations written over two days. There are two opportunities every year for candidate legal practitioners to write the admission exam. In each case, the four exams are scheduled over two consecutive days. Prospective legal practitioners are permitted to complete the four papers in any sequence and “do not have to complete all portions of the exam in a designated order during a single exam period” (Maisel 2010:22).

According to rule 21.2 the assessment of prospective legal practitioners shall consist of an assessment at least in relation to the practice and procedure in the High Court and in the Magistrates' Courts (paper 1); the practice and procedure relating to the winding up and distribution of the estates of deceased persons (paper 2); the practice, functions and duties of an attorney, including the ethical duties of an attorney (paper 3), and knowledge of accounting necessary for the keeping of accounting records relating to trust accounts and compliance with accounting rules published by the Legal Practice Council from time to time (paper 4).

Rule 23 gives effect to rule 21.2 by stipulating the details and mechanisms of how competence assessments are to be conducted. In this regard, rule 23 provides that the competency assessments are to be undertaken by persons or assessors who qualify to conduct assessments.⁶ Such assessors will put written questions to prospective legal practitioners, which written questions "may require the candidate to draft such process, accounts and documents to show whether he or she possesses sufficient practical knowledge of such subjects" (Rule 23.2.1).

The purpose behind admission exams has always been to ensure that legal practitioners, particularly those newly admitted, have the "minimum competence to practice law unsupervised" (Glen 2003:347). Admission exams have always been regarded as the legal profession's way of ensuring that the right of the public to receive competent legal counsel from legal practitioners is realised. Chernovskyi (2019:12) points out that the "professional competence of a lawyer occupies a special place, and its task is to protect the rights, freedoms and legitimate interests of citizens". That this is the case is also spelt out in the Code of Conduct for all Legal Practitioners, Candidate Legal Practitioners and Juristic Entities, where clause 3.11 of the code enjoins all legal practitioners to "use their best efforts to carry out work in a competent and timely manner". Clause 18.4 goes a step further and urges attorneys to

perform professional work or work of a kind commonly performed by an attorney with such degree of skill, care or attention or of such a quality or standard as may reasonably be expected of an attorney.

In *Legal Aid Board v S*, the Supreme Court of Appeal reasoned that members of the public were entitled to competent legal counsel as that "is an important safeguard of fairness in the administration of ... justice." The court was saying here, and the code of conduct seeks to underscore, that legal practitioners must be competent because courts cannot discharge their

⁶ According to Rule 25.2.1 a qualifying assessor is a person who has been a practising attorney for not less than seven years.

obligations of doing justice between conflicting parties without competent and effective legal representation.

1.3 Concerns about poorly prepared legal practitioners

Despite the Legal Practice Council's mandate and efforts in assessing prospective legal practitioners' competence prior to being admitted into the profession, concerns have been raised about the quality and competence of legal practitioners who have been licensed and admitted into the profession (Biggs and Hurter 2014: 2). The concerns about the quality and competence of legal practitioners got so serious that the South African Law Dean's Association (SALDA); the Law Society of South Africa (LSSA); the General Council of the Bar (GCB); the Judiciary; the Magistracy, law teachers and the Council for Higher Education (CHE) in May of 2013, held an LLB summit titled "Legal Education in Crisis" (Sedutla 2013:8). The primary purpose of the summit was to examine the root cause of the crisis and "to make recommendations on how to improve the degree" (Sedutla 2013:8). The summit resolved that there be a national review by the Council for Higher Education (CHE) of all the LLB programmes offered by the seventeen universities in South Africa.

In 2018, the CHE released its findings which stated that the purpose of the LLB degree was to prepare "well-rounded graduates for the three career pathways, namely entry into legal practice, into a wide range of another career that require the application of law, and for postgraduate studies" (CHE Report 2018:21). In so far as the purposes of the LLB degree were concerned, the CHE found "evidence that demonstrates that the LLB degree attempts to address the stated purpose of the qualification" (CHE Report 2018:21).

The CHE also looked at graduate attributes, focusing specifically on the extent to which the programmes taught knowledge, skills and applied competencies. On the attribute of knowledge, the findings were that the LLB degree "imparts to graduates 'comprehensive and sound knowledge and understanding' about South African law and the legal system" (CHE 2018:31). On skills, the finding was that the degree, in conceptualisation and design, meets the objective of preparing students for the careers even though some universities did this better than others (CHE 2018:31 & 34).

The literature review will explore the extent to which the concerns about the quality and competence of legal practitioners are thought to have their roots in the under-preparation of legal students entering higher education, the quality of university-based coursework, and the quality of learning and mentoring of legal internship programmes.

In debates around the quality of legal practitioners admitted to the profession, very little research focuses on the Legal Practice Council's role in ensuring that those admitted to the profession have the necessary knowledge, competencies and attributes to enter the profession. Instead, the focus has always been on the role of universities and legal education, where it is argued that the four-year LLB programme is either too short, in which event the answer to the concerns about poor quality legal practitioners is to extend the LLB programme (Van Niekerk 2013:541); or that the programme is too theoretical with no real opportunities for students to learn practical and critical skills (Maharaj 1994:329). Not much is said about the Legal Practice Council and what is examined in the admission exams it administers. In particular, not much is known about how the Legal Practice Council admission examinations require prospective lawyers to work with their legal knowledge base.

It is taken for granted that the primary role of the admission exams is to protect "the public by ensuring that only competent persons are licensed to practice law" (Nord 1971:546). Commenting on the purpose and importance of admission exams, Corneille (2001:611) says:

[Admission] exams are used to screen out those who are not competent to practice. While not perfect, the [admission] exam represents the ... high courts' commitment to protecting the public by requiring potential lawyers to show evidence of their legal competence. The existence of the [admission] exam ... indicates that the high courts, which hold the plenary authority to regulate admission to the [profession], are not satisfied merely with graduation from law school as an indicator of competence to practice. ... the [admission] examination [is] the standard of last resort for determining who is capable of representing the legal concerns of members of the public in need of legal counsel.

Corneille's (2001) comments about the role, purpose and importance of admission exams considered in light of the outcry about legal practitioners' lack of skills to practice law provokes questions about the extent to which the Legal Practice Council has been able to perform its task of screening those prospective legal practitioners who have achieved adequate knowledge and skills to practice law. In other words, the question is, to what extent is the Legal Practice Council assessing knowledge and skills that are similar or different from those expected by the legal profession?

1.4 Problem Statement

It cannot be disputed that the competence or incompetence of legal practitioners is a matter of great national importance. When faced with legal practitioners who are not adequately skilled to practice law, the public, the administration of justice, and the entire legal system suffer.

To assume, as has been the case, that the solution to poor quality legal practitioners lies solely in the failures of legal education to produce adequately skilled legal practitioners is too simplistic an answer to this problem. It is also the least likely to bring about any changes as “it takes a complex system of interactions performed in just the right way, at the right time” to cause change (Dudley-Marling 2004:489). Instead, a holistic enquiry is required to determine whether the Legal Practice Council's skills and competence assessment practices are appropriate, relevant and responsive to ensure that appropriately skilled practitioners are licensed to enter the legal profession. To date, no enquiry into the role of the Legal Practice Council in the quality and competence of legal practitioners has been undertaken. In particular, there has not been a study of the extent to which the admission examinations are fit for purpose and evaluate the knowledge, skills and competencies valued by members of the legal profession. This study intends to make a small contribution towards this goal.

1.5 Purpose Statement and Rationale for the Study

The main purpose of this study is to investigate precisely how the admission exams require prospective legal practitioners to recruit and work with legal knowledge. Though specifically focussing on legal practitioners, it is essential to note that the problem of ill-prepared graduates is not limited to law and legal practitioners. Mungal and Cloete (2016:2) conducted a broad literature review, which indicated that graduates across disciplines, universities and countries “are weak and underprepared for the work environment and lack the ability to transform theoretical knowledge to work practice”. The study aims to draw the legal profession into reflecting on how the knowledge and skills valued by legal practitioners are assessed and evaluated in the admission exams.

1.6 Research Questions

This study is premised on and guided by the following research question:

What knowledge-building work is required of candidate legal practitioners to complete the attorneys' admission exam successfully?

The main research questions will require the investigation of the following sub-questions:

- (a) What knowledge, procedures and competencies are required by the Legal Practice Council in the examinations?
- (b) How do the Legal Practice Council admission examinations require legal practitioners to work with legal knowledge and procedures?
- (c) To what extent are candidate legal practitioners developing these competencies during their Practical Vocational Training?
- (d) What are the implications of this study for the training of candidate legal practitioners doing Practical Vocational Training?

1.7 Significance of the Study

The importance of the study lies in its attempts to investigate whether the skills and competence assessment practices of the Legal Practice Council are sufficient in validating legal practitioners who are ultimately licensed and admitted into the profession. This question has not occupied much research as it is generally assumed that the poor quality of legal practitioners is the function of inadequate university teaching.

To address the question of specialised knowledge and procedural competencies among legal practitioners, all the issues that may cause the problem must be properly assessed. It cannot be correct that such a problem is only caused by legal education and university practices. The Legal Practice Council must also evaluate the appropriateness and efficacy of its internal assessment practices. This is necessary because the Legal Practice Council is statutorily obligated to assess prospective legal practitioners' knowledge and applied competencies prior to their admission into the profession.

Maton (2014:10) explains, "actors construct knowledge but not under conditions or in ways entirely of their own making, and not entirely alone. Rather, knowledge is about something other than itself, draws on existing knowledge, and is produced and judged by socially situated actors". The Legal Practice Council and those who develop the assessment questions for the admissions examination are enacting their perspective of what prospective lawyers need to know and what they need to do to practice competently. The admission examinations can, therefore, be viewed as an artefact that embodies the knowledge and knowledge practices valued by the profession.

1.8 Researcher positionality statement

Very little research in the social or educational field is value-free (Holmes 2020:2). For this reason, positionality requires that the researcher explicitly acknowledge "their views, values,

and beliefs about the research design, conduct, and output(s)”, as these may influence how the research is conducted and presented and the overall findings (Holmes 2020:2).

Positionality, it seems, is about who the researcher is in relation to the research conducted. I am an African man, a law teacher and a practising legal practitioner. I served my two-year articles of clerkship, now known as practical vocational training, at a university law clinic where I attended to the legal problems of our indigent clients. Our university law clinic ran a compulsory final-year LLB course called Practical Legal Studies (“PLS”), which aimed to introduce final-year law students to the practical aspects of the law. As part of the PLS program, the law clinic provided free legal services to indigent clients who came to consult on family law; criminal law; refugee law; consumer protection law, labour law, delictual actions against organs of State and general litigation. In many instances, we were the first and last hope for our clients. This exposure gave me my initial impression of the law and what constitutes legitimate legal practice.

After admission, I commenced my legal practice at the university law clinic, where I was introduced to the training and supervision of both final-year law students and new candidate legal practitioners. I was also drafted into university teaching, research, and publishing, where I taught, researched, and published in the areas of civil procedure, family law, pension funds law, labour, and administrative law.

My interest in the current study stems from my continued practice as a legal practitioner and my ongoing involvement in teaching, training, and supervising law students and candidate legal practitioners. As someone who is in the field, I am aware of the challenges posed by and criticisms directed against underprepared legal practitioners. I am also familiar with the research that has been done into this problem which research focuses on legal education as the sole cause of the problem.

1.9 Structure and layout of the study

The study will be presented in seven chapters. The first chapter introduces the study and provides a background, the purpose, motivation, and significance of the research. It has also formulated the research questions that guide the study. This chapter further explained the significance of the study thereby highlighting the need to undertake this research.

Chapter two reviews the literature related to admission exams, and empirical studies on the preparation of legal practitioners. It then identifies a gap in the literature and introduces the

theoretical framework of the study. The chapter outlines how the specialisation codes and the semantic gravity of Legitimation Code Theory can be used to answer the research question. Chapter three sets out the research design and justifies the conceptual framework for the study. Chapter four presents the methodology of the study. Chapter five presents the findings of the study. Chapter six sets out the knowledge-building work required by the admission exam, and Chapter 7 is the conclusion.

Chapter 2: Literature review

2.1 Introduction

This chapter aims to locate this study within existing literature by reviewing the bodies of literature that are applicable to it. To that end, I first look at the literature that details the problem of poorly prepared legal practitioners entering the legal profession. This literature locates the problem presented by poorly prepared legal practitioners in various sources ranging from the school systems that fail to prepare learners for university study to legal education that is too theoretical and not focused on teaching legal skills. This will be followed by a review of the admission exam literature. The admission exams literature sets out the history, purpose and aims of admission exams more generally. The chapter will conclude the literature review by looking at the knowledge-building literature. This literature will enable this study to answer the question about knowledge-building in the attorneys' admission exam.

2.2 The problem of poorly prepared legal practitioners entering the legal profession

This study is concerned with understanding the knowledge-building work required of candidate legal practitioners by the admission exam. The point to note in this regard is that a lot is written about the history, the role and the failures of South Africa's legal education to produce sufficiently competent legal practitioners (Van Niekerk 2013:534). The opinions expressed in the literature suggest, as argued by Pantazis (2013:22), that "the quality of [legal education] in South Africa is of an unacceptably low standard" and has led to legal practitioners who "do not have adequate knowledge of the law and are poorly prepared for the practice of law" entering the profession.

The problem of poorly prepared practitioners entering the profession, or as Wasby (2013:47) calls it, "[t]he problem of lawyer's inappropriate or substandard performance has long been with us". The reasons for the problem have ranged from arguments that the study programme⁷ is either too short, in which event the answer is to extend the programme, or that the programme is too theoretical with no real opportunities for students to learn practical skills (Du Plessis 2015:312). Some arguments have centred on students being underprepared to enter higher education or to undertake legal studies. One proponent of this particular view is Domanski (2011:55), who argues that.

The teaching of law in South Africa today faces daunting challenges. One of these is the large number of underprepared students who lack skills in reading, writing, and

⁷ Study program is typically four years of legal education and two years of practical vocational training.

speaking English. Even after completing their studies, many law graduates lack the ability to apply legal principles and solve problems. This parlous state of affairs is largely the result of the government's deplorable policy decision to sacrifice the humanities on the altar of science and technology.

Domanski's view is echoed by numerous scholars, including Wille & Strode (2017) and Snyman-van Deventer & van Niekerk (2018), who have all argued, with different degrees of emphasis, that the root cause for higher education generally and legal education specifically failing to produce graduates of high quality is because students enter higher education ill-prepared for the unique challenges of university studies. This lack of preparation not only puts universities under pressure to provide sufficient support to students during their studies to compensate for this lack of preparedness (Wille & Strode 2017:383) but also compels them to deviate from fully engaging in their core business, which is to teach appropriate skills needed by the professions and the economy. Colgan et al. (2017:2), referencing an official in the attorney's profession, argue that one of the reasons law graduates lack the requisite skills to practice law is because tertiary institutions, instead of teaching those skills, "were being forced to address the skills deficit inherited from primary and secondary schools."

Despite the Legal Practice Council's mandate and efforts in assessing prospective legal practitioners' competence prior to being admitted into the profession, concerns have been raised about the quality and competence of legal practitioners who have been licensed and admitted into the profession. Critics, who, according to Greenbaum (2016:471), comprise "all stakeholders in legal education, including the judiciary, the legal profession, employers of law graduates, and academics", argue that admitted legal practitioners are under-prepared for the practice of law in that they lack the most basic skills necessary to practice law.

In particular, the outcry has been that admitted legal practitioners do not possess the necessary skills to practice law. Responding to a 2012 survey which found that out of 500 attorneys surveyed, only 31 percent believed law graduates were adequately prepared to join the profession, judge Jappie (2012) expressed the outcry in the following terms:

The main problem [with admitted legal practitioners] is communication skills. People cannot get across what they want to say and do not seem to understand basic court procedures. When it comes to trial work, they battle with understanding questions of onus and putting forward a coherent argument.

Inadequate communication, numeracy, and literacy skills coupled with a lack of critical reasoning and critical thinking—all skills and attributes that are non-negotiable prerequisites for legal practice—have long been highlighted as serious areas of concern amongst recent entrants into the profession (Greenbaum 2010:12; Mojapelo 2012:56; Van Niekerk 2013:534; Campbell 2014:17; Quinot & Greenbaum 2015:29).

Though not disputing the problems associated with the length of the study programme, the under-preparedness of school leavers for higher education, and the programme's theoretical rather than practical nature, this study seeks to shift the inquiry into the lack of skills and competence of legal practitioners to admission exams.

Despite the outcry about legal practitioners' under-preparedness and lack of skills to practice law has been fierce, the criticisms have focussed mainly on the failures of universities, that is, the shortcomings of legal education to produce adequately skilled and well-prepared graduates and not much has been said about the role or indeed the failures of the Legal Practice Council to ensure, as per the statutory mandate, that suitably competent practitioners are trained, licensed and admitted into the profession.

When engaging with this literature, one should remember that legal practitioners in South Africa undergo a dual system of study that consists of legal education and practical vocational training. Though there is an abundance of literature on the state of our legal education, no actual studies have been conducted on practical vocational training or admission exams. The role of admission exams in the competency of legal practitioners is an under-researched topic in South Africa.

2.3 Admission exams as an indicator of competence for legal practice in South Africa

Not much research has been conducted into the role and purpose of admission exams in South Africa, as much of the focus has been on legal education. One of the papers that has looked at some aspects of admission exams in South Africa is Mhlungu's (2004) article. In it, she describes the education and licensing regime of attorneys in South Africa. She provides a personal account of what she went through to get licensed as an attorney and as the first black woman property lawyer in the Eastern Cape. Mhlungu's article for this study is important because the licensing regime she describes has not changed much.

It is still a requirement, as described by Mhlungu (2004:1012) that every law graduate intending to join the profession must enter into a contract of articles with a principal who must be a senior attorney who has been in practice for a minimum period of three years. Currently, the contract

of articles Mhlungu refers to has become known as Practical Vocational Training, and the senior attorney has become a Legal Practitioner. The Practical Vocational Training just like the contract of articles can be undertaken at a private law firm, a university law clinic, justice centre, or a public interest law firm (Mhlungu 2004:1012). It remains a requirement that a candidate legal practitioner undergoing Practical Vocational Training “undertakes to diligently, honestly, properly, and confidentially serve the principal and the profession”, and in “return, the principal undertakes to use his best efforts to ensure that the [candidate legal practitioner] is properly instructed in the practice, ethics, and understanding of the profession” (Mhlungu 2004:1012). These undertakings by both principal and candidate legal practitioner are the bedrock on which the whole Practical Vocational Training for intending legal practitioners is built.

What seems to have been discontinued from Mhlungu’s (2004) account is the requirement that candidate legal practitioners keep a diary or other written record of the training they have received until admission, which written record could be inspected by their principals, the Legal Practice Council or the examiners. The duty to keep this diary or written record emanated from section 14 of the now repealed Attorneys Act 53 of 1979.

It must be pointed out though that the Law Society of South Africa was the regulatory body under the Attorneys’ Act. In the present regulatory regime under the Legal Practice Act, the Legal Practice Council succeeded the Law Society. However, despite there being changes in the regulatory regime, transformation has been slow. This much is said by Klaaren (2020) who though supporting much of what Mhlungu says about the admission process into the legal profession specifically notes “the slow pace of demographic change” in the profession. In support of Mhlungu (2004), Klaaren (2020:536) also points out that to qualify as a legal practitioner in South Africa “one must be an LLB graduate of a South African law school, complete an apprenticeship (articles of clerkship) with an admitted attorney, and pass an examination administered by the Law Society of South Africa.”

Klaaren (2020:536) also considers the “unification process” of the profession introduced by the Legal Practice Act⁸ albeit in the context of the slow demographic change. Looking at both attorneys and advocates, Klaaren comments that “[i]t is significantly easier for a law graduate to complete the formal requirements to become an advocate by simply presenting oneself

⁸ “Unification process” refers to the breaking of the barriers that historically kept the Advocates and Attorneys professions as two different professions. Part of what the Legal Practice Act has introduced is the concept of a Legal Practitioner who could either be an Advocate or an Attorney.

before a court.” It is indeed so as pointed out by Maisel that law graduates intending to become advocates follow a slightly different admission route from those intending to become attorneys. Klaaren’s interest is to figure out why there has been a slow pace of demographic change even in the advocates’ profession where it is easier and quicker to get admitted. In this regard he concludes that the problem accounting for the slow pace of change in the advocates profession is “the dominant position of the private associations of advocates (most of them organised in cities), which are joined together in the GCB” (Klaaren 2020:536). Going further, Holness (2020) “explores the graduate community service scheme provided for in section 29 of the Legal Practice Act 28 of 2014 (LPA)”. Though capable of providing opportunities for practical vocational training similar to law clinics, Holness correctly notes that the graduate community service scheme “is not yet in place - nor is its implementation even a *fait accompli*” (Holness 2020:1). Despite the potential and role the graduate community service scheme can play in practical vocational training of candidates, the graduate community service scheme is positioned as a service as opposed to a training responsibility. Holness (2020) contends that the scheme, if implemented properly, may provide better access to justice in civil matters for the indigent. Unlike the medical profession, graduate community service schemes have not been a standard feature of the South African legal profession.

In terms of the impact and the role of the Legal Practice Act, Robertson and Kruuse (2016:345) highlight that the lack of ethical practice amongst legal practitioners is something that requires attention. They argue that the impact of the Legal Practice Act in the training of future legal practitioners will be determined by how well the legal profession implements provisions regulating the conduct of legal practitioners, through open and transparent disciplinary mechanisms, as well as a creation of a new body to oversee the conduct of legal practitioners (Robertson and Kruuse 2016:345). Robertson and Kruuse’s paper is relevant to this study for the reason that ethics and ethical conduct forms part of the admission exam.

Maisel (2004:977) compares the South African admission exam system to that of the United States and introduces the reader to the debates about admission exams in the United States. The debates in the United States have been about the extent to which admission, or bar exams as they call them, are fit for purpose. Maisel (2004:977) “examines the system of educating and licensing [legal practitioners] in South Africa to determine whether [this] country’s experience can provide guidance to jurisdictions in the United States that are considering proposals to reduce or eliminate the importance of bar exams.”

In her examination of the South African admission exam system, Maisel (2004:978) correctly notes that historically and in contrast with the unified system in the United States, South Africa followed the British system of a divided bar where there was a strict division between attorneys (called solicitors in Britain) and advocates (called barristers). Attorneys were general practitioners in that they acted for clients in every aspect, including representing clients in the lower courts. Advocates, on the other hand, were thought of as being specialists and generally represented clients in the superior courts. Although the current Legal Practice Act has sought to unify the legal profession into one single profession, the hallmarks of the divided profession still exists in practice. Maisel's article is therefore important for this study as it provides, for purposes of background and context, the historical roots of the South African legal profession.

Though important for background and context, Mhlungu and Maisel's studies are somewhat removed from the question investigated by this study. Studies are closest to the issues investigated in this study are Clarence's 2014 and Moore's 2022 doctoral studies. Clarence's doctoral study analyses a law course offered to first-year law students to, on the one hand, develop an approach to pedagogic practice that recognises "the need for inclusion of a great number of students within disciplinary discourses and knowledge-making practices" and, on the other hand, apply to current pedagogy "tools that enable an in-depth and layered account of what enables and constrains this inclusion" (Clarence 2014:25). One of the findings Clarence makes is that there is "some concern that the students are not learning the knowledge within the course cumulatively, but are indeed segmenting their learning, at least in part" (Clarence 2014:119). Clarence's study is particularly relevant in this context because it applies the tools from LCT to analyse teaching and learning problems arising from a legal education context.

Moore's doctoral study was concerned with legal writing in law by both legal academics and legal practitioners. This study is relevant because Moore's doctoral study was also premised on the problems presented by poorly prepared legal practitioners, dubbed the "crisis in legal education." One of the manifestations of the crisis in legal education is, according to Moore, "the state of law students' and law graduates' writing" (Moore 2022:258). Moore (2022:3) argues that "people are clear that legal writing is a problem for students and graduates in South Africa but less clear about what counts as good legal writing." In her investigation of this question, she concludes that there are multiple understandings of what legal writing is and that these understandings are linked to conceptions of legal knowledge and conceptions of legal education.

Clarence's doctoral study, in part, looked at how that particular law course was taught and learned; Moore's study looked at legal writing from both the perspectives of legal academics and legal practitioners. This study builds on Clarence's and Moore's doctoral studies by analysing what knowledge-building work is required from candidate legal practitioners by the attorneys' admission exam.

These articles, together with Maisel's (2010:15) latest article, which explores how the legal profession is currently organised and proceeds to describe South Africa's legal education "and the licensing requirements for both attorneys and advocates," show that though some aspects of the admission exams have been considered, the considerations have been largely descriptive of what already exists. No studies have analysed the content and focus of admission exams in assessing professional competence for legal practice and explored its basis of legitimation.

Such studies exist internationally, particularly in the United States, where researchers have questioned whether the bar exam is an appropriate and the best way of testing if new entrants have the required skills and knowledge to enter the profession. Hansen (1995:1235), for example, has traced the historical origins, role and justifications of admission exams and concluded that "the bar exam should be eliminated" because

Admissions processes from other common law countries indicate that a modern bar exam, administered in the United States, is unnecessary to ensure competent attorneys. Instead, a special practical education in the third year and a mandatory postgraduate clerkship may produce better attorneys and help "bridge the gap" between law school and legal practice.

Hansen's article shows that admission exams emerged to bridge the gap between theoretical education taught and learned in law schools and the practical knowledge required for legal practice. On this formulation, admission exams were meant to test the extent to which a legal practitioner's acquired practical and professional knowledge of legal practice renders them worthy or competent to be admitted into the profession.

Curcio (2002) argues that competent lawyers should have a wide range of knowledge, skills and legal expertise. However, the bar exam "overemphasises some skills and completely disregards others" (p. 364). In this study, Curcio compares what is being tested in the American bar exam to the range of skills and competencies he believes legal practitioners should possess and finds a mismatch. Curcio's main argument is that in the United States, there was a "commission of lawyers, judges and law professors [who] conducted an in-depth study" about

the core skills and abilities competent lawyers needed to have (Curcio 2002:364). He concludes that most of those core skills “are not tested on the bar” (Curcio 2002:365).

Similar to Hansen (1995), Curcio (2002:422) then concludes that:

It is time to stop pretending that the existing bar is a valid measure of minimum competence to practice law. It does not begin to test the breadth of skills that minimally competent lawyers need. Those skills that the current exam tests are tested in a way that has little relationship to how the skills are used in practice. The existing exam is a one-size-fits-all exam that does not consider that different lawyers must be proficient in various skills and other substantive areas.

Although the legitimacy and appropriateness of bar exams have been questioned for years in the USA, such exams remain the rite of passage for all law graduates intending to join the profession. Markovic (2022:164) captures the rite of passage that is the bar exam in the following terms:

Perhaps no rite of passage is as reviled as the bar examination. Every year, tens of thousands of freshly minted law school graduates pour into convention centres and lecture halls to begin a two— or three-day ordeal that has little relation to any task they will perform in legal practice. Most will pass on their first attempts, while others will pass on subsequent ones. However, for a small minority, the bar exam will prove to be an insurmountable barrier.

The bar exam, according to Markovic (2022:164), has been the rite of passage into the legal profession for law graduates in the USA since “the post-colonial period” and, according to Jellum and Reeves (2005:647) “, the bar examination is here to stay and is a reality that our graduates must face.” The bar exam is entrenched so much so that “[e]ven the disruption caused by the COVID-19 pandemic failed to loosen the bar exam’s grip on the attorney admission process” (Markovic 2022:167).

2.4 Knowledge-building and assessment in the admission exam

Competent and suitably qualified legal practitioners are an important objective of the attorneys’ admission exam. Where there are concerns and criticisms that new entrants into the legal profession are poorly prepared, the LPC must respond to those concerns and criticisms. Much of the responses to the question of poorly qualified legal practitioners, however, have focused on issues of teaching and learning in the LLB and on the lack of preparedness of the candidates

themselves. The problem with this response is that though it focuses on teaching and learning and on the readiness of candidates to enter the legal profession, it ignores knowledge as a subject of its focus. It becomes what Maton (2014:3) calls “knowledge blindness”, meaning the generalised overlooking of knowledge in research educational problems and challenges. Knowledge blindness, Maton (2013) argues, obscures both knowledge and knowledge-building.

The knowledge blindness Maton talks about concerned Shulman (1986) who earlier termed the phenomenon “the missing paradigm” in considering educational matters. Shulman (1986:8) argued that in the literature on teaching, the central questions were not asked. The emphasis in teaching practices, Shulman argued, was on how classrooms were managed, how activities were organised, how time and turns were allocated, how assignments were structured, and how students were assessed. What was not asked and thus constituted the missing paradigm were questions about the content of the lessons taught, the assessment questions asked, and the explanations offered for those lessons and assessments (Shulman 1986:8). In other words, educational research was not asking questions about knowledge, its structures and its manifestations. The reason for this is that educational research had “no language or tools with which to see, research and analyse knowledge as both a subject and an object of study” (Clarence 2013:6). LCT responds to this knowledge blindness or missing paradigm by providing researchers with both the language and the tools to research knowledge in educational practices (Maton 2013). It enables researchers to identify knowledge in the data and to analyse it in various ways to see what kind of knowledge is valued and what kinds of knowers are legitimated in different contexts or disciplines. As will be seen in the chapters that follow, LCT also enables researchers to reveal the many aspects of knowledge that are otherwise invisible.

In the context of this study, as Shulman argued, a lot of questions have been asked and suggestions made about poorly prepared legal practitioners, but the central question: what knowledge-building work is required of legal practitioners entering the legal profession remains a blind spot or a missing paradigm in conversations about the preparedness of new entrants into the legal profession. This study will use LCT as the multidimensional conceptual framework to investigate this question.

2.5 Gaps in the literature

Admission exams in South Africa have not yet been the subject of rigorous analysis as they have been in the United States. The question arises of whether South Africa will reach the same

conclusion as Curcio when such an analysis of the admission exams is undertaken in South Africa. Will South Africa also conclude that admission exams are not a valid measure to test for minimum competence to practice law? To answer this question one way or another, one will first need to analyse the knowledge practices required by the admission exams and reveal their organising principles and the grounds for legitimising legal practice. This study hopes to contribute in this regard.

This literature review shows two crucial knowledge gaps in the study of admission exams. The first gap is that, unlike the United States, South Africa has not engaged with or questioned the need, purpose, validity and efficacy of admission exams. In South Africa, the need, purpose, validity and efficacy of admission exams is taken as a given without much thought. This lack of research creates a knowledge gap about how admission exams test the knowledge, skills and attributes necessary to enter the profession. This study attempts to question the efficacy of admission exams and thereby add to the literature by providing insights that may strengthen the current dispensation of admission exams or cause them to be reviewed.

The second knowledge gap is that even in jurisdictions like the United States, where the efficacy of admission exams has been researched, that research has primarily been descriptive by focusing on the processes and procedures of admission exams as opposed to being analytical by concentrating on the substance of what admission exams are testing for.

2.6 Summary of the chapter

This chapter has provided a literature review that guides and informs this study. The chapter started by looking at the literature that deals with the phenomenon of poorly prepared candidate legal practitioners entering the profession. This literature is crucial for this study as it provides the context against which the research question can be investigated. This chapter also looked at the literature that documents the aims and objectives of admission or bar exams. Therein, a literature gap was identified when it became clear that though much international literature has probed admission exams from different angles, admission exams have not been much of a subject of research or analysis in the South African context. To put everything in perspective, this chapter concludes by introducing the knowledge-building literature and trying to show how this literature helps this study find the missing paradigm or close the blind spot in the admission exam.

Chapter 3: Conceptual and analytical framework

3.1 Introduction

To investigate the knowledge-building work required of candidates by the admission exam, I need a framework that will allow me to identify, analyse and compare the focus of questions in the examinations and their basis of legitimation. The study uses the conceptual and analytical tools from Legitimation Code Theory (LCT). LCT is “a framework for researching and shaping practice” (Maton and Chen 2020:37). LCT is a multi-dimensional toolkit where each dimension offers concepts for analysing a particular set of organising principles underlying practice (Maton 2013). LCT has been widely used to analyse assessments in diverse fields, including chemistry (Rootman-De Le Grange and Blackie 2018), music (Walton 2020) and graphic design (Giloi 2016). Most relevant to this study is that it has been used in various legally focused research studies, including the study of pedagogic practice in law and political science courses (Clarence 2013).

LCT is a multidimensional framework where each dimension explores a different aspect of practice. Each dimension has two organising principles that generate codes that show what is valuable or legitimate to participate and achieve in a particular field of practice (Maton 2014). Legal training and education can be considered such a field because it has “its legitimate ways of doing things, which denotes what is acceptable and valued in the field” (Arbee et al 2014:42). In this study the perspectives of established members of the profession and its body, the Legal Profession Council enact their views about what skills, knowledge and dispositions newcomers to the profession need to demonstrate to be recognised as legitimate knowers, in artefacts like their Code of Ethics and the requirements of the Admissions examination.

Currently, three active dimensions are used to analyse different organising principles of practice and what is valued in participating in and achieving in practice. In particular, this study draws on the Specialization and Semantic dimensions to understand how the knowledge of legal practitioners builds over time and is legitimated by the Legal Practice Council in the admission exams.

3.2 What is emphasised as a basis for achievement in Legal Practice Council examinations?

The Specialization dimension explores the basis of membership, authority, status and achievement underlying practices, dispositions and context. At the heart of the Specialization dimension are questions about “what makes someone or something different, special and worthy of distinction” (Howard and Maton 2011:196). In this study, participation and

achievement are about what a new legal practitioner needs to know and be able to do. The Specialization dimension proceeds from the premise that all practices, beliefs or knowledge claims are about something and by someone (Howard and Maton 2011:196). This dimension then differentiates a field from other fields by analysing what knowledge may be legitimately pursued and how this may be done (setting up epistemic relations, ER between knowledge and the practice), and who may be considered a legitimate knower (setting up social relations, SR between the legal practitioner and the practice) (Maton 2014). Each can be stronger or weaker along a continuum. What this means in the context of this study is that each criterion of assessment in the admission exams can be analysed according to the strength of epistemic relations, that is, knowledge or procedure is specified in the questions and/or how strongly or weaker the social relations (or attributes of the knower) form a basis for demonstrating the competence of the legal practitioner.

Epistemic relations and social relations manifest in assessment questions in a range of strengths. A stronger epistemic relation, for example, means that the candidate needs to know highly specific strategies or procedures. For example, if the assessment requires a candidate legal practitioner to draw on knowledge of precedents in case studies, the assessment task would have a stronger epistemic relation than a question that asks for an opinion. Similarly, a stronger social relation, for example, means the dispositions of legal practitioners are emphasised as measures of legitimation. In contrast, a weaker social relation does not emphasise a practitioner's dispositions as a basis for legitimation. For example, if the assessment requires a candidate's legal practitioner to account for their legal opinion, the assessment task would require candidates to enact a stronger social relation than a task that requires that candidate to provide a definition.

The interaction of the strength of epistemic relations and social relations generates specialisation codes. A knowledge code, for example, emphasises the mastery of knowledge or procedures as a basis for legitimation, whereas other codes (including relativist and knower) do not (Maton and Chen 2020:38).

3.3 How do the Legal Practice Council examinations require prospective lawyers to work with legal knowledge?

Semantics is another dimension of LCT that explores how “knowledge builds over time, both in terms of its relation to the contexts in which it is applied (semantic gravity, SG) and the complexity invested over time in terms of concepts and symbols (semantic density, SD)”

(Clarence 2016:126). Semantics view “social fields of practice as *semantic structures* whose organising principles are conceptualised as *semantic codes*, comprising strengths of semantic gravity and semantic density” (Maton 2013:11; Maton 2020:62).

The Semantic dimension proceeds from the premise that knowledge is not static but builds over time in semantic waves that encompass recurrent shifts in context-dependence and condensation of meaning that “weave” different forms of knowledge (Maton 2014:1). This dimension then differentiates a field from other fields by analysing how knowledge or meaning relates to its context (semantic gravity) and how meaning is condensed or related to more complex networks (semantic density) (Maton 2020:63). Semantic gravity and semantic density manifest in assessment questions along a continuum of strengths and weaknesses (Maton 2020:63). What this means in the context of this study is that each criterion of assessment in the admission exams can be analysed according to its degree of context dependence (conceptualised as stronger or weaker manifestations of semantic gravity). Complexity, enacted by semantic density (SD), can manifest as more straightforward, everyday meanings to more complex, condensed meanings expressed in technical legal discourses (Hassan 2020:188).

The stronger the semantic gravity (SG+), the more meaning is dependent on its context and vice versa, and the stronger the semantic density (SD+), the more meaning is condensed within practices, that is, the more complex the practices, and the weaker the semantic density (SD-), the fewer meanings are condensed within practices (Maton 2020:63). For example, if the assessment requires that a candidate legal practitioner draws on knowledge of precedents in case studies, the assessment task would have stronger semantic density than a list of fact of a given case.

Similarly, if the assessment task requires a candidate legal practitioner to name or list the elements of a particular legal statute, it would have weaker semantic gravity because “it is removed from any context in which it would find application” (Clarence 2014:127). If, however, that assessment task required the candidate legal practitioner to apply the elements of that criminal offence to a particular set of facts, it will have a stronger semantic gravity because that abstract concept has been attached to the context in order to make sense (Clarence 2014:127).

Table 1. Semantics translation device

Concept	Categories	Indicators	Examples in this study
weaker semantic gravity ↑ ↓ stronger semantic gravity	SG--	The question requires a universally applicable answer not linked to the specifics of a particular case in time or space.	List four non-deductible collateral benefits (P1, Q4).
	SG-	The question requires the answer to draw on regionally applicable statutes or procedures that are or have been applicable over a relatively long period of time	Name the two disclosures, in terms of Section 60 (11B) of the Criminal Procedure Act, which an accused is compelled to make to the Court at a bail application (P1, Q7).
	SG+	Question requires the answer to draw on cases from different places or time.	Before the start of a criminal trial in which you will represent the accused, you discover that the magistrate is the mother of the complainant. How would you apply the applicable rules of conduct and what will you do if you are unsuccessful? (P3, Q5).
	SG++	The question requires the answer to be restricted to a particular case, fixed in space and time.	Mike Mkhize dies intestate and is survived by his three wives Lindi, Monica and Ella to whom he was married according to customary law, out of community of property and without the accrual system. Mike is also survived by the following people: (i) his daughters Fikile and Stella by his marriage to Monica; (ii) his son Bongani by his marriage to Lindi, who insists that as the only son of the deceased and according to traditional law he is entitled to the entire estate of his father; (iii) his parents, Xolane and Lizzie, who have paid for all the funeral expenses and who also insist that they are entitled to the estate of their son Mike. His net estate is worth R 1 470 000.00 (One Million Four Hundred and Seventy Thousand Rand), consisting of cash only. Advise the Mkhize family as to who are Mike's heirs and what amount will each inherit.

The intersection of strengths of semantic density and semantic gravity sets up four analytically distinct legitimization codes that reveal what is valued by legal practitioners as legitimate knowers in practice. These codes are rhizomatic codes (SG-, SD+); prosaic codes (SG+, SD-); rarefied codes (SG-, SD-) and worldly codes (SG+, SD+) (Maton 2020:64-65). Rhizomatic

codes are concerned with relatively context-independent and complex stances, while prosaic codes emphasise context-dependent and simpler ones. Rarefied codes emphasise context-independent stances that are relatively simpler, and worldly codes emphasise relatively context-dependent stances that are relatively complex (Maton 2022:64).

Because this study aims to analyse the knowledge, skills and attributes valued by the profession with those examined in the Board examination, the Semantics dimension, focusing on how knowledge accumulates and what is valued for achievement underlying practices, is most suitable. The Semantic dimension assists in research such as this, which aims to understand how knowledge is valued and legitimated.

3.4 Shifts in semantic gravity

The degree of context-dependence can shift from one strength to another over a task. A question, for example, may ask candidates to work at one strength of semantic gravity, for example, to list non-deductible collateral benefits (SG--). Other examples may require a shift between the facts of a case (SG++) and relevant statutes (SG-).

These shifts can be represented on a semantic profile to show the shifts in context-dependence over time (like a lecture) or task (like parts of an assessment question).

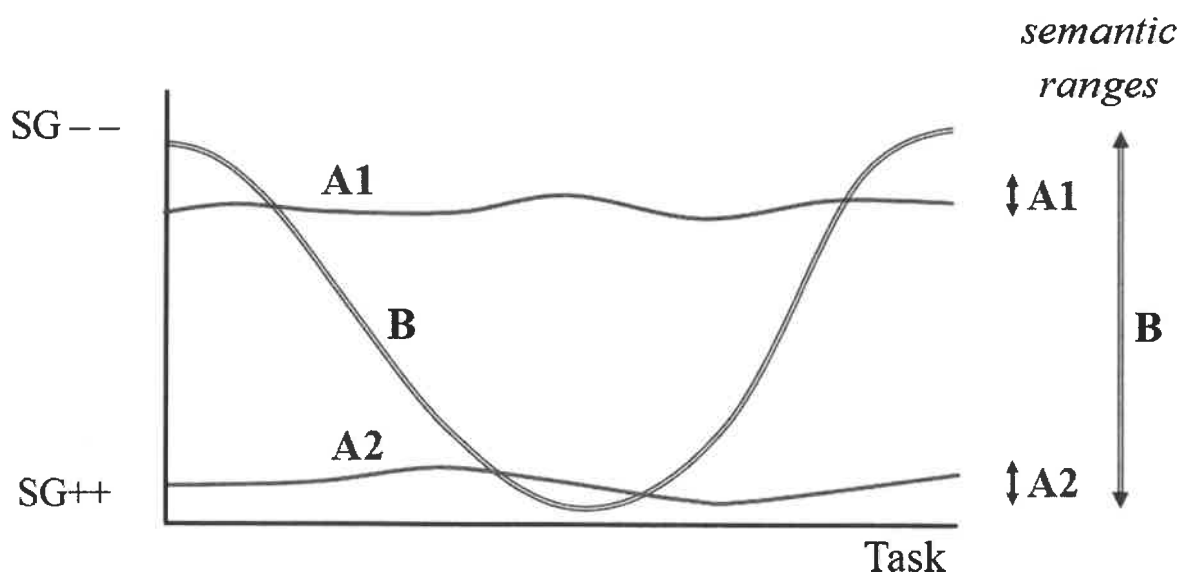


Figure 1. Illustrative profiles and semantic ranges (diagram from Maton 2013).

The above semantic profile reveals how knowledge builds over the tasks given in the admission exam. A brief explanation is that it depicts a semantic scale of strengths of semantic gravity from the weaker SG—to the stronger SG++ on its y-axis and the task candidates must perform

by the admission exam in its x-axis. A1 and A2 are the semantic ranges which depict high semantic flat lines (A1) and low semantic flat lines (A2). B is the semantic wave which strengthens and weakens along the semantic range.

When using semantic gravity in one's analysis, it is important to know that the flat lines depicted in Figure 1 can be high or low depending on whether one is dealing with meanings which are abstract and less context-dependent and, therefore, represented as high semantic flat lines, or meanings which are not abstract and are closely tied to their context, therefore, represented as low semantic flat lines. Maton (2013) has argued that semantic waves represent the pulse of cumulative knowledge-building and involve shifts in context-dependence. The workings of this explanation will be seen in the chapter that deals with the findings of this study. For now, it suffices to say cumulative knowledge-building occurs when the tasks given to candidates require or enable them to move from one level of meaning-making to another level covering all levels of the semantic range (Maton 2013).

3.5 Summary of the chapter

This chapter has outlined the conceptual and analytic framework of this study. The key concepts of semantic gravity, semantic ranges, semantic profiles, and semantic waves have been discussed, and their relevance for this study has been shown. This chapter also sets out a translation device that will be used to link the data to the theory. The overview of the key concepts and the translation device provide the lens through which my research questions will be answered in chapter one.

Chapter 4 Research Methodology

4.1 Introduction

The research methodology followed in this study is a qualitative approach, which consists of a survey questionnaire and document analysis. This method falls within the qualitative paradigm, which Creswell (2013) defines as most suitable in studies that seek to understand the subjective nature of social reality while at the same time providing insights from the perspective of the participants.

4.2 Data collection

The survey questionnaire and document analysis were appropriate for this study not only because the researcher has access to participants and documents of the Legal Practice Council but also because the study aims to examine, interpret, and elicit meaning to gain understanding and develop empirical knowledge around the assessment practices of the Legal Practice Council in relation to the competence of legal practitioners that are being admitted into practice. These aims are precisely what Bowen (2009) says document analysis enables a researcher to do.

4.2.1 Document analysis

According to Bowen (2009), document analysis is a systematic procedure for reviewing or evaluating both printed and electronic documents to examine or interpret the meaning and significance of the data contained in the document. Documents, continues Bowen (2009) contain text and images that may be analysed for meaning and understanding and to develop empirical knowledge about the investigated phenomenon.

The documents analysed in this study were the previous admission exam question papers. These question papers are publicly and easily accessible as they are available from a number of websites including the website of the Legal Education and Development (LEAD) at <https://www.lssalead.org.za/resources/previous-examination-papers/>.⁹ LEAD also sells these question papers together with other study materials. The papers are in four parts, namely, Part 1 which is described as the Court Procedures paper, Part 2 described as the Estates paper, and Parts 3 and 4 which are described as the Attorneys' Practice paper and Legal Practitioners' Bookkeeping respectively. The papers are neatly packaged in terms of the years in which they

⁹ Website last accessed on 13 March 2024.

were written. This study randomly chose to analyse the question papers that were written in the year 2020.

These question papers were analysed based on the nature and type of knowledge they each examined and the marks awarded for questions. Questions that carried the most marks were given closer attention. Part 1 has a total of 14 questions, and question 9 carries the most marks as it carries 16 marks. Part 2 has a total of 4 questions, and question 4 carries 68 marks. Part 3 has a total of 9 questions, and question 2 carries 24 marks. Moreover, question 4 in Part 4 carries 40 marks.

The weighing of the marks in each question demonstrated the most important question in that question paper. The marks also indicated the complexity or the number of essential skills and competencies the questions required from the candidates. In some instances, like in Part 2, a candidate could pass the entire paper by getting all the 68 marks that question 4 carries. This is the case because question 4 tests a candidate's skill and competence to administer an entire deceased estate from facts close to what a candidate will get in practice.

Therefore, by focusing on the questions that carry the most marks, the researcher indirectly addresses the most important questions in each paper. This exercise enabled the researcher to properly investigate what knowledge, skills, and competencies are assessed in the admission exams. Equally important, these questions enabled the study to investigate the strength of epistemic relations, that is, the extent to which legal and procedural knowledge is emphasised in the admission exams, and the strength of social relations, which is the extent to which attributes, dispositions or capabilities of legal practitioners as knowers are emphasised in the exams.

4.2.2 Survey questionnaire

A survey is a flexible research approach used to investigate diverse topics. Surveys often employ a questionnaire as a tool for data collection. It has been said that surveys are particularly useful for non-experimental research that seeks to understand a phenomenon or describe a social reality like the prevalence of something, its proliferation or incidents of its occurrences (Mathers et al. 2009:5). A questionnaire is a form, or a written, or a printed list or a set of questions addressed to the targeted participants of the research study. It is a way of gathering information for the researcher, and it is mainly used to collect statistical information or opinions from people about a particular phenomenon of interest. According to Oppenheim (1992), questionnaires offer an objective means of collecting data about people's knowledge, beliefs,

ideas, attitudes, and behaviours. This method is particularly relevant for this study because a survey is known to aid researchers in getting their participants' individual views, experiences, and insight into their understanding of their work, their practice, and the challenges of their environment. Because this study is also concerned with the views, experiences, insights and practices of candidate legal practitioners undergoing Practical Vocational Training, the survey questionnaire as a research method is a good fit.

4.3 Participants

Rule and John (2011:63) correctly argue that it is impossible for a researcher to consult everyone when conducting research. For this reason, the researcher “has to choose people who can shed the most light, or different lights on the [issue researched]”. Heeding Rule and John’s observation, the selection of participants for this study is purposeful. The participants will be selected for their knowledge and interest in the subject matter as well as their availability and suitability to advance the purpose of the study.

Considering those criteria, at least four candidate legal practitioners currently undergoing practical vocational training will be surveyed. The choice and selection of these practitioners are based on the consideration that they are often candidate legal practitioners as people currently undergoing practical vocational training with first-hand experience of the admission exams. This experience makes them ideal candidates to participate and to be surveyed in this study.

4.4 Sampling of Participants

Sampling is defined as a process of employing a portion or a select number of people with representative traits to represent a larger group or the entire population in survey research (Adeoye 2023:88). Sampling plays a crucial role in research as it enables a researcher to identify and select an appropriate pool of participants for the objectives of the study. It has also been said that choosing a correct sample for the type of research conducted significantly impacts the accuracy, quality and reliability of the research findings. There are different types of sampling methods appropriate to different research objectives. This study uses the convenience sampling method. The convenience sampling method involves selecting a sample from a group of people who are readily available to the researcher and are able to offer specific feedback to the research questions (Adeoye 2023:91).

With this in mind, the sample used in this study consists of candidate legal practitioners currently undergoing practical vocational legal training at the Socio-Economic Rights Institute Law Clinic working in the human rights sector. This group of candidate legal practitioners is easily available to the researcher and will be able to offer insights and valuable feedback on the admission exam and the practical vocational training. Simply put, the sampling is based on principles of convenience emanating from my access to sites of practical vocational training because of my connections in this sector as a legal practitioner in the field. The first four to respond positively will be selected for the study. In this way, the sample is self-selecting.

The questions to be answered by the candidate legal practitioners will be based on their everyday experiences. They will be asked, for example, if in their line of work, to draft legal documents or give legal advice or legal opinion. If so, they will be asked if they do that a lot, if they do it occasionally or never. For the purpose of this study, the questionnaire will form my second data collection method, as my main data will come from the analysis of the admission exams' previous question papers.

Patterns of required knowledge-building from an analysis of the examination papers will be compared to the actual experiences of legal candidates completing their vocational. If for example, the experiences of the candidates are that they work with a particular type of knowledge or perform a particular task a lot or minimally, that may indicate some sort of a strong or weak correlation between the practical vocational training the candidates receive and the admission exam. The survey may also offer insights into whether the knowledge and skills tested by the profession find expression in the candidate's practical vocational training experience.

4.5 Data analysis

Data analysis is best understood as a process of trying to interpret and understand data to make meaningful conclusions about a social phenomenon being studied (Maguire and Delahunt 2017:3351). Miles and Huberman (1994:10), argue that data analysis involves three concurrent flow activities; data reduction, data display, and conclusion drawing. Data reduction is a practice of cautiously picking out, streamlining, and coding primary data collected. Data display refers to the way in which data is organised and sorted, allowing the researcher to formulate conclusions. Lastly, conclusion drawing and verification refers to the discovery of

patterns and themes that help draw a parallel in the study and can be substantiated by challenging its validity and reliability (Miles and Huberman 1994:10)

In this vein, the questions will first be analysed thematically. In this study the assessment tasks will be divided into three thematic classifications, namely, legal knowledge, legal opinion and legal communication. I will then analyse each question or assessment task in terms of its semantic gravity. On the semantic gravity, I define four strengths, that is, principles and concepts (SG--), laws and procedures (SG-); general cases and case precedents (SG+) and specific cases (SG++).

The study is not only concerned with the strengths of semantic gravity required by the questions in the admission examinations; it is also interested in seeing the extent to which the questions require prospective lawyers to shift between different strengths of semantic gravity and the discourses. Together, these will reveal the knowledge-building pathways expected of practitioners in the admission examinations.

4.6 Ethical considerations

Research involving humans as participants gives rise to ethical considerations. It requires that human participants be respected, be treated fairly and as autonomous agents. To achieve this, the researcher has the task of ensuring the confidentiality and anonymity of participants and ensuring that participants have full knowledge of the purpose of the study and that they can withdraw from the study at any given time with no penalty or punishment. Put differently, the researcher should obtain informed consent from the participants (Babbie 2008:24).

Additionally, the researcher is required to be fair and transparent with the participants regardless of the content or outcome of the interviews (Babbie 2008:26). To comply with ethical considerations, the researcher will apply for the necessary ethics clearance from the relevant ethics committee.

4.7 Limitations of the study

Every research project has potential shortcomings and challenges, because choices must be made about how, when, and with whom the research project is conducted. Every choice has its own advantages and disadvantages which must be acknowledged upfront. The limitations of this study are firstly that it was developed during COVID and in compliance with the

restrictions put in place, I had to rely exclusively on online data sources and online surveys. The study also only analyses the admission exams for one year and that the sample of participants is purposely small. Working with a small sample allows for easy management of the data, but it is also a limiting factor as the sample is not representative of a bigger group.

4.8 Summary of chapter

This chapter sets out the research methodology followed in this study. The chapter locates the study within the qualitative research paradigm and states that the method of document analysis and survey questionnaires will be used for data collection. Both these methods are defined in the chapter and the reasons for their use in this study are explained. The criteria for the identification and selection of participants are set out. The chapter concludes by discussing important aspects like ethical considerations and the limitations of this study.

Chapter 5: Findings: Knowledge-building work required by the Admissions exam

5.1 Introduction

I have argued that the primary purpose of the admission exam, administered by professional bodies such as the Legal Practice Council (Legal Practice Council), is to ensure that appropriately skilled and sufficiently competent legal practitioners are admitted into the legal profession to practice law unsupervised. Seen in this way, admission exams are a measure of competence and a form of quality assurance given by the legal profession to the public that the legal practitioners the profession admits into the legal profession are sufficiently qualified to practice law in the sense that they possess the necessary legal knowledge, sufficient skills, and appropriate levels of competence.

This chapter presents findings of an analysis of the legal knowledges, skills and competencies tested by the 2020 South African admission exams. Using thematic analysis and analytic tools provided by LCT, the chapter shows the knowledge-building work demanded of prospective legal practitioners expected by admission exam questions. The chapter begins by briefly describing the admission exam question papers. It is followed by an analysis of the focus and the basis of the questions, which shows the knowledge-building work required from candidate legal practitioners. First, I analyse questions that require candidates to articulate their legal knowledge and understanding. These questions positioned candidates as legal scholars. Second, I analyse questions that position candidates as legal practitioners and required them to apply knowledge in legal practice. I then present a comparative analysis of the knowledge-building work required of candidates over the four papers that make up the admission examination.

5.2 General description of the papers

The 2020 attorneys' admission exam consisted of four papers, Part 1 to Part 4. Each part was designed to test a particular skillset, body of legal knowledge, applied competence or a combination of these. All four papers were marked out of 100 marks per paper, so the entire admission exam was evaluated based on a total of 400 marks. To pass the admission exam, candidates must pass each paper separately by achieving a minimum of 50 percent of the marks. Candidates who achieved anything from 40 percent to 49 percent qualified for an oral

examination, which stood and functioned as a supplementary exam. Candidates who achieved less than 40 per cent of the marks on any paper were considered to have failed that particular paper and needed to repeat the examination of that paper. To be eligible for the profession, a candidate must pass all four papers.

5.3 Focus of the question papers

Court Procedures (Part 1) required candidates to demonstrate their legal knowledge, skills and applied competencies in vast areas of law, ranging from claims of loss of support arising from intimate relationships and dependent children the workings of the Road Accident Fund, particularly the kinds of injuries and damages it covers; degrees of negligence in passenger claims; procedural steps involving in appealing a civil matter from the Magistrates' Court to the High Court, to disclosures that must be made in terms of the Criminal Procedure Act.

Estates (Part 2) tests candidates' legal knowledge, skills and competencies relating to the handling and administration of deceased estates. In this paper, working with different factual scenarios, candidates were required to work out who the heirs are and what they are entitled to inherit. They are required to demonstrate knowledge of the duties and powers of executors and show an in-depth understanding of the application of the Wills Act. They are also required to draft an entire Liquidation and Distribution Account.

Attorney's Practice (Part 3) focussed on testing candidates' legal knowledge, skills and competencies in varied areas of law ranging from legal entities; calculations of accrual amongst spouses; tribunals and forums to approach when making different claims; rules applicable to conflict of interest, and to drafting different contracts like an acknowledgement of debts and specific contractual clauses like restraint of trade clauses.

Legal Practitioners' Bookkeeping (Part 4) tests required candidates to demonstrate knowledge of bookkeeping. Questions were asked about the purpose and use of journals, such as the fees journal, the transfer journal, and trust and business journals. Candidates were also required to demonstrate skills and competence pertaining to the recording of transactions in their appropriate accounting books, such as the supplementary cash book and the bank reconciliation statement.

The questions across all four papers were largely problem-based with multiple parts. However, there were a few short questions that required candidates to, for example, “List four non-deductible collateral benefits” in Part 1 or to simply state “Where on the Will must the witness sign?” in Part 2. These types of short questions were far fewer than the extended problem-based questions which characterised most of the admission exam and were awarded very few marks, like four marks for the four non-deductible collateral benefits and two marks for identifying where on the Will must a witness sign. The problem-based questions, on the other hand, were awarded the most marks based on what legal knowledge, skills or competence the candidates were asked to express or demonstrate.

5.4 Understanding and explaining legal knowledge

This section analyses the various ways in which the exam required candidates to demonstrate, as part of their knowledge building work, their understanding and explanation of legal knowledge. This ranged from questions that required candidates to explain their knowledge and understanding of legal concepts or principles to questions that asked candidates to explain their knowledge of legal statutes and procedures.

In this section, I shall analyse how candidates were required to articulate their knowledge of legal concepts and principles, their knowledge of legal statutes, their knowledge of legal procedures and their knowledge of legal precedent, which all formed part of their examinable knowledge building work.

5.4.1 Articulating candidates’ knowledge of legal concepts and principles

Across all four exam papers, the candidates’ knowledge of legal concepts and principles was examined the most compared to, for example, their knowledge of legal statutes or their knowledge of legal precedents. Questions that focussed on examining the candidates’ knowledge and understandings of legal concepts and principles constituted 33, 3 percent of the entire admission exam.

Examples of questions where candidates were asked to articulate their knowledge of legal concepts and principles are Part 1 (Q3), where candidates were asked to distinguish between “degrees of negligence that need to be proven” in claims. Similarly, in Part 4 (Q1), candidates were asked to “describe and explain the use and purpose of a journal”.

Knowledge of concepts was also examined in Part 1 (Q4), where candidates were asked to “list four non-deductible collateral benefits”. In all these examples, candidates needed to articulate

their understanding of the legal concepts and principles. These questions demanded an answer that was of a weaker semantic gravity (SG--) because they were generalised responses and did not need to be linked with particular cases or statutes. In other words, they demonstrated a weak contextual dependence.

When responding to these questions, candidates were positioned as knowledgeable scholars of the law. The questions demanded technically accurate explanations from the candidates, expressed in legal discourse but not in specialised legal formats.

5.4.2 Candidates' knowledge of legal statutes and legal precedents

A substantial proportion of the admission exam demanded candidates' knowledge of legal statutes and legal precedents. However, much of this was implicit when candidates were required to give legal opinions (see section 5.4.1 below). Nevertheless, there were places where candidates were required to articulate their knowledge of legal statutes. For example, in Part 1 (Q7), candidates were asked to "Name two disclosures, in terms of section 60 (11B) of the Criminal Procedure Act, which an accused is compelled to make in a bail application." In another example, Part 2 (Q3) candidates were asked for specific details from Section 2(1)(a)(v) of the Wills Act 7 of 1953. In both these examples the statutes were explicitly named and their contents needed to be remembered and articulated.

In other cases, candidates' knowledge of statutes was more implicitly assessed. The statutes were not named, but the knowledge of their content was required. For example, Part 1 (Q6) provided a case of a married client who conducted business as a sole trader. This client intended to sue, and candidates were asked if she could sue in her name. Candidates were also required to substantiate their response "referring to the general rule and the exceptions to the rule" of this unspecified Act. To answer this question candidates were expected to draw on the Matrimonial Property Act 88 of 1984 in order to determine whether spousal consent was needed for legal action. In a similar example, Part 1 (Q9) expected the candidate to draw on Rule 51 of the Magistrate's Court Act in order to draw up a notice of appeal and state the accompanying documents, the timelines for lodging an appeal, and the procedures to follow if the timelines had lapsed.

Some of these examples are linked to particular cases, but the candidates were not giving legal opinions. They were demonstrating their knowledge of the applicable statutes. Their responses were contextually dependent on the statutes but not on particular cases. Therefore, the responses required had relatively weak semantic gravity (SG-). Furthermore, the responses

were to be given in a scholarly way with academic language, and the responses were directed to the examiner (as opposed to a client or the court).

Legal statutes, together with legal precedent; the common law, custom and customary law are primary sources of South African law and for that reason occupy a very important status in the legal hierarchy. Because of the important status legal statutes enjoy as a primary source of South African law, the expectation was that this knowledge would be examined in a significant proportion than was the case.

The other primary source of South African law, namely, legal precedent, was not examined at all. Across all four exam papers, candidates were not explicitly asked to demonstrate their knowledge of legal precedent. An argument could be made that legal precedent, being one of the primary sources of South African law and probably the most applied is adequately tested in the LLB and does not need to be examined in the admission exam.

5.5 Candidate's knowledge of ethical underpinnings

Ethical dilemmas often arise in legal practice. This is not surprising because legal practitioners owe duties to both their clients and to the courts. Article 3.3 of the Code of Conduct, for example underscores this by providing that legal practitioners have a duty to "treat the interests of their client as paramount, provided that their conduct shall be subject always to their duty to the court; the interests of justice; observance of the law; and the maintenance of the ethical standards prescribed by this code, and any ethical standards generally recognised by the profession".

Notwithstanding the role of ethics in the legal profession, in all the papers, there were two questions that required candidates to articulate knowledge of ethical underpinnings broadly. One question tested the candidates' knowledge of the rules of professional conduct, and the other focussed on their recognition of the ethical principles governing the legal advice given in a particular context. In Part 3 (Q5), candidates are introduced to a potential conflict of interest situation. They were asked how they would apply the applicable rules of conduct and what they would do if they were unsuccessful. Although not explicitly stated, question 5 directs the candidates to the South African Legal Practice Code of Conduct, from where the rules of professional conduct are found. Similarly, in Part 1 (Q8) candidates were required to state "what ethical principles are applicable" when representing a client who enters a plea of not guilty after having initially confessed to the crime. Question 8, on the other hand, tests the candidates' knowledge of legal ethics.

Both questions do not test the candidates' internalised ethical underpinnings by requiring them to position themselves ethically. All that the questions do is to test the extent to which the candidates are able to recall and to apply the Code of Conduct and the legal ethics as prescribed by the Legal Practice Council.

The conduct rules and ethical principles to be expressed are linked to the facts of the given cases. The questions demand answers that shift from the specifics of a case (a stronger semantic gravity, SG++) to the ethical principles that govern professional practice (a weaker semantic gravity, SG--). In other words, they require a weakening of contextual dependence.

Having analysed the ways in which legal knowledge and understanding were examined, the following section presents an analysis of how the application of knowledge in legal practice was dealt with.

5.6 Applying knowledge in legal practice

A large part of the 2020 admission exam examined the extent to which candidates were able to apply their legal knowledge in practice. The application of legal knowledge in practice was examined in various ways, such as requiring candidates to draw up legal documents, give legal opinions and provide a motivation for it.

5.6.1 Drawing up of legal documents

All four papers candidates contained questions in which candidates were given a set of facts related to hypothetical cases from which they were required to draw up different types of legal documents. For example, in Part 1 (Q6), candidates were required to draft particulars of a claim, and in question 9, they were asked to draw a notice of appeal. In Part 2 (Q4), they were required to draft a liquidation and distribution account; in Part 3 (Q2), they were asked to draw an acknowledgement of debt. In Part 4 (Q3), they were asked to prepare a supplementary cash book and a bank reconciliation statement.

Although legal documents such as these are drawn up on behalf of the client, they are directed to the attention of the court. In asking candidates to draw such technical documents, these questions positioned candidates as legal practitioners who need to communicate in specialised ways with the courts.

The responses provided must be drawn up in a specific standard legal form complying with all legal prescripts expected. Candidates were not given a template or an example of the legal document and were expected to know it. Furthermore, the language used in each document is to be expressed in specialised legal discourse rather than in everyday language.

Furthermore, these questions require that legal practitioners draw on their specialised knowledge of particular legal forms, structures and documents and are drafted according to the facts of the case given. In these questions, the candidates need to shift from a required format (SG-) to a specific case (SG++). In this way, candidates need to strengthen semantic gravity as they respond to the questions asked.

5.6.2 Giving and motivating legal opinion

Some questions required candidates to give legal opinions in the form of advising clients. In Part 1 (Q1 and Q2), for example, candidates were given sets of hypothetical facts from which they were required to advise clients on whether, in (Q1), she could claim for loss of support and in (Q2) what damages could be claimed against the Road Accident Fund. In both these questions, candidates were explicitly asked to motivate their answers. In Parts 1 (Q1) and (Q2), the legal opinion was directed at the examiner. It would be expressed not only in legal discourse but also needed to be supported by either statute, legal precedent, or both. Candidates were not given the applicable statute or legal precedent, as they were expected to work that out for themselves. In this type of question, examiners accept that the legal opinion given may differ from candidate to candidate because some candidates may argue that in (Q1), the client does not have a claim for loss of support, whilst others may argue that she does. It is the ability to properly motivate the legal opinion, given that it is tested.

In another example, in Part 2 (Q1), working from a set of hypothetical facts, candidates were required to “Advise the Mkhize family as to who Mike’s heirs are and what amount each will inherit.” Although not expressly stated, the question directs the candidates to the provisions of the Intestate Succession Act 81 of 1987, which regulates the deceased estates of people who died without a Will. Legal opinions given to clients are by their nature considered privileged and are never disclosed to outside parties beyond the clients to whom they were given.

In Part 2 (Q1), the legal opinion was directed at the Mkhize family. It would be communicated in everyday language that would be understandable to clients who are not practitioners of the law. Furthermore, the legal advice would be provided non-specialised or general. These questions require candidates to consider the specific facts of a hypothetical case, apply their legal minds, provide advice, and communicate it in a non-specialised discourse accessible to the layperson. The conversion from specialised to everyday discourse is assessed.

The legal opinions to be given are linked to the facts of the given cases, therefore these questions demand answers that demonstrate semantic waving from the specifics of a case (a

stronger semantic gravity (SG++) weakened to consider legal precedent (SG+) or relevant statute (SG-) and then strengthen again to give legal advice on the particular case (SG++). In Part 2 (Q2), for example, the first part of the question requires candidates to give an opinion of what advice they would give to a client intending to bring a claim that is out of time against a deceased estate. The second part of the question asks candidates to answer the question about what advice they would give to the client if the executor rejected the claim filed out of time. In other words, these questions demand both a weakening and strengthening of semantic gravity.

5.7 Conducting legal-based research

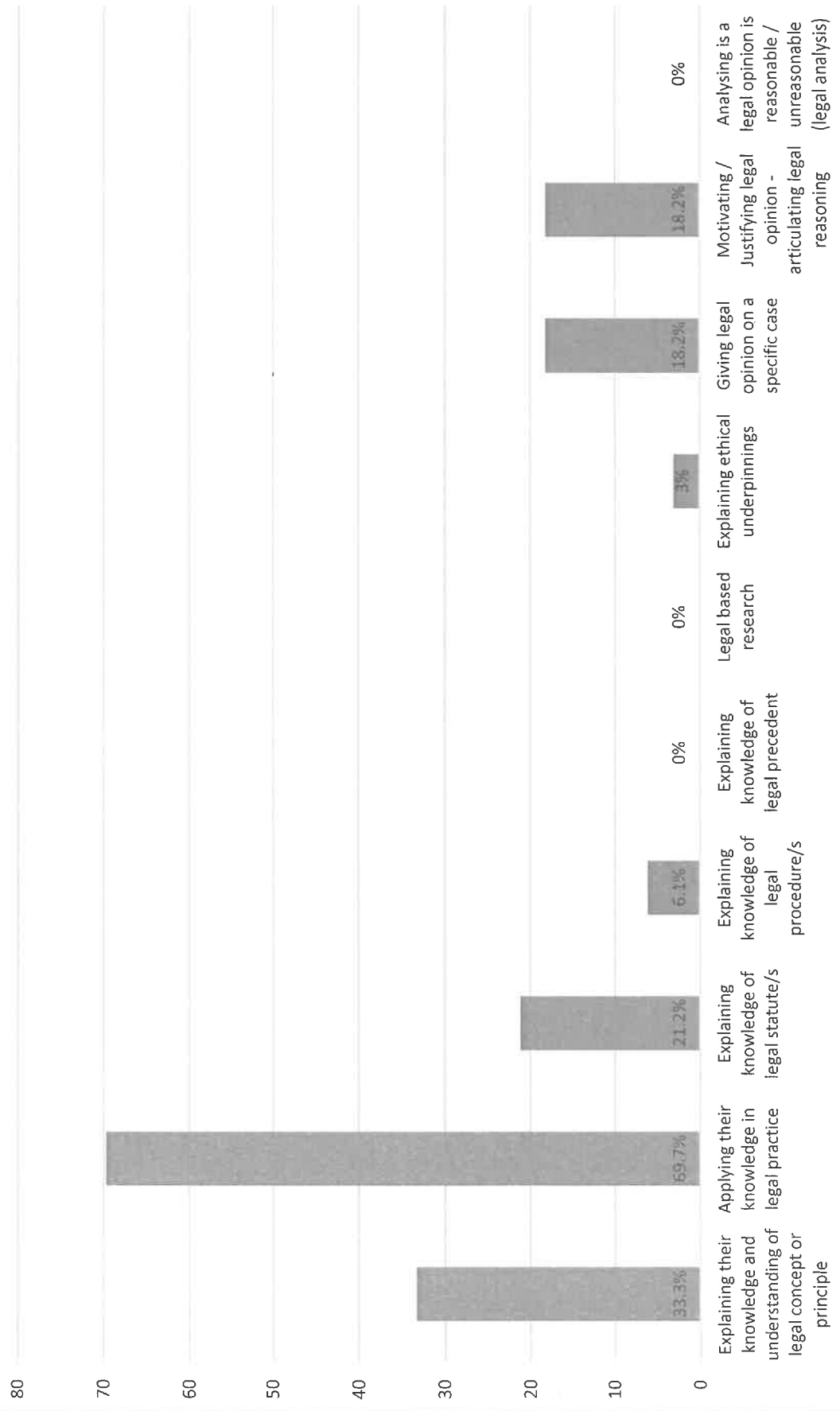
Law, it has been said, is a dynamic field, ever seeking to adapt itself to deal effectively with the increasing complexities of modern organised society.¹⁰ Because law is ever-changing, legal research is a key component in every legal practitioner's toolkit as it enables legal practitioners to keep up with the developments in the law.

As important as legal research is for legal practitioners, the skills required for conducting legal-based research were not tested in any of the four papers. This was the case even though there were questions such as in Part 1 (Q1) that were suited for legal research. In Part 1 (Q1), the issue is whether life partners in a long-term monogamous relationship owe duties of support to each other. South African law did not always place a duty of support on partners who were not married to each other. This duty has been developed incrementally by the courts, and candidates, if legal research was examined, could have been asked to trace its developments, including the conflicting judgments handed down by the different courts. Similarly, in Part 2 (Q1), a claim is made by one of the children of the deceased that as a male child, he "according to traditional law is entitled to the entire estate of his father." Candidates could have been asked to conduct research on whether this claim was accurate under traditional law.

It may have been the case that the admission exam, being an exam written over two or three hours in stressful exam conditions, was thought to be ill suited to test legal based research. The profession may have deliberately omitted legal-based research from the admission exam not because research skills are not valuable but because those skills are better dealt with and assessed elsewhere in the candidates' journey to becoming a legal practitioner, namely, at the LLB stage.

¹⁰ See *Pearl Assurance Co v Union Government* 1934 AD 560 at 563.

Figure 2. Diagram depicting knowledge types examined in the exam



5.8 Patterns across the four parts of the examination

Comparing the different parts of the exam and the knowledge examined, the data, as shown in Figure 2, shows that 33.3% of all the questions directly and explicitly required candidates to explain their knowledge and understanding of legal concepts and principles. The examination is strongly governed by a knowledge code (ER+, SR–) with stronger epistemic relations and weaker social relations. A majority of this type of questions came from Part 1 and, to a lesser extent, Parts 2 and 3. Part 4 focused on journals and their use, as well as the recording of transactions in other accounting books, and did not have questions on legal concepts and principles.

The questions that asked candidates to explain their knowledge of legal concepts and principles required candidates to position themselves as legal scholars who have acquired the requisite knowledge and understanding of the legal concepts and principles. In the context of the exam, these questions signify that the profession is interested in knowing the extent to which candidates have acquired and are able to demonstrate competence in the disciplinary knowledges of the law.

Going further, 21.2 percent of the questions required candidates to explain their knowledge of legal statutes, and a further 6.1 percent of the questions were concerned with examining the candidates' knowledge of legal procedures. These types of questions came predominantly from Parts 1, 2 and 3 purely because the nature of the knowledge tested in those papers landed itself to those types of questions.

Knowledge of legal statutes and legal procedures is at the core of legal practice. No legal practitioner can practice without adequate knowledge of the statutes, and no court or relevant tribunal can be approached without knowledge of the legal procedures. In that context, these questions sought to position candidates as legal practitioners who must demonstrate knowledge relevant to practice.

Although there were no questions that directly and explicitly examined the candidates' knowledge of legal precedents, this type of knowledge was implicitly tested in questions such as Part 1 (Q3 and 4) where candidates were asked to “distinguish between the degrees of negligence” and to list “four non-deductible collateral benefits”. A complete answer to questions of this nature would require candidates to refer to some of the leading legal precedents, such as *Kruger v Coetzee*, which defined and established the test for negligence, and *Zysset v Santam*, which grappled with the issue of collateral benefits. Knowledge of legal

precedents would also have been indirectly tested on those questions that required candidates to not only advise clients but also to motivate their answers, as was the case. Motivating a legal opinion necessarily calls for legal precedent.

Figure 2 also shows that across all four papers 18, 2 percent of the questions required candidates to give and motivate legal opinion. These questions were a subset of the broader theme of questions that tested candidates' ability to apply their knowledge in legal practice. The great majority came from Part 1, where candidates were required to advise clients on many questions of law ranging from loss of support, types of damages claimable against the RAF and which courts to go to when instituting legal action. The overall goal of such questions was to get candidates to imagine themselves as legal practitioners performing the kind of legal work they will be expected to perform upon admission to the profession.

In so far as the mark allocation is concerned, the data, as appears from Table 2 that across all four papers, the understanding of legal concepts and principles was evenly tested and counted for 67 percent of the total marks in the exam. This shows that the exam did place some value and emphasis on this type of knowledge. Understanding and knowledge of legal procedures were unsurprisingly particularly emphasised in Part 1 where it was allocated 24 percent of the marks, even though it was allocated 52 percent of the overall marks across all four papers. Unsurprisingly, knowledge of legal procedures is emphasised in Part 1 because Part 1, through its title, is presented as a paper about court procedures. The surprise is that procedural questions were only allocated 24 percent of the marks when the expectation would have been for a higher percentage. That said, the indirect and implicit examination of the candidates' knowledge of legal statutes and precedent came from Part 1, which counted for only 13 percent of the total marks in the exam.

The knowledge building work pertaining to applying knowledge in legal practice, which consisted of the exam testing the candidates' abilities to draft legal documents and give and motivate legal opinion, was by far the most emphasised part of the 2020 admission exam. Figure 2 shows that 69.7 percent of the questions were application questions where candidates were required to apply their knowledge in various ways, particularly in drafting legal documents. This strong emphasis on application, particularly on drafting legal documents, is also visible in the marks allocation. Figure 1 shows that the drafting of legal documents was awarded 225 marks out of the available 400 marks in the exam. Parts 2 and 4 stand out as in these papers, the drafting of legal documents was awarded 68 and 75 percent of the marks,

respectively. This is not particularly surprising because Part 2 focuses on testing the candidates' ability to draft the liquidation and distribution account, whilst Part 4 is concerned with testing the candidates' ability to draft various accounting books.

Table 2. Table showing knowledge-building work and marks allocation

Knowledge building work		Part 1	Part 2	Part 3	Part 4	TOTAL
Understanding and explaining legal knowledge	Concepts & principles	11	12	25	19	67
	Procedures	24	5	17	6	52
	Statutes & precedents	13	0	0	0	13
Applying legal knowledge	Drafting documents	38	68	44	75	225
	Giving legal opinion	13	15	9	0	37
Legal research		0	0	0	0	0
Legal ethics		1	0	5	0	6
SUB TOTAL		100 marks	100 marks	100 Marks	100 Marks	400 marks

Further, Table 2 also shows that the candidates' ability to give legal opinions was not tested very much across all four papers. The paper where this skill was tested the most is Part 2, where it was awarded 15 percent of the marks. Overall, the candidates' ability to give legal opinions was awarded 37 percent of the total marks.

As presented in Chapter 5, legal research was not examined at all in the 2020 admission exam, and legal ethics were minimally examined in that there were two questions (one direct and explicit and the other indirect and implicit) where legal ethics were in issue. Even there, candidates were not given an ethical problem that tested their ethics; it was more of a situation of recalling and naming the ethical rule. This is reflected not only in the paucity of the questions but also in the marks allocation, where legal ethics were only awarded 6 percent of the marks.

5.9 Correlation between knowledge-building and candidates experiences

When testing the knowledge-building work as required by the admission exam against the lived experiences of candidates, surveyed candidates indicated that they all had to explain legal concepts and/or principles as part of their practical vocational training. However, they differed on the frequency over which they had done it. The first half indicated that they had often explained legal concepts and/or principles to others, whilst the other half was divided between

having done it sometimes and having done it occasionally. Examples of legal concepts and/or principles candidates had to explain included temporary emergency accommodation and homelessness in the context of evictions. One candidate said:

The most common one I have to explain is the nature and purpose of the temporary emergency concept. Albeit not a principle as such, it is a concept necessary to understand to alert clients to the possible end-result of an eviction matter. This would be to say, I explain that under the PIE Act, persons susceptible to homelessness following eviction are entitled to shelter - temporarily - for as long as the threat of homelessness remains.

Another candidate indicated that they had to explain concepts such as the landlord's hypothec, attorneys' lien and mandamus.

Similarly, when surveyed on their work with statutes, court procedures and/or legal procedures, half of the candidates surveyed indicated that they had worked with this type of knowledge a lot, whilst the other half were split between having worked with it sometimes and having worked with it occasionally, respectively. By way of examples, candidates indicated that they "draw on knowledge of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act a lot as we deal with a large volume of eviction matters, and this is the primary legislation that gives guidance on the issue." And, one candidate indicated that when "drafting documents, conducting research, and offering legal opinions to clients, active engagement with statutes and adherence to court procedures are essential aspects of the process."

Although no candidate indicated that they had never worked with legal concepts and/or principles; statutes, court procedures or even legal opinions during their practical vocational training, the frequency and extent to which this had taken place varied a great deal and showed a weak correlation between the knowledge-building work required by the admission exam and the practical vocational training candidates go through before and in preparation of the admission exam. In each category, only half to a little more than half of the candidates reported having frequently worked with legal concepts and/or principles, statutes, court procedures, and/or legal precedents, as well as legal opinions during their practical vocational training. By way of example, when asked about the frequency to which candidates worked legal concepts and/or principles 66 percent worked with this type of knowledge a lot. However, when the same question was asked of statutes, court procedures and/or legal precedents, the frequency decreased to 50 percent. The frequency of legal opinions was 30 percent. This is a problem because the frequency with which one is exposed to a particular task or activity provides a reasonable basis for perfecting that learning that task.

This weak correlation between the frequency within which candidates work with knowledge-building work required by the admission exam, such as legal concepts and/or principles; statutes, court procedures, and/or legal precedents, and legal opinions during their practical vocational training indicates a disjuncture between what the admission exam requires and prioritise as valuable knowledge required from candidates and what candidates learn during their practical vocational training. Put differently, the weak correlation between the knowledge-building work required by the admission exam and what candidates learn during their practical vocational training calls for an integration between what candidates learn during their practical vocational training and what they are examined in the admission exam.

5.10 Summary of the chapter

This chapter has shown how the exam papers were analysed and how the data gleaned from them has been coded for the purposes of making meaning. After the analysis of the question papers both in terms of the questions asked therein and the marks awarded to the questions, this chapter was able to set out the findings made. This exercise revealed that candidates were tested in various areas of the law. The questions required candidates to, on the one hand, demonstrate their knowledge and understanding of certain concepts and, on the other hand, show their abilities to draft certain legal documents. It was also found that not all the questions were awarded the same marks and that the disparity in the marks allocation is not insignificant. The marks allocation communicates certain messages to candidates, ranging from which knowledge is important in which paper to how much detail and attention is required when answering certain questions. However, in considerable measure, this chapter shows what knowledge-building work is required from the candidates for the admission exam.

Chapter 6: Knowledge-building through the attorneys' admission examination

6.1 Introduction

The previous chapter presented the findings of the knowledge-building work required by the attorneys' admission exam. This chapter will deepen the analysis of the knowledge-building work demanded of candidates in the attorneys' admissions examination. The chapter is in three parts. First, it considers how the questions require candidates to shift between facts of hypothetical cases and legal statutes, precedents or concepts. This study theorises these shifts in context dependence as strengthening and weakening of semantic gravity. This is followed by an analysis of how candidates are expected to use different discourses, namely, the legal, academic and everyday, and to shift from one discourse to the other. Thirdly, the chapter will discuss the extent to which candidates are required to give justification for their legal advice. At the end of each part, I will report on the experiences of candidates engaged in their Practical Vocational Training. I explore the extent to which they perceive that they are getting experience in these aspects of knowledge-building in legal practice through their practical vocational training.

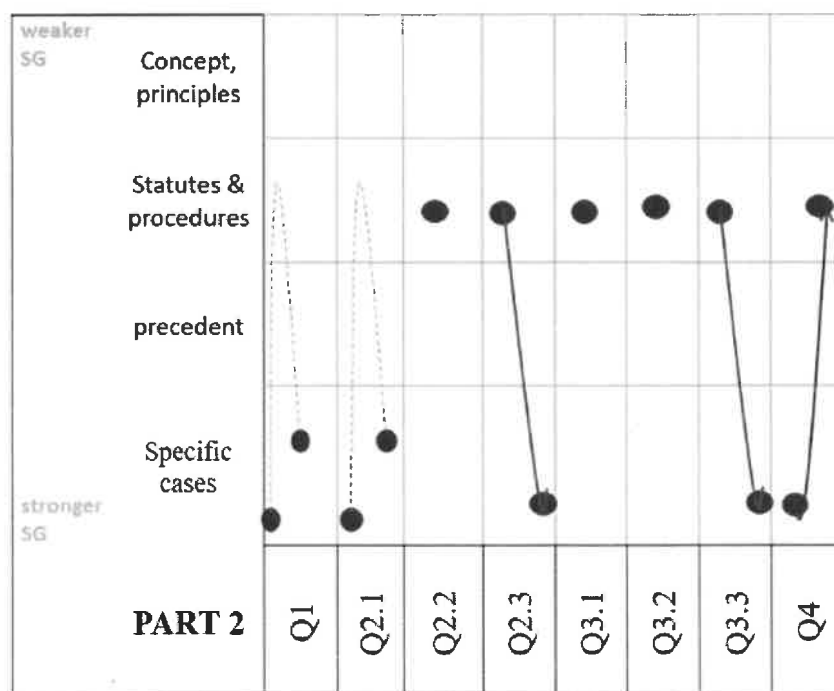
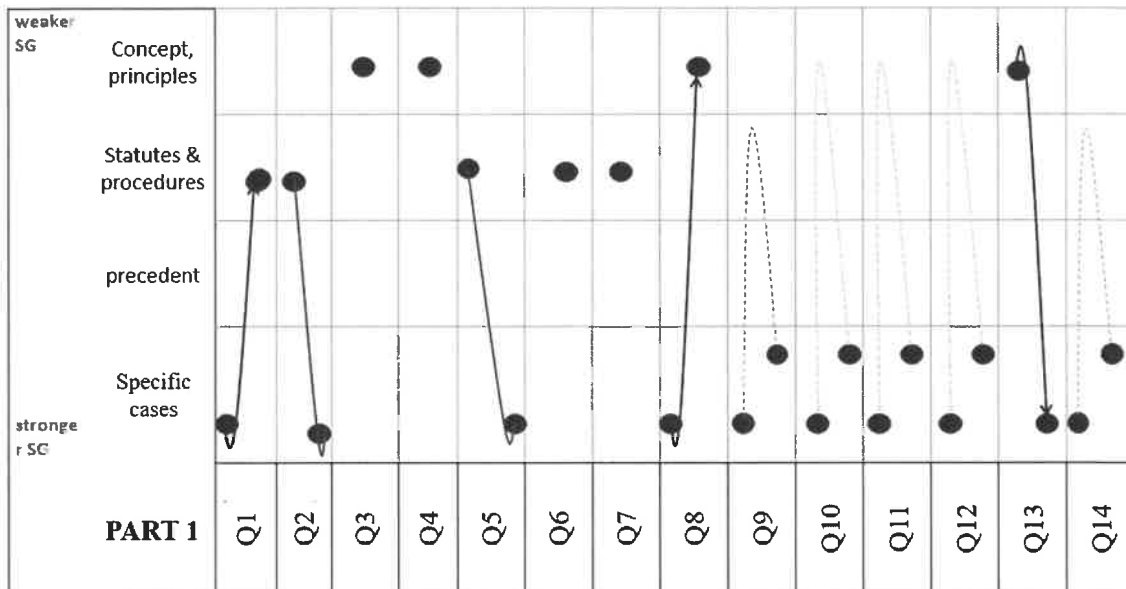
6.2 Shifts in context dependence

Semantic gravity can shift from one strength to another or not at all, depending on the question. The shifts in semantic gravity over the four papers can be represented in a semantic profile. Semantic profile characterised by the upward and downward shifts in semantic gravity enacts semantic waves, which are essential for understanding and analysing cumulative knowledge building (Maton 2014). This is the case because semantic profiles, as seen in Table 1 below, provide a visualisation of how the exam questions allow for cumulative knowledge-building by making their organising principles visible (Hipkiss 2023).

The four exam papers required candidate legal practitioners to explain and demonstrate their understanding of legal knowledge by working with given facts and legal concepts, legal principles, legal procedures, and legal statutes and legal precedents. Working with given facts of hypothetical cases, the four papers also required candidates to apply their legal knowledge by drafting legal documents and giving legal opinions. In some questions, candidates were required to explain their legal knowledge and demonstrate and apply it all in one question. This requires them to work at different strengths of semantic gravity, from the particulars of a case to the regionally applicable statutes and procedures and less-content-dependent concepts used

in legal frameworks. This analysis will show that legal candidates are required to shift from one strength to another repeatedly in all four parts of the examination.

What follows is a visualisation of the ways in which semantic gravity shifted or did not shift across all four exam papers.



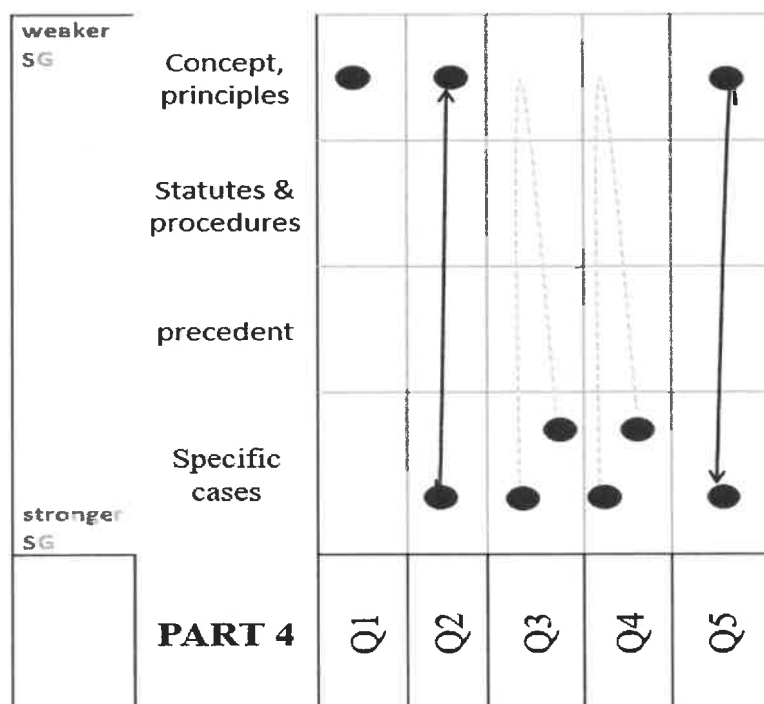
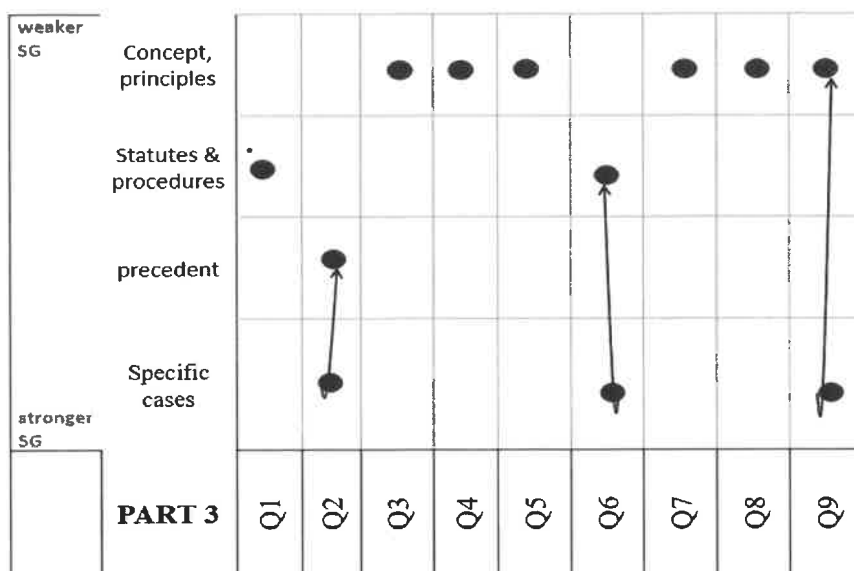


Figure 3. Shows semantic gravity profiles in the four parts of the attorneys' admissions examination.

Across all four papers, candidates were required to demonstrate their legal knowledge by working with various legal concepts and principles, applying their legal knowledge by drafting certain legal documents and giving sound legal opinions. Demonstrating legal knowledge in these ways required candidates to work with and to shift between the more context-dependent particular facts of a case, the relevant legal statutes and precedents and the less context-dependent meanings of legal concepts and knowledge. This section employs semantic gravity, which is concerned with the extent to which meanings are tied or linked to their context, to track the context dependence of the legal knowledge examined by the Legal Practice Council in the admission exam.

The profiles of the semantic gravity in the four papers of the attorneys' admissions exam show upshifts and downshifts where there is a strengthening and a weakening of semantic gravity. Some questions make this expectation explicit, while others expect the candidates to figure it out for themselves. The black solid lines in the semantic gravity indicate those questions where the strengthening and weakening of the semantic gravity is explicit, and the grey dotted lines indicate those questions where the strengthening and weakening of the semantic gravity is implicit.

For example, Part 1 (Q9) provides a set of facts from which candidates draw a notice of appeal. They need to work closely with the particulars of the case, at stronger levels of semantic gravity. In addition, they are asked to demonstrate more general knowledge of legal procedures by specifying the documents that must accompany the notice of appeal and the period within which an application for leave to appeal must be brought. In the same question, candidates were also required to demonstrate their understanding of the applicable legal statute and legal procedure by specifying the procedure to follow and the document to file when lodging an appeal out of time. In another example, Part 2 (Q4) is similar worded in that from a given set of facts candidates were required to demonstrate their knowledge of legal concepts, legal principles and legal statutes and to apply it in order to draft the entire liquidation and distribution account in the estate of the late Samuel Maree. To successfully draft the liquidation and distribution account, candidates will be required to show, amongst others, their understanding of the legal concepts of dying “unmarried” and “intestate” and demonstrate their knowledge of the principles applicable if the deceased is survived by his girlfriend, and their knowledge of the applicable legal statutes governing intestate succession as well as the regulations governing the form and content of the liquidation and distribution account. This question was awarded the most marks in the whole paper. In Part 3 (Q2), candidates are given

a fairly simple short description of facts pertaining to borrowed monies from which they are asked to draw a complete acknowledgement of debt for the parties. The question is focused on testing candidates' knowledge of the clauses that must appear in an acknowledgement of debt, excluding interest rate, early repayment and domicile. In Part 4 (Q4), candidates are required to work with a fairly complex set of facts to record accounting entries in circumstances where they are not given the applicable books of accounting. Candidates are also asked to pay unnamed beneficiaries and accounts to a particular client and to transfer appropriate monies from a Trust to a Business account. What monies are transferrable from the Trust to a Business account? Candidates are expected to work that out for themselves, relying on their prior knowledge of applicable legal principles and concepts. This will require implicit semantic shifts.

Two kinds of semantic shifts are prevalent. In the first case, candidates are given specifics of a case, but what is not specified are the relevant legal statutes and procedures. In such cases, the candidates are expected to weaken semantic gravity as they access the relevant legal frameworks in their answers. In the second case, the question explicitly states a statute or procedure the candidate needs to work with. The pattern emerging from these examples is that in those questions where candidates are required to demonstrate and explain their legal knowledge, the applicable legal knowledge in the form of concepts and principles, procedures, statutes and precedents is not expressly given. Candidates are expected to either know the exact applicable legal principle or concept, the exact procedure, and the applicable statute and precedent or to work it out for themselves. The same applies to cases where candidates are required to apply their legal knowledge by drafting legal documents but are not given the form the legal document must take. All they are given is the name, such as a notice of appeal, acknowledgement of debt, liquidation and distribution account, or books of account. Candidates are expected to know the form of these legal documents. Notably, these questions are awarded the most marks per paper, so much so that a candidate cannot pass Part 2 of the exam if they do not do well in (Q4) as it carries 68 marks out of 100. Question 4 of Part 4 carries 40 marks out of the 100. In both questions the marks allocation signals the significance of the questions in the whole exam paper. Put differently; the mark allocation clearly shows the importance and the value the Legal Practice Council attaches to the candidates' knowledge and ability to draft a complete liquidation and distribution account and to record all the accounting entries in their proper books of account. To complete the point, in Parts 1(Q9) and 3(Q2), the questions were awarded 16 and 24 marks out of 100, respectively, although not

determinative of passing or failing the paper, still indicates that the Legal Practice Council weighs and requires candidates to know the appeal procedures and acknowledgement of debts clauses.

In the context of this study, a stronger semantic gravity (SG ++) describes a question that is strongly linked to specific facts like (Q1 and Q2) in Part 1. Question 1 of Part 1, for example, is framed as follows:

Q 1: You are consulted by Ms Emilia Adams, who instructs you as follows:

- She had been in a long-term monogamous relationship with a life partner, Peter Jansen, for ten years,
- From this relationship, two minor children were born,
- Ms Adams instructs you that she and Mr Jansen lived together as man and wife and that throughout their relationship, he had supported her and the children. He was the sole breadwinner for the family as she was, by agreement between them, unemployed,
- Two months ago, Mr Jansen, whilst being conveyed as a passenger in a motor vehicle, was killed in a motor vehicle accident.

ANSWER THE FOLLOWING QUESTIONS WITH REFERENCE TO THE ABOVE FACTUAL INFORMATION

- 1.1 Can Ms Adams claim loss of support for herself in her personal capacity? Motivate your answer.
- 1.2 Can Ms Adams claim for loss of support for the children, and if so, over what period?
- 1.3 On the assumption that Ms Jansen was not wearing a seatbelt and was thus flung from the vehicle when it rolled, resulting in fatal injuries, explain, if at all, how this will affect your answers to 1.1 and 1.2 above.

This is an example of a strengthening semantic gravity because the questions directed to the candidates are strongly linked to the factual scenario given. The question even says, “With reference to the above factual information,” answer the following questions. This means that the answers the candidates give must be linked to factual information.

A weaker semantic gravity (SG - -), on the other hand, describes a question where candidates are simply asked to describe or discuss abstract concepts like “degrees of negligence” (Q3) Part 1, list non-deductible collateral benefits (Q4) Part 1, or even the purpose of the journal as was asked in (Q1) Part 4 where the question is framed as

Describe and explain the use and purpose of a Journal. Describe the purpose and entries you would make in the Fees, Transfer, Trust and Business Journals and the narrations (if any) to support the entries.

In these examples, the context dependence is much weaker. Candidates are simply asked to describe and explain the concepts and workings of the journals in general or in the abstract. They are not given any context, nor are they asked to link their discussion to any context. In other words, candidates are required to provide a generalised answer that is not attached to the specifics of a case.

Table 2 shows that across all four exam papers, many of the questions weave together different forms of knowledge in the sense that though starting from the facts of the case, that is, stronger semantic gravity, candidates are required to provide answers that shift between various strengths of semantic gravity. The questions require candidates to demonstrate their legal knowledge by engaging in both upward shifts from specific cases to concepts and principles and downward shifts from generalised concepts and principles to specific cases. As indicated by the solid lines and the grey dotted lines, these shifts are also both explicit and implicit. In Part 1, for example, we see both explicit (Q1 and Q2) and implicit (Q9 to Q13) shifts from stronger semantic gravity to weaker semantic gravity.

When comparing the papers, Part 1 exhibits more implicit shifts than explicit ones, and only four out of the fourteen questions were there no shifts at all. For example, in Q10, the question is framed as follows:

Your client XYZ Bank entered into a loan agreement with Mr Smith for R70 000. Mr Smith gave his *domicillium citandi et executandi* (service address) address as Vereeniging and consented to any dispute being heard in the Magistrate's Court of Vereeniging, he however resides in Johannesburg now. Mr Smith defaulted on payment. Where would a summons be issued? Please also state a reason.

To answer this question, the candidate will be required to consider the specific facts given, shift upward to the concept of jurisdiction, and then go back to the specific facts. The shift is implicit because the concept of jurisdiction, which is at the centre of the question, is not given. Candidates are expected to work that out for themselves. The same is the case with Q11, which says:

A motor vehicle collision occurred between Mr Xaba and Mr Alberts. At the time of the accident Mr Xaba was driving the vehicle in the scope of his employment. Mr Xaba was employed by ABC (PTY) Ltd. ABC (PTY) Ltd is the owner of the vehicle. According to your client's version Mr Alberts was the sole cause of the accident and your client ABC (PTY) Ltd wants to issue a summons for his damages amounting to R 20 000. Who would be the plaintiff?

Candidates are required to consider the given facts and then work out that though the vehicle was driven by Mr Xaba, Mr Xaba did not suffer any patrimonial loss as a result of the accident

and as such does not have locus standi to sue. The concepts of patrimonial loss and locus standi are not explicitly given, and as such, the shift from the facts to the concepts is implicit.

In Q3 and Q4, there were no shifts in the semantic gravity as candidates were required to discuss and list abstract concepts such as degrees of negligence and collateral benefits, respectively, which resulted in the semantic gravity staying weak. The questions required candidates “to distinguish between the degrees of negligence that need to be proven in respect of a passenger claim and a driver’s claim” and to “List four non-deductible collateral benefits”, respectively.

This pattern of weaving together different forms of knowledge and showing explicit and implicit shifts is also visible in Parts 2 and 4 of the exam. In Part 2, the majority of the questions (three out of eight) required explicit shifts from SG++ to SG-, and only two required implicit shifts from SG++ to SG- and back again to SG++. In Part 4, two questions have an equal number of explicit and implicit shifts. Only one question (Q1) required candidates to describe the abstract concept of a journal, thereby exhibiting SG--. In Part 3, out of the nine questions, only three questions (Q2, Q6 and Q9) had explicit shifts from SG++ to SG--. The rest of the questions showed weaker semantic gravity (SG--) as they required candidates to express their knowledge of numerous abstract concepts ranging from “What types of company can be incorporated under the New Companies Act?” to “Which tribunal, forum or office” would have powers to adjudicate the different cases listed. The semantic gravity is weaker here because candidates are required to express their knowledge of these concepts without the need to provide examples.

Though the examples above indicate what knowledge forms the Legal Practice Council awarded the most marks to, for the whole exam, candidates were still required to demonstrate cumulative learning, which requires shifts in context dependence. Successful practice in law happens when candidates are able to work with and apply abstract concepts and principles to real-world problems. For this reason, shifts in context dependence are important in the work of legal practitioners.

6.3 Experiences of candidates currently engaged in Practical Vocational Training

Candidates currently engaged in Practical Vocational Training were surveyed on the extent to which they had to explain legal concepts and/or principles as part of their learning. In responding to the survey, all surveyed candidates indicated that they had done this. However, they differed on the frequency over which they had done it. The first half indicated that they

had often explained legal concepts and/or principles to others, whilst the other half was divided between having done it sometimes and having done it occasionally.

When reflecting on the extent to which they explain legal concepts and/or principles, one candidate said:

During my training, we usually offer free legal advice to members of the public, which involves having to explain and clarify legal concepts on a daily basis.

Moreover, another echoed that statement and said:

Whenever we meet clients, we first have to explain concepts to them. Sometimes, we have to explain a judgment that has been delivered in cases in which they are involved.

From these responses, it is clear that explaining legal concepts and principles often to clients and members of the public is something that is done by all candidates and can be said to be almost foundational to the work of candidate legal practitioners. Having to explain legal concepts and principles to clients and members of the public in this way enables candidates to integrate their understanding of those legal concepts and principles with application or problem-solving. The first candidate explained this integration well by saying,

The most common one I have to explain is the nature and purpose of the temporary emergency concept. Albeit not a principle as such, it is a concept necessary to understand to alert clients to the possible end-result of an eviction matter. This would be to say, I explain that under the PIE Act, persons susceptible to homelessness following eviction are entitled to shelter - on a temporary basis - for as long as the threat of homelessness remains.

When surveyed on the extent to which they work with statutes, court procedures, and/or legal procedures, half of the candidates indicated that they had done this a lot. In contrast, the other half were split between having done it sometimes and occasionally, respectively. One candidate explained that.

When drafting legal documents, legal opinions, and heads of argument. I would have to draw on various court procedures to understand the rules on when to file heads of argument or set a matter down. More specifically, when outlining the law and making arguments in my drafting work.

Although no candidate indicated that they had never worked with this type of knowledge, but there may be a gap in their learning if only half of them do so regularly. Statutes are the primary source of law, and court procedures are the mechanism with which to practice law; for these reasons, one would have expected candidates to be working with this type of knowledge very frequently.

6.4 Shifts in discourse

This section looks at how candidates are knowers and expected to work with specialised legal discourses and legal forms or structures of knowledge in the exam. Candidate legal practitioners are required to communicate with a range of stakeholders in the course of legal practice. This includes their clients, other legal practitioners, the Legal Practice Council and the courts. Each of these requires a different use of discourse and an ability to shift between the everyday use of language, the language used in contexts like businesses and specialised legal discourse.

In this study, three discourses are identified, namely, the academic discourse, where candidate legal practitioners are required to position themselves as students of the law and explain their understanding, knowledge and reasoning of the law to the examiner. Question 5 in Part 1 provides an example of such an academic discourse since it requires candidates to set out the procedural steps to be taken when appealing a civil matter from the Magistrates' Court to the High Court. To set out the required procedural steps, candidates must position themselves as students of the law and address their answers to the examiner using academic discourse.

There is also the everyday discourse where candidate legal practitioners were required to communicate in understandable ways using non-specialised terminology with regular community members. They need to communicate their understanding of the law and legal principles that affect their clients' cases in ways that non-lawyers would understand. This discourse, as can be seen for example in Part 2 (Q1), was directed to the clients. The question is framed as follows:

Mike Mkhize dies intestate and is survived by his three wives Lindi, Monica and Ella to whom he was married according to customary law, out of community of property and without the accrual system. Mike is also survived by the following people:

- (i) his daughters Fikile and Stella by his marriage to Monica;
- (ii) his son Bongani by his marriage to Lindi, who insists that as the only son of the deceased and according to traditional law he is entitled to the entire estate of his father;
- (iii) his parents, Xolane and Lizzie, who have paid for all the funeral expenses and who also insist that they are entitled to the estate of their son Mike. His net estate is worth R 1 470 000.00 (One Million Four Hundred and Seventy Thousand Rand), consisting of cash only.

Advise the Mkhize family as to who are Mike's heirs and what amount will each inherit. (Make explanatory remarks where necessary)

As this example shows, the advice the Mkhize family candidates are expected to give will require them to communicate legal knowledge in everyday language to ensure that the Mkhize family understands who Mike's heirs are and how much they will each inherit.

The last discourse identified in this study is the legal discourse that requires candidates to communicate their legal knowledge in technical and precise legal discourse as legal practitioners would. The notable characteristic of this discourse is that the communication is directed to the court. In many cases, the questions also ask candidates to express their legal knowledge using standard legal formats like the particulars of claim candidates were asked to draft in question 6.2 of Part 1, liquidation and distribution account (Part 2, Q4) and the complete acknowledgement of debt (Part 3, Q2). Question 9 of Part 1 provides another example of legal discourse as candidates from a given set of facts were asked to

Draw the Notice of Appeal against the sentence on the basis that the trial court has already granted leave to appeal, and refer to the various alternative sentences the Court could have imposed on the accused. (Include the heading and ending).

In all these questions, the discourse is legal because candidates are expected to convert the facts into specialised legal language and present them in an appropriate legal format. In other words, candidates are expected to put things in legal language for the courts, as both the notice of appeal and the particulars of the claim are standard-form legal documents.

In some questions, candidates were required to shift between these discourses. In Part 1, for example (Q6), the facts are given in everyday discourse, but candidates are required to shift into the legal discourse; the same is the case in (Q12) and (Q14), which require candidates to draft summons and a plea, respectively. Typical situations where legal advice is required are presented to candidates. For example, candidates were required to advise their clients on issues of inheritance (Part 2, Q1), a rejected claim by an executor (Part 2, Q2), as well as on the administration of deceased estates (Part 2, Q4). In these examples, the candidate needs to shift their discourse from specialised legal discourse to everyday language as they explain the outcomes to their clients. Part 3 (Q2), (Q6) and (Q7) are examples where the discourse shifted both ways from everyday language to legal when candidates were required to use given facts to draw a complete acknowledgement of debt, draft clauses in a sale agreement; and legal language to everyday when candidates were required to advise their clients on prescription. Part 4 had only one example in (Q4) where the discourse shifted from every day to legal when candidates were required to use the given facts by client to draft an agreement of sale.

When comparing the shifts in discourse across the four papers and using the mark allocation as an indicator of significance, it emerges, as can be seen from Figure 6 below, that the majority of the shifts were from the everyday discourse to the legal discourse. Figure 6 also shows that the shifts from everyday discourse to legal discourse occurred throughout all four papers and most visibly in Part 2, where such shifts accounted for 68 marks out of the available 100. On the other hand, the shifts from the legal discourse to the everyday discourse only occurred in Parts 2 and 3 of the admission exam, and there were no shifts at all in Parts 1 and 4 of the papers. Even in Parts 2 and 3, the shifts were minimal, accounting for only 29 marks between the two papers.

What follows is a visual representation of these shifts from everyday to legal discourse.

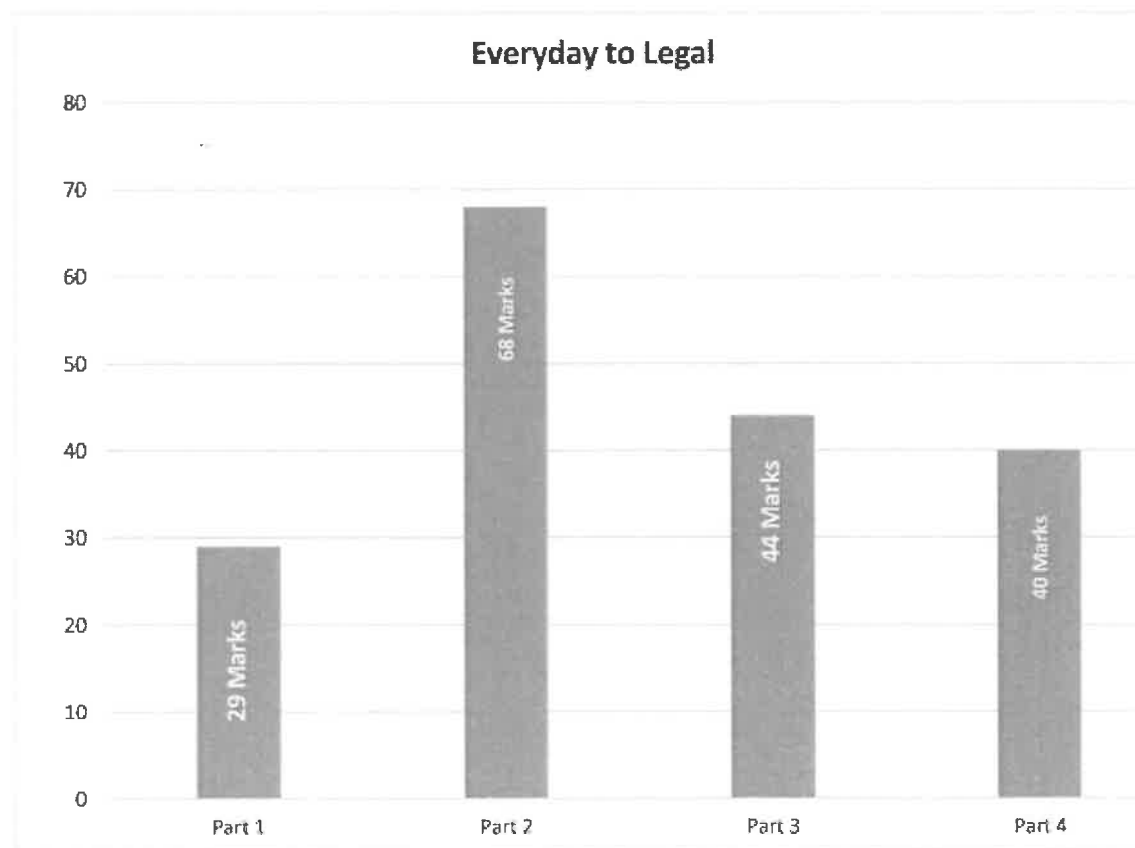


Figure 4. Graphs depicting shifts from everyday discourse to legal discourses

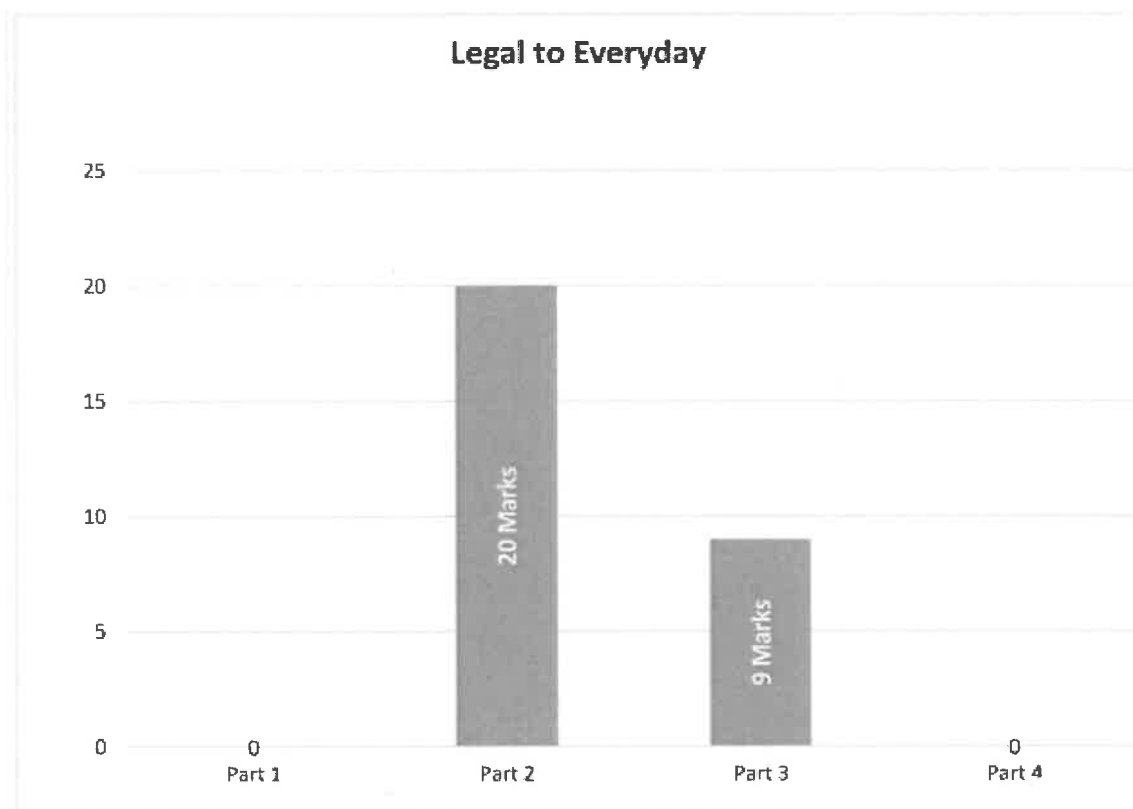


Figure 5. Graphs depicting shifts from legal discourse to everyday discourses

The fact that there are many shifts in discourse from the everyday discourse to the legal discourse, and such shifts occur across all four papers, as seen in Figure 5, indicates the prevalence and the dominance of the legal discourse in the admission exam. The prevalence of the legal discourse throughout the exam and across all four papers is but only an indication that the profession values and puts some emphasis on the candidates' ability to communicate like a legal practitioner using the legal discourse.

6.5 Shifts in discourse: Experiences of candidates engaged in Practical Vocational Training

The candidates engaged in Practical Vocational Training indicated that they often shift into and out of different discourses as part of their day-to-day learning activities. Interestingly, though, unlike in the admission exam, where the papers indicated that the most shifts were from the everyday to the legal discourse, candidates engaged in Practical Vocational Training indicated that when performing their activities, they shifted more from the legal discourse to the everyday discourse. A sizeable majority of the surveyed candidates indicated that they had often turned specialised legal language into everyday language. The remaining few said they occasionally shifted from legal discourse to everyday language. No candidate said they had never shifted

between these two discourses. Instead, candidates gave examples of when and how they shifted between these discourses. One candidate indicated they shifted through these discourses “a lot during a consultation with clients and workshops.” Another candidate echoed this and said

that when advising clients, regard is had to the statute regulating the matter, and statutes come in legal jargon which a client may not readily understand. I have had to simplify a statute to explain it to the client in simple terms.

On the everyday discourse shifting into legal discourse, the first half of surveyed (3 out of 6) candidates indicated that they had done this a lot, and the second half (other 3 out of 6) indicated that they had never done this at all. The other half either had done this sometimes or occasionally. Those candidates who have shifted in between these discourses indicated that they had done so when “a client has explained an issue to me in everyday language and I then have to relay this in drafting papers for their matter.” Another candidate said, “When tasked with distilling information from clients' recounted events to assist in formulating court applications, I work to extract relevant facts and use them as essential details for the drafting process.” Still, on shifting discourses, half of the surveyed (3 out of 6) candidates indicated that they had drawn up legal documents in specialised formats as required by the courts a lot, whilst the other half (other 3 out of 6) said they have either done so sometimes or they had done so occasionally or partially. Instances on which and circumstances under which specialised legal formats were used ranged from “when assisting in drafting affidavits and heads of argument, I have needed to use the specialised format needed by the courts” to “I have drafted various affidavits and notices. This is typically in application proceedings, which are the bulk of the matters I am involved in.”

The dataset emerging from the candidates engaged in Practical Vocational Training suggests that the everyday practice of law requires more shifts in discourse to move from legal to everyday discourse, and this is primarily driven by client interaction. It can be argued that the possible reason why the analysis of the admission papers showed more shifts from everyday discourse to legal discourse was because, in those instances, the target of the discourse was the examiner. In contrast, the target of the discourse in the Practical Vocational Training is actual real clients consulting on real problems.

6.6 Justification of legal advice or opinions given

The admission exam required candidates to demonstrate their legal knowledge in various ways. One of the ways in which candidates were required to demonstrate their legal knowledge was by advising clients or giving opinions on different legal problems. In some cases, candidates

were expressly required to justify or motivate the advice or opinion given. For example, in Part 1 (Q1.1), candidates were given facts of a motor vehicle accident which resulted in the death of a life partner and were asked to advise or give an opinion on whether Ms Adams, the surviving life partner of the deceased, could claim loss of support for herself in her personal capacity against the wrongdoer. In this question, which was awarded four marks, candidates were also expressly asked to motivate their answers. The expectation was that they would refer to the precedent set out in cases such as *Paixao v Road Accident Fund*, which held that the typical law dependant's action, which entitles a claimant to claim for maintenance and loss of support suffered as a result of a breadwinner's death, had been extended to a claim by a surviving partner of a permanent opposite-sex life partnership in which the partner had undertaken reciprocal duties of support with the deceased, despite such reciprocal duties of support not having been assumed by express agreement between the parties.

In another example involving a motorcycle and a vehicle collision, candidates were asked to give an opinion on what damages, if any, can be claimed against the Road Accident Fund by the rider of the motorcycle who suffered personal injuries and had his motorcycle written off (Part 2, Q2.1). For four marks, candidates were also asked to motivate their answers, which implicitly required them to cite the relevant section of the Road Accident Fund Act, which deals with the liability of the Fund. Question 10 in Part 1 is another instance where candidates were expressly asked to provide a reason for their answer. This question was awarded three marks. In Part 2 (Q1), for ten marks, candidates were asked to make explanatory notes when advising the Mkhize family as to whom the heirs of the deceased are arising from the given facts and how much each inherited.

Across all four papers, candidates were only asked for motivation for their advice, opinion or answers in Parts 1 and 2 of the exam, and even there, the marks allocated to those questions were 11 and 10, respectively. In Parts 3 and 4 of the exam, no questions expressly required candidates to justify their answers.

The pattern emerging from this is that in only two papers out of the four, only 21 marks out of 400 were awarded to questions requiring candidates to justify their advice, opinion or answer expressly. This means that there are very few opportunities in this admission exam for candidates to justify or give an account for their legal opinion.

6.7 Justification of legal advice or opinions given: Experiences of candidates engaged in Practical Vocational Training

Regarding giving a legal opinion, an equal number of candidates (3 apiece) indicated that they either had done this a lot, done it occasionally or had not done this at all. Those who did it a lot and those who did it occasionally indicated that their legal opinions were directed to other lawyers and their clients. One candidate, for example, indicated that she “did a legal opinion for counsel and my supervising attorney”, and the other candidate said she “advised the client” on what steps to take to resolve the issue. Half of those candidates (3 out of 6) who had provided legal opinion indicated that they only provided justification for their legal opinion occasionally, whilst the remaining half (3 out of 6) indicated that they either had provided justification for their legal opinion a lot, done so sometimes and had never justified their legal opinion at all. Some examples of instances where candidates had to justify their legal opinions were

when we had an opportunity to look at the draft rules for domestic workers. I had to explain my opinion on the fairness of the 30-day rule in providing accommodation at the employer's premises to a dismissed domestic worker.

Another candidate said:

The legal opinion is often based on the specific instructions provided by the client. Providing justification helps with presenting complex legal concepts in a clear and understandable manner. It aids clients in grasping the reasoning behind the legal advice I provide.

The fact that the majority of surveyed candidates (4 out of 6) indicate that they had only justified their legal opinion occasionally instead of a lot is in line with the pattern that emerged in the analysis of the admission exam, where only 21 marks out of the 400 were awarded to the questions that required candidates to justify or provide reasons for their legal opinions.

6.8 Summary of chapter

As the chapter addressed the question pertaining to how the attorney's admission exam enables knowledge-building in candidate legal practitioners, the findings revealed that though the attorney's admission exam supports cumulative knowledge-building, this is not always explicit or visible. There are instances where the shifts in semantic gravity occur in implicit ways, which may have implications for the overall performance of candidate legal practitioners. This is the case because candidates need to be clearly shown the skills and the knowledge they need in order to make connections between their LLB studies, their practical vocational training and practice.

Chapter 7: Discussion and Conclusion

7.1 Introduction

The aim of this chapter is to summarise the main findings of this study. To do so, I will provide a brief overview of the important findings, as well as some conclusions drawn from the interpreted data. I will then look at how the main findings answer or contribute to the main research question. In addition, this chapter will outline the gaps in the admission exam and make some recommendations.

7.2 Main findings

The first finding of this study is that the analysis of the admission exam papers showed that candidate legal practitioners were examined in areas of law in three ways. Those were based on their understanding and explanation of legal knowledge, which required them to work with legal concepts and principles, court procedures, statutes, and precedents. Candidate legal practitioners were also examined on their application of legal knowledge, which required them to draft legal documents and to give legal opinion and advice. Though not as extensive as the first two areas, candidates were also examined on legal ethics to a minimal extent. These areas of examination constituted the knowledge-building work required by the admission exam.

The second finding is that the ways in which candidates were examined required them to work with knowledge in various ways. One of those ways involved working with both context-dependent and abstract concepts for purposes of cumulative knowledge-building and also moving iteratively from one to the other. This expectation required candidates to shift up and down the semantic profile as questions were characterised by both stronger and weaker semantic gravity. In some cases, the required shifts were made explicit by giving both the relevant statute and the facts of a case. In other cases, the shifts were implicit, requiring candidates to see for themselves that a strengthening or weakening of semantic gravity was expected. Added to this was the finding that, in some instances, there were no shifts at all, and the semantic profile remained at one strength.

The third finding of this study is that the admission exam required candidates to shift between different discourses. Candidates were required to shift between legal and everyday discourses. In the written exam, many shifts were made from everyday discourse to legal discourse, so much so that it may be concluded that legal discourse was prominent in the written exam. The experiences of candidates currently engaged in Practical Vocational Training showed an

opposite pattern where the shifts in discourse were largely from the legal discourse to the everyday. However, in both instances, the finding is that the admission exam requires candidates to work with different discourses and be able to shift in and out of them when necessary.

The fourth finding is that although the bigger part of being a legal practitioner involves advising clients and rendering legal opinions on a range of legal matters, the admission exam acknowledges this but does not examine this work sufficiently. In particular, though there were questions in the exam that simulated live client problems candidate legal practitioners will face in practice, often candidates were not expressly asked to give reasons, justification or even motivations for their advice and/or legal opinion. The failure to expressly ask candidates to justify their legal advice and/or legal opinion has implications for the way in which candidates are introduced into the profession.

7.3 Answering the research questions

To recap, the overall purpose of this study was to investigate how the attorneys' admission exams require prospective legal practitioners to work with legal knowledge. To this end, the study aimed to answer the following research question: *What knowledge-building work is required of candidate legal practitioners to complete the admission exam successfully?*

The main findings show that the South African Legal Practice Council ("Legal Practice Council") assesses understanding and explanation of legal knowledge and applying that knowledge to solve legal problems. The assessment of the understanding and explanation of legal knowledge requires candidates to demonstrate knowledge and competence in the concepts and principles, court procedures, and statutes and precedents, all of which are core in the practice of law. The assessment of the application of knowledge to solve legal problems requires candidates to demonstrate skills in drafting legal documents and in giving legal advice and legal opinions, which skills are essential in the practice of law.

Two conclusions can be drawn from this. The first conclusion is that in so far as the practice of law is concerned, the Legal Practice Council is of the view that these knowledge, skills and competence are key to successful entry into the profession. The second conclusion to draw is that in assessing candidates' knowledge of concepts and principles, court procedures, and precedents and statutes; and in assessing the skills to draft legal documents and to give legal opinion and advice, the Legal Practice Council is implicitly saying to the world and the

candidates themselves that a candidate worthy of admission into the legal profession has this knowledge and skills as a base.

7.4 Gaps and recommendations

The admission exam does well in requiring candidates to demonstrate their legal knowledge and showcase their drafting skills. These are core competencies necessary for legal practice. There are, however, two big gaps in the way in which candidates are assessed. The first noticeable gap is that on the topic of legal ethics, that singular problem that gets many legal practitioners disbarred year in and year out, the Legal Practice Council appears to have paid no attention. In the whole exam, there was only one question (Part 3; Q5) that tangentially examined legal ethics. Tangentially examined because the question did not directly examine the candidates' ability to apply an ethical rule as the question was on applicable rules of conduct to apply in a case of a conflict of interest. Legal ethics only constituted 1,25% of the marks awarded in the whole admission exam.

Moreover, another identifiable gap is around the surprisingly fewer opportunities for candidates to justify and motivate their legal advice and/or opinions. This is surprising given the importance of justifying legal advice based on statutes and precedents in legal practice. In fact, equally surprising is that the knowledge of precedent is not explicitly mentioned even once across all four papers. Justifying or motivating one's legal advice is a practice requirement, as two legal practitioners may give conflicting opinions on the same issue. What tips the scales in one way or the other in that situation is the reasoning provided for the legal advice or opinion rather than the opinion itself. The requirement to provide motivation and justification for the legal advice given stems from a realisation that, in most cases, there is more than one absolutely correct legal position on the subject at hand. It is a glaring gap in the admission exam not to require candidates to motivate or justify every advice or legal opinion they give.

Furthermore, it is noteworthy that the candidates' research skills are not tested at all in the admissions exam. This is noteworthy because there is general acknowledgement that in addition to knowing the law and being a skilled drafter of legal documents, a legal practitioner must be a skilled researcher. Law develops constantly, and legal practitioners are expected to keep up with those developments, and research skills are necessary for that purpose. It may be that a 12-hour (each paper is 3 hours) admission exam is not the ideal way to test the candidates' research abilities. However, if research skills were part of those skills identified by the Legal Practice Council as core, then there would be questions or tasks to test the candidate's competencies in this regard. It is recommended that the LPC take steps to close these gaps.

7.5 Conclusion and implications of the findings

It could be said upfront that this study has implications for the Legal Professional Council, the law firms that take on candidates for PVT, and the candidates themselves. In light of the gaps identified, this study recommends that the LPC pay attention to the knowledge being examined in the admission exam. In particular, the LPC should consider if it is in the best interests of the public, on whose benefit the admission exam exists, that it continues this way. Critical knowledge and skills like legal ethics and research capabilities are either insufficiently examined or not examined. Moreover, candidates are not given sufficient opportunities to justify or motivate their legal advice and opinions. In certain instances, legal knowledge as the subject of the examination is not made visible.

Law firms engaging candidates in PVT should consider bridging the gap by providing opportunities to candidates to give motivated and justified legal advice and legal opinions even though this is not sufficiently tested in the admission exam. At the practical level, law firms should also take steps to make the knowledge candidates are supposed to learn visible to them to enable them to learn cumulatively as opposed to segmentally. Where knowledge is not made visible, it can become difficult for candidates to engage in cumulative knowledge-building, which is to make connections between the legal knowledge acquired in the LLB and the practical knowledge acquired in the Practical Vocational Training. In the current exam, some connections are not made visible but are expected to occur implicitly.

Candidate legal practitioners should take heed of the knowledge valued by the LPC, namely the knowledge of concepts and principles and the knowledge of statutes and precedents, even though the latter is implicitly examined. Candidates should also take note of the need to apply their legal knowledge through the drafting of various legal documents and engaging in appropriate discourse for the appropriate target recipient.

Like any other exam, an admission exam is valid only if it examines what it exists to examine; an admission exam “that bears a weak relationship to actual competence is not valid” Howarth (2020:948). It is critically important that the attorneys’ admission exam bears a proper relationship with the competence of new entrants it seeks to examine. The findings of this study will benefit all the stakeholders by ensuring that the admission exam remains true to its purpose.

8. REFERENCES

- Adeoye, M., “Review of Sampling Techniques for Education” (2023) *ASEAN Journal for Science Education*, 2(2)
- Ajayi, J., “The Continuity of African Institutions under Colonialism” (1968) in T. O. Ranger (ed) *Emerging Themes of African History*.
- Arbee, A., Hugo, W., & Thomson, C. “Epistemological access in Marketing—a demonstration of the use of Legitimation Code Theory in higher education” (2014) *Journal of Education*, (59)
- Archer, S., “The Function of a University in South Africa: Part 1” (2017) *South African Journal of Science*, 113(5)
- Attorneys, Notaries and Conveyancers Act 23 of 1934
- Attorneys Act 53 of 1979
- Babbie, E., (2008) *The Basics of Social Research*, 4th Edition, Thomson/Wadsworth
- Biggs, L., & Hurter, K., “Rethinking Legal Skills Education in an LLB” (2014) *Journal for Juridical Science*, 39(1)
- Boote, D., & Beile, P., “Scholars before Researchers: On the Centrality of the Dissertation Literature Review in Research Preparation” (2005) *Educational Researcher*, 34(6)
- Bowen, G. A., (2009) "Document Analysis as a Qualitative Research Method", *Qualitative Research Journal*, Vol. 9 (2)
- Campbell, J., “The Role of Law Faculties and Law Academics: Academic Education or Qualification for Practice (2014) *Stellenbosch Law Review*, 25
- Chernovskyi, O. “The Paradigm of Lawyer’s Professional Competence” (2019) *European Journal of Law and Public Administration*, 6(2)
- Council on Higher Education “The State of the Provision of the Bachelor of Laws (LLB) Qualification in South Africa” (2018) Report on the National Review of LLB Programmes in South Africa
- Colgan, D., Domingo, W., & Papacostantis, H., “Change to a Skills-Based LLB Curriculum: A Qualitative Study of Participants in a Family Law Course” (2017) *Potchefstroom Electronic Law Journal*, (20)
- Corneille, M., “Bar Admissions: New Opportunities to Enhance Professionalism” (2001) *South Carolina Law Review*, (52)

- Clarence, S., "Enabling cumulative knowledge-building through teaching: A Legitimation Code Theory analysis of pedagogic practice in law and political science" (2013) A thesis submitted in fulfilment of the requirements for the degree of Doctor of Philosophy, Rhodes University
- Curcio, A., "A Better Bar: Why and How the Existing Bar Exam Should Change" (2002) *Nebraska Law Review* (81)
- Creswell, J.W.C. (2003). Research design. Thousand Oaks, California: Sage Publications.
- Domanski, A., "Ulric Huber's Programme for Legal Education – What Lessons for Today" (2011) *Fundamina*, 17(2)
- Dudley-Marling, C., "The Social Construction of Learning Disabilities" (2004) *Journal of Learning Disabilities*, 37(6)
- Du Plessis M A., "Clinical Legal Education: Determining the Mission and Focus of a University Law Clinic and Required Outcomes, Skills & Values" (2015) *De Jure*
- Giloi, S., "The Knowledge-Knower Structures Used in the Assessment of Graphic Design Practical Work in a Multi-Campus Context." (2016) Unpublished Doctoral Thesis, Rhodes University, Grahamstown.
- Glen, K. B., "Thinking out of the Bar Exam Box: A Proposal to "MacCrate" Entry to the Profession" (2003) *Pace Law Review*, 23(2)
- Gravett, W., "Pericles Should Learn to Fix a Leaky Pipe – Why Trial Advocacy Should Become Part of the LLB Curriculum (Part 2)" (2018) *Potchefstroom Electronic Law Journal*, 21
- Greenbaum, L., "The Four- year undergraduate LLB: Progress and Pitfalls" (2010) *Journal for Juridical Science*, 35(1)
- Greenbaum, L., "Legal Education in South Africa: Harmonizing the Aspirations of Transformative Constitutionalism with our Educational Legacy" (2016) *New York Law School Review*, 22(63)
- Hansen, D., "Do we need the Bar Examination – A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives? (1995) *Case Western Reserve University Law Review* (45)
- Holmes, A. G. D., "Researcher Positionality – A Consideration of its Influence and Place in Qualitative Research – A New Researcher Guide" (2020) *Shanlax International Journal of Education*, 8(4)
- Holness, D., "Improving Access to Justice through Law Graduate Post Study Community Service in South Africa." (2020) *Potchefstroom Electronic Law Journal* 23(1)

- Howard S., & Maton K. (2011). Theorising knowledge practices: a missing piece of the educational technology puzzle. *Research in Learning Technology*, 19(3)
- Jellum, L., & Reeves, P., "Cool Data on a Hot Issue: Empirical Evidence that a Law School Bar Support Program Enhances Bar Performance" (2005) *Nev. Law Journal*
- Klaaren, J, "South Africa: A profession in transformation." *Lawyers in 21st-Century Societies* 1 (2020)
- Legal Aid Board v S* 2011 (1) SACR 166 (SCA)
- Legal Practice Act 28 of 2014
- Maguire, M.; Delahunt, B. (2017) Doing a Thematic Analysis: A Practical, Step-by-Step Guide for Learning and Teaching Scholars. *Reflect. Journeys Case Studies*
- Maharaj, J. H., "The Role of the Law Schools in Practical Legal Training" (1994) *South African Law Journal*, 111
- Maloka, TC. "Protecting the Foundation and Magnificent Edifice of the Legal Profession: Reflections on Thukwane v Law Society of the Northern Provinces 2014 5 SA 513 (GP) and Mtshabe v Law Society of the Cape of Good Hope 2014 5 SA 376 (ECM)" (2015) *Potchefstroom Electronic Law Journal*, 18(7)
- Maisel, P. "An alternative model to United States bar examinations: the South African community service experience in licensing lawyers" (2004) *Georgia St UL Rev* 20
- Maisel, P. "The Education and Licensing of Attorneys and Advocates in South Africa" (2010) Research Paper No 10-33
- Markovic, M. (2022). Protecting the Guild or Protecting the Public? Bar Exams and the Diploma Privilege. *Geo. J. Legal Ethics*, 35.
- Maton, K. (2013) Making semantic waves: A key to cumulative knowledge-building, *Linguistics and Education*, 24(1)
- Maton, K. (2014). *Knowledge and knowers: Towards a realist sociology of education*. Routledge.
- Maton, K, Hood, S. and Shay, S. (2016) *Knowledge-Building: Educational Studies in Legitimation Code Theory*, London, Routledge
- Maton, K. & Chen, R. T-H. (2020) Specialization codes: Knowledge, Knowers and Student Success, In Martin, J. R., Mmaton, K. & Doran, Y. J. (Eds) *Accessing Academic Discourse: Systemic Functional Linguistics and Legitimation Code Theory*, London, Routledge.

- Mathers, N., Fox, N. & Hunn, A. 2009. Surveys and questionnaires. The NIHR RDS for the East Midlands/Yorkshire
- McConnell, T., “Can the Elite University Survive?” (1973) *The Research Reporter* 8(2)
- Miles, MB. Huberman, AM, (1994) *Qualitative Data Analysis: An Expanded Sourcebook*. Sage Publications Ltd
- Mojapelo, P., “Transformation, Independence and Poor ‘products’ of the LLB” (2012) *De Rebus*
- Mhlungu, T. “Education and Licensing Attorneys in South Africa” (2004) 20 *Ga. St. U. L. Rev.*
- Mungal, A., & Cloete, M., “Preparing undergraduate students for Higher Education and Beyond: The Development and Implementation of an Integrated Project” (2016) *Accounting Education*
- Moore, J “What Counts as Legal Writing: An Analysis of what it means to write in law with reference to both Legal Academics and Practitioners in South Africa” (2022) Unpublished Doctoral Study, University of the Witwatersrand.
- Nord, M. “Old and New Type Bar Exams” (1971) *Cleveland State Law Review*
- Oppenheim, A. (1992). *Questionnaire Design, Interviewing and Attitude Measurement*, London
- Paixao v Road Accident Fund* 2012 (6) SA 377 (SCA)
- Pantazis, A., “The LLB” (2013) *The Advocate*
- Pearl Assurance Co v Union Government* 1934 AD 560
- Quinot, G., & Greenbaum, L., “The Contours of a Pedagogy of Law in South Africa” (2015) *Stellenbosch Law Review*, 26(1)
- Robertson, M., & Kruuse, H. “Legal Ethics Education in South Africa: Possibilities, Challenges and Opportunities” (2016) *South African Journal on Human Rights*, 32(2)
- Rootman-le Grange, I. & Blackie, M. (2018) Assessing assessment: In pursuit of meaningful learning, *Chemistry Education Research and Practice*, 19
- Rule P., John V. (2011). *Your Guide to Case Study Research*. Pretoria: Van Schaik.
- Sedutla, M. “LLB Summit: Legal Education in Crisis?” (2013) *De Rebus*
- Shulman, L. S. “Knowledge and teaching: Foundations of the new reform” (1986) *Educational Researcher*, 15(2),

- Snyman-van Deventer, E., & van Niekerk, L., “The University of the Free State Faculty of Law/Write Site Intervention – Supporting Broader Access with the Skills for Success” (2018) *Journal for Juridical Science*, 43(1)
- Swanepoel, CF., Karels, M & Bezuidenhout, I. “Integrating Theory and Practice in the LLB Curriculum: Some Reflections” (2008) *Journal for Juridical Science Special Issue*
- Van Niekerk, ‘The four year undergraduate LLB: Where to from here?’ (2013) *OBITER*, 34(3)
- Wasby, SL “As seen from Behind the Bench: Judge’s Commentary on Lawyer’s Competence” (2013) *Journal of Legal Profession*, 38(47)
- Walton, J. (PhD, 2020) Making the Grade: Theorising musical performance assessment, PhD thesis, Griffith University, Australia
- Wille, E., & Stroude, A., “The Impact of the Academic Skills Programme on Pass Rates in the Introduction to South African Law Module At the School of Law (Pietermaritzburg campus) of the University of KwaZulu Natal (2017) *OBITER*
- Whitear-Nel, N., & Freedman, W., “A Historical Review of the Development of the Post-Apartheid South African LLB Degree – With Particular Reference to Legal Ethics” (2015) *Fundamina*, 21(2)

APPENDIX A1: ATTORNEYS' ADMISSION EXAM PAPER PART 1

ATTORNEYS' EXAMINATION

PART 1

COURT PROCEDURES

19 FEBRUARY 2020

09:00-12:15

Total: [100]

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. The examination of 3 hours then follows.

1. Candidates must answer all the questions.
2. Candidates must remember that marks are awarded for good draftsmanship.
3. Candidates must invent their own facts wherever necessary.
4. Please write only in pen on the right-hand pages.
5. Except if a special reason exists, a candidate will not be required to do an oral in this part if 50% or more is attained. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.

QUESTION 1

[9]

You are consulted by Ms Emilia Adams who instructs you as follows:

- She had been in a long term monogamous relationship with a life partner, Peter Jansen for 10 years;
- From this relationship two minor children were born;
- Ms Adams instructs you that she and Mr Jansen lived together as man and wife and that throughout their relationship he had supported her and the children. He was the sole breadwinner for the family as she was, by agreement between them, unemployed.
- Two months ago Mr Jansen, whilst being conveyed as a passenger in a motor vehicle, was killed in a motor vehicle accident.

ANSWER THE FOLLOWING QUESTIONS WITH REFERENCE TO THE ABOVE FACTUAL INFORMATION

- 1.1 Can Ms Adams claim loss of support for herself in her personal capacity? Motivate your answer.
(4)
- 1.2 Can Ms Adams claim for loss of support for the children and if so over what period?
(3)
- 1.3 On the assumption that Mr Jansen was not wearing a seatbelt and was thus flung from the vehicle when it rolled, resulting in fatal injuries, explain, if at all, how this will affect your answers to 1.1 and 1.2 above?
(2)

QUESTION 2

[9]

You are consulted by Mr Jones who was knocked off his motorcycle by a motor vehicle which executed a right hand turn into his path of travel. Mr Jones had never obtained a license to ride a motorcycle. He instructs you to claim for personal injuries suffered in the accident and for the value of his motorcycle which was written off as a result of damage caused by the accident.

- 2.1 What damages, if any, can be claimed by Mr Jones from the Road Accident Fund? Motivate your answer.
(4)
- 2.2 Against who, if anyone, can Mr Jones claim for damages, if any, not covered by the Road Accident Fund Act 56 of 1996, as amended? (3)

- 2.3 What effect, if any, will the fact that Mr Jones does not have a licence to ride a motorcycle have on any claims he might have? (2)

QUESTION 3 [3]

You are required to distinguish between the degrees of negligence that need to be proven in respect of a passenger claim and a driver's claim.

QUESTION 4 [4]

List four non-deductible collateral benefits.

QUESTION 5 [12]

Set out the procedural steps in the Magistrate Court and High Court that you would take in an appeal to the High Court from a judgment of a Magistrate in a civil matter up to and including the notice of set down in the High Court.

QUESTION 6 [13]

You are consulted by Jennifer Jones, who trades as Easysell Estate Agents at Houghton Centre, Houghton, Johannesburg. She informs you that during January 2019, she received oral instructions from John Smith to market and sell Smith's fixed property situated at 12 Black Street, Houghton Estate, Johannesburg for an amount of R20 million.

They agreed that in the event of the mandate carried out successfully agents commission of 10% of the purchase price, plus VAT would become payable. Jones informs you that she introduced one Charles Green to the property. It has now come to her attention that Green bought the property from Smith in terms of a written agreement of sale to which she was not a party.

She sent a letter of demand to Smith, who in the meantime has retired and relocated to 12 West Street, Durban, KwaZulu-Natal. Smith informed your client that Green told him that he heard that the property was in the market through a colleague at work and that no estate agent was involved.

- 6.1 Would your client, the plaintiff, being married in community of property, need the consent of her husband to institute action? Briefly motivate your answer referring to the general rule and the exceptions to this general rule. (3)
- 6.2 Draft the particulars of claim. Include the heading indicating from which of the divisions of the High Court, do you intend to institute action from. (10)

QUESTION 7 [4]

- 7.1 Name the two disclosures, in terms of Section 60 (11B) of the Criminal Procedure Act, which an accused is compelled to make to the Court at a bail application. (2)
- 7.2 What are the possible consequences of an accused wilfully failing to make such disclosures? (2)

QUESTION 8 [5]

Your client, Mr Zuba, is charged with culpable homicide. The state avers that he was the driver of a motor vehicle which, on the 10th July 2018, was involved in a collision with a pedestrian, on Mount Road and Port Elizabeth. The state avers that Mr Zuba knocked down the person who at the time was crossing the road at a pedestrian crossing, causing his death. Whilst your client admits to you that he indeed drove the vehicle that collided with the pedestrian, on obtaining copies of the statements of state witnesses it is apparent that the state is not in a position to prove a case against client.

- 8.1 Are you entitled to advise your client to plead not guilty? (1)
- 8.2 In the event of your client deciding to plead not guilty what ethical principles are applicable? (1)

- 8.3 What procedure will you follow should the state during the course of the trial present evidence which proves that it was indeed your client who drove the vehicle that collided with the deceased?
(3)

QUESTION 9

[16]

- 9.1 Your client, John Smith, is the driver of a motor vehicle on De Jongh Drive in Pretoria. He fails to bring the vehicle to a halt at a stop street and enters an intersection causing a collision with another vehicle which results in the death of the other driver. The collision occurred at approximately 3 a.m. and the traffic at that time of morning was very light. He pleads guilty and is convicted of culpable homicide and the Regional Magistrate sentences him to 12 years direct imprisonment. He is 40 years of age, is a first offender, is married and supports his wife and four school-going minor children. He is furthermore the sole proprietor of a small business employing five persons. He is also a deacon in his church and a member of an organisation that does charity work involving children.

Draw the Notice of Appeal against the sentence, on the basis that the trial court has already granted leave to appeal, and refer to the various alternative sentences which the Court could have imposed on the accused. (Include the heading and ending).
(12)

- 9.2 What other document must accompany the notice of appeal? (1)
- 9.3 Within what period of time subsequent to the date of sentence must an application for leave to appeal be brought? (1)
- 9.4 What procedure would you follow if the period referred to in 9.3 above has expired and what documentation will be required? (2)

QUESTION 10

[3]

Your client XYZ Bank entered into a loan agreement with Mr Smith for R70 000. Mr Smith gave his domicilium citandi et executandi (service address) address as Vereeniging and consented to any dispute being heard in the Magistrate's Court of Vereeniging, he however resides in Johannesburg now. Mr Smith defaulted on payment. Where would summons be issued? Please also state a reason. QUESTION 11 [2] A motor vehicle collision occurred between Mr Xaba and Mr Alberts. At the time of the accident Mr Xaba was driving the vehicle in the scope of his employment. Mr Xaba was employed by ABC (PTY) Ltd. ABC (PTY) Ltd is the owner of the vehicle. According to your client's version Mr Alberts was the sole cause of the accident and your client ABC (PTY) Ltd wants you to issue a summons for his damages amounting to R20 000. Who would be the plaintiff?

QUESTION 11

[2]

A motor vehicle collision occurred between Mr Xaba and Mr Albers. At the time of the accident Mr Xaba was driving the vehicle in the scope of his employment. Mr Xaba was employed by ABC (PTY) Ltd. ABC (PTY) LTD is the owner of the vehicle. According to your client's version Mr Alberts was the sole cause of the accident and your client ABC (PTY) Ltd wants you to issue summons for his damages amounting to R 20 000. Who would be the plaintiff?

QUESTION 12

[9]

Your client XYZ (PTY) LTD entered into a loan agreement with Mr Smith for R70 000 and interest on the R70 000 from the 1st of July 2019. The agreement is a credit agreement in terms of the National Credit Act. Mr Smith defaulted on payment. Your client who is a registered credit provider has instructed you to proceed with summons. What would your first step be? Draft the necessary notice.

QUESTION 13

[4]

Which summons would you use in the Magistrates' Court where your client:

- a. Wishes to sue for arrear rental and ensure that the assets, brought by the tenant onto the rental premises during the period of the lease agreement, will not be removed from the premises?
(1)
- b. Wants to claim delictual damages from the defendant? (1)

- c. Holds an amount of cash to which three persons make adverse claims? (1)
- d. Is owed money in terms of a liquid document and your client would like payment of the amount due before the defendant debtor is allowed to defend the action?
(1)

QUESTION 14

171

The plaintiff, a private company, has sued your client out of a Regional Magistrates' Court which does not have jurisdiction over your client. Your client denies that the debt is due. You have delivered a notice of intention to defend. Draft the pleading necessary to reflect your client's response. You should include the heading of the pleading.

- THE END -

APPENDIX A2: ATTORNEYS' ADMISSION EXAM PAPER PART 2

ATTORNEYS' EXAMINATION

PART 2

ESTATES

19 FEBRUARY 2020

14:00-16:15

Total: [100]

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. The examination of 2 hours then follows.

1. Candidates must answer all the questions.
2. Candidates must remember that marks are awarded for good draftsmanship.
3. Candidates must invent their own facts wherever necessary.
4. Please write only in pen on the right-hand pages.
5. Except if a special reason exists, a candidate will not be required to do an oral in this part if 50% or more is attained. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.

QUESTION 1

[10]

Mike Mkhize dies intestate and is survived by his three wives Lindi, Monica and Ella to whom he was married according to customary law, out of community of property and without the accrual system. Mike is also survived by the following people:

- (i) his daughters Fikile and Stella by his marriage to Monica;
- (ii) his son Bongani by his marriage to Lindi, who insists that as the only son of the deceased and according to traditional law he is entitled to the entire estate of his father;
- (iii) his parents Xolane and Lizie, who have paid for all the funeral expenses and who also insist that they are entitled to the estate of their son Mike. His net estate is worth R1 470 000.00 (One Million Four Hundred and Seventy Thousand Rand) consisting of cash only.

Advise the Mkhize family as to who are Mike's heirs and what amount will each inherit. (Make explanatory remarks where necessary).

QUESTION 2

[10]

- 2.1 You act for a client who has a liquidated claim against a deceased estate. You establish that the period for filing of creditors claim against the estate has passed. What advice will you give your client? (3)
- 2.2 After receiving the claim the Executor doubts whether this claim can be allowed. Which steps should the Executor take in order to resolve this matter?
(5)
- 2.3 How would you advise your client if the executor rejects the claim? (2)

QUESTION 3

[12]

Brian executed a Will on 13 January 2018 in terms of which he left his estate to his wife Pretty. Brian and Pretty who were married out of community of property were divorced on 24 May 2019. Brian married Maria on the 25th June 2019 and died childless on 11th July 2019. With regard to the execution of the Will by Brian which consists of more than one page, explain the following:

- 3.1 Where on the Will must the witnesses sign? (2)

- 3.2 If Brian signs by means of a mark, then a certificate in terms of Section 2(1)(a)(v) of the Wills Act 7 of 1953 should be appended:
- (a) by whom? (1)
 - (b) where on the will? (2)
 - (c) where must the certifying officer sign? (1)
 - (d) what must be certified? (2)
- 6.3 How will Brian's estate be distributed? (5)

QUESTION 4

[68]

Samuel Maree, unmarried, died intestate on 15 January 2019. He was survived by his girlfriend Hany and his younger brother Jeff, who was born on 13 March 1982. You are appointed as the attorney to assist with the administration of the estate and you are registered for VAT.

A. The under-mentioned assets were found in his estate:

1. The house in which they reside and registered in both the deceased's name and his girlfriend's name in equal shares is valued by an appraiser at R850 000.00.
 2. Proceeds of Liberty Life Insurance Policy on his life payable to his estate in the amount of R225 000.00.
 3. Proceeds of Sanlam Life Insurance Policy on the deceased's life in the amount of R240 000.00. The policy was taken out by Jeff. The premiums were paid by Jeff and the premiums plus 6% interest amounted to R15 000.00 at deceased's death. The proceeds were paid to Jeff.
 4. An Old Mutual Life Insurance Policy on Jeff's life with a maturity value of R600 000.00 and which is surrendered for R150 000.00.
 5. Furniture valued at R160 000.00.
 6. A Toyota Corolla in the deceased's name valued by the appraiser at R295 000.00. The executor sold this vehicle out of hand at a loss of R7 500.00 on 5 March 2019 and the proceeds were paid into the estate banking account on the same day.
 7. The deceased had an investment of R200 000.00 at TYME Bank. The executor realizes this investment for R224 000.00, of which R8 500.00 is in respect of interest accrued after date of death.
 8. The deceased's 700 shares in LRM Ltd, a company listed on the JSE, which are valued by a stockbroker as at the date of death at R175 000.00. A dividend of R15.00 per share is declared and paid on 2 May 2019. The stockbrokers' valuation fees amount to R1 500.00.
 9. Loan owing by his girlfriend Hany in the amount of R17 000.00.
 10. 255 shares of R2.50 each in TOK (Pty) Ltd, valued by the auditor at R1 000.00 per share (as approved by Chief Revenue Inspector) as at the date of death and sold in the course of liquidation at a profit of R20 000.00.
 11. An amount of R18 257.50 is owing to SARS in terms of the final income tax assessment.
- B. The father of the deceased, Gabriel Maree, who died on the 3rd of April 1995, bequeathed in his Will the Farm Oranges to the deceased subject to the provision that it should after Samuel's death go to Jeff Maree, his other son. The Farm was valued on 15 January 2019 for R900 000.00. However, in the Estate Duty Addendum the value of the ceasing Fideicommissum may be reflected in an amount of R876 482.64. The valuation costs amounted to R3 500.00 and the transfer costs to R20 275.00.

Liabilities, claims and costs of administration total the amount of R150 000.00.

Draft the entire Liquidation and Distribution Account in the estate of the late Samuel Maree to be submitted to the Master of the High Court. Specify the necessary expenses. Use imaginary information where necessary.

-THE END-

APPENDIX A3: ATTORNEYS' ADMISSION EXAM PAPER PART 3

ATTORNEYS' EXAMINATION

PART 3

ATTORNEYS' PRACTICE

20 FEBRUARY 2020

09:00-11:15

Total: [100]

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. The examination of 2 hours then follows.

1. Candidates must answer all the questions.
2. Candidates must remember that marks are awarded for good draftsmanship.
3. Candidates must invent their own facts wherever necessary.
4. Please write only in pen on the right-hand pages.
5. Except if a special reason exists, a candidate will not be required to do an oral in this part if 50% or more is attained. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.

QUESTION 1 [10]

- 1.1 Give reasons why in certain circumstances conducting a business through a legal entity is preferable to doing so as a sole proprietor or partnership; (5)
- 1.2 What types of company can be incorporated under the New Companies Act No. 71 of 2008? (5)

QUESTION 2 [24]

A borrows from B an amount of R200 000-00 repayable in 60 equal monthly instalments. Draw a complete acknowledgement of debt omitting only clauses relating to the rate of interest, early repayment and domicile.

QUESTION 3 [5]

Which of the following would be included in the calculation of the accrual as between spouses:

- 3.1 Large income earned by the husband while his wife remained at home to manage the household; (1)
- 3.2 Money earned by the wife by part-time dressmaking for neighbours; (1)
- 3.3 The husband inherits R20 000-00 out of his father's estate: (1)
- 3.4 The wife received R20 000-00 general damages arising from an accident; (1) 3.5 The RAF pays the wife R50 000-00 for medical expenses. (1)

QUESTION 4 [17]

At which tribunal, forum or office would you or your client seek relief in respect of the following:

- 4.1 A claim for damages for R9 000-00; (1)
- 4.2 An order that a provision affecting R100 000-00 is unconstitutional; (2)
- 4.3 A claim for reinstatement after unfair dismissal; (2)

- 4.4 An unfair calculation of pension benefits by a pension fund; (1)
- 4.5 The interrogation of an insolvent who hides assets; (2)
- 4.6 Amendment or enforcement of a High Court maintenance order; (2)
- 4.7 An excessive fee charged by an attorney in a criminal trial; (2)
- 4.8 Trust money apparently stolen by an attorney; (3)
- 4.9 Loss due to professional negligence of an attorney. (2)

QUESTION 5 **[5]**

Before the start of a criminal trial in which you will represent the accused, you discover that the magistrate is the mother of the complainant. How would you apply the applicable rules of conduct and what will you do if you are unsuccessful?

QUESTION 6 **[20]**

You are consulted by the Seller and the Purchaser of a Café business. They tell you they have agreed on most of the terms of the sale but they are not certain what provision should be made to determine the value of the stock in the business on the take-over date or how to provide that the Seller will not conduct a similar business in the area. They ask you to draft clauses for their consideration which are to be included in the deed of sale covering these two aspects which are fair to both parties.

QUESTION 7 **[9]**

You negligently allow a claim for damages to prescribe. What is the effect of prescription? What should you advise your client; and what can you do in regard to your own position?

QUESTION 8 **[5]**

What are the grounds that would entitle an attorney to withdraw as attorney and terminate his client's mandate?

QUESTION 9 **[5]**

The Court finds in a civil trial that in a motor collision your client, A, suffered damages of R100 000 but was 50% negligent. The defendant's damage was R90 000 and negligence also 50%. What is the net effect and what order for costs will be made?

- THE END -

APPENDIX A4: ATTORNEYS' ADMISSION EXAM PAPER PART 4

ATTORNEYS' EXAMINATION PART 4 LEGAL PRACTITIONERS' BOOKKEEPING 20 FEBRUARY 2020

14:00-16:15

Total: [100]

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. The examination of 2 hours then follows.

1. Candidates may use calculators.
2. In answering the questions you should ensure that the relevant entries are clearly identified, narrated and detailed.
3. Separate business and trust cash books and clients' ledger accounts must be opened and are not to be combined. Journal entries must be properly identified and narrated.
4. Please write only in pen on the right-hand pages.
5. Except if a special reason exists, a candidate will not be required to do an oral in this part if 50% or more is attained. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.

QUESTION 1 **[15]**

Describe and explain the use and purpose of a Journal. Describe the purpose of and entries you would make in the Fees, Transfer, Trust and Business Journals and the narrations (if any) to support the entries.

QUESTION 2 **[20]**

You are required to record the following transactions in **fully narrated journal entries**. In doing so you are to **identify the journals** that you would use.

1. You charge your client a fee of R5 000 for professional services plus Vat at 15%. You are a registered Vat vendor.
2. Your bookkeeper has mistakenly credited Sipho's Trust ledger account with R8 000 instead of Madaline's Trust ledger account. How would you rectify the error?

QUESTION 3 **[15]**

Your business cashbook balance on 30 June 2019 reflected a balance of R40 000. The bank statement balance on the same date was R5 000.

A comparison of the cashbook and the bank statement for June 2019 reveals the following:

1. Interest of R3 900 on the favourable balance has not been entered in the cashbook.
2. A deposit of R25 360 has been incorrectly entered into the cashbook as R25 630.
3. A deposit of R11 000 made on 28 June 2019 is not reflected on the bank statement.
4. An EFT of R45 000 from a client has not been entered in the cashbook.
5. A debit order in favour of Nedbank for R28 236 appears on the bank statement only.
6. Bank charges in the amount of R2 000 have been debited to your bank account.
7. An EFT payment to a client for R14 000 on 30 September 2018 scheduled for payment on 1 July 2019 appears only in the cashbook.
8. A deposit of R41 000 which was entered in the cashbook does not appear on the bank statement.
9. A trust deposit of R12 606 has erroneously been credited to the business account.

You are required to prepare:

- a. The supplementary cashbook for June 2019.
- b. The bank reconciliation statement as at 30 June 2019.

QUESTION 4

[40]

You are consulted by Mr Mabuza who is selling his property to Ms Baloyi for R10 million.

He instructs you to prepare a Sale Agreement. The essential terms of the sale are:

- a) Ms Baloyi will pay a deposit of R1 million on signature.
- b) Ms Baloyi will pay the transfer costs of R500 000 of which R300 000 is transfer duty.
- c) You will invest the R1 million deposit in an interest-bearing account for her benefit.
- d) You will arrange a second bond for Ms Baloyi for R2 million from your client, Ms Lender. You hold R3 million on behalf of Ms Lender in your trust account.
- e) Ms Baloyi has arranged a first bond with Capitec Bank for R7 million.

The agreement is signed on the 15th July 2019.

1. On the 16th July, you receive two payments by EFT from Ms Baloyi: R1 million deposit and R500 000 for the pro forma costs of transfer. You invest R1 million with ABSA Bank.
2. On the 17th July, you pay the transfer duty to SARS.
3. On the 19th July, you receive a Bank Guarantee from Capitec Bank for R7 million.
4. On the 25th July, you receive the Transfer Duty receipt from SARS.
5. On the 26th July the documents are lodged in the Deeds Office.
6. On the 2nd August, the transfer and bonds are registered.
7. You receive R1 100 000 from ABSA Bank.

You are required:

- a) to record all the accounting entries in your books of account;
- b) pay all beneficiaries;
- c) account to Ms Baloyi;
- d) transfer appropriate monies from Trust to Business (ignore VAT).

QUESTION 5

[10]

- 5.1 May an attorney withhold the banking of trust money to pay cash to a trust creditor. (1)
- 5.2 How does an attorney pay bail in a criminal matter when he/she holds the funds in the trust account. (3)
- 5.3 How often is an attorney obliged to:
 - 5.3.1 do a reconciliation statement; (1)
 - 5.3.2 extract a Trust Trial balance; (1)
 - 5.3.3 have a trust account audit. (1)
- 5.4 Under what circumstances may business monies be deposited into the Trust account and what action should be taken thereafter. (3)

- THE END-

APPENDIX B1: Letter to the Director, SERI Law Clinic



University of the Witwatersrand,
Wits School of Education

October 2022

Dear Director

Re: Permission to conduct research at your Law Clinic.

My name is Thulani Nkosi. I am a Masters student in Education registered with the University of the Witwatersrand. I am currently conducting research on the topic: *What knowledge work is valued in Admission exams for Attorneys? An Analysis of their focus and basis of legitimation.*

Admission exams are integral to the preservation of professional standards in the legal profession and my research is aimed at investigating how the professional expectations of the legal profession are reflected in the admission exams. My research project is done with ethical clearance from the University of the Witwatersrand Ethics Committee.

I wish to invite candidate legal practitioners currently undergoing practical vocational legal training in your Law Clinic to participate in this research project. If they choose to participate, they will be asked to answer questions from a previous admission exam paper and participate in a semi structured interview, lasting approximately, 20 minutes. This means that the interview will not interfere with their working hours or duties in the Law Clinic. There are absolutely no negative consequences to you, the candidates or the Law Clinic for taking part in the research. Instead the research data gathered will be used to understand the extent to which admission exams promote professional standards in the legal profession. Furthermore, the research will not negatively affect or tamper with the performance of the candidate legal practitioners in their duties to the Law Clinic. The names of the candidate legal practitioners and the Law Clinic will never be revealed in the research nor in any publications arising from the study.

Participation in this research is entirely voluntary. Therefore, no form of coercion will be used to force the candidate legal practitioners to take part without their full consent. If you chose not to grant permission for the research, there will be no negative consequences implicated in your decision.

All research data (electronic and material) will be kept securely in locked offices at the University of the Witwatersrand and will be destroyed five years after completing the project. The findings of the research will be used for academic purposes (including book chapters, journals and conference papers). A summary of findings will be made available to participants on request.

If you are willing to permit the candidate legal practitioners of your Law Clinic to participate in this research project, I would ask that you complete and sign the slip below. If you have any queries regarding any aspect of our research, please do not hesitate to contact me or my research supervisor, Professor Lee Rusznyak.

Kind regards

Thulani Nkosi
xxxx@students.wits.ac.za
000 0000 000

Prof. Lee Rusznyak (Supervisor)
Lee.Rusznyak@wits.ac.za
011 0000 000

I _____ (full name) I have read and understood the “permission letter”

I, therefore, do grant the permission to the researcher to conduct the study in my Law Clinic and to work with the selected candidate legal practitioner/s **Yes/ No**

Signature:
Date:

APPENDIX B2: Invite to candidates to participate in study

Candidate invitation to participate letter



07 October 2022

Dear Candidate Legal Practitioner,

Information about research study and invitation to participate

I am Thulani Nkosi and I am registered M Ed student at the Wits school of Education.

As part of my studies I am conducting research under the supervision of Prof. Lee Rusznyak which investigates what knowledge work is valued in attorneys' admission exams. The title of my study is: **What knowledge work is valued in admission exams for attorneys? An analysis of their focus and basis of legitimation.**

The purpose of this study is to investigate what knowledge, skills and competences are assessed in the admission exams. This investigation aims to determine if the knowledge and skills valued by the legal profession finds expression in the admission exams. You are a suitable participant to participate in this study because you are currently undergoing your practical vocational legal training where you will be expected to sit for the admission exams. To understand what knowledge work is valued in admission exams, I ask that you participate in this study by answering one question in the previous question papers and by availing yourself for a 20 minutes interview.

The choice whether or not to participate in this study is entirely up to you. A decision to participate or not will not advantage or disadvantage you in any way. However, the findings will be useful for understanding the focus and basis of legitimation of the admission exams. Your participation will be greatly appreciated.

- Your name and identity will be kept confidential at all times.
- You will not be identified in any reports or publications that come out of the research.
- No one else will be able to tell whether or not you have agreed to participate in the research study.

Participation in this research is entirely voluntary. If you chose not to take part in the research, there will be no negative consequences implicated in your decision. There are no direct benefits to you, but we expect that our research findings will be used to inform and contribute to the ongoing research on the assessment of prospective legal practitioners through the Legal Professional Council examinations.

All research data (electronic and material) will be kept securely in a password protected computer that is kept in a locked office. The findings of the research will be used for academic purposes (including my book chapters, journals and conference papers). A summary of findings will be made available to participants on request and submitted to the Legal Professional Council.

If you are willing to participate, I would ask that you complete and sign the attached consent forms. If you have any queries regarding any aspect of our research, please do not hesitate to contact me or my research supervisor, Professor Lee Rusznyak (LeeRusznyak@wits.ac.za). In the event of any problems or concerns/questions you may contact the researchers, or the University Research Ethics Committee, contact details as follows: University of the Witwatersrand Human Research Ethics Committee (Non-Medical), telephone +27(0) 11 717 1408, email Shaun.Schoeman@wits.ac.za.

Thank you for taking time to consider this invitation.

Yours faithfully,

THULANI NKOSI

xxxxx@students.wits.ac.za

000 0000 000

APPENDIX B3: Survey questionnaire

Preparing for the Board examination

Dear Candidate,

My name is Thulani Nkosi, I am a Master of Education student at the Wits School of Education. I am conducting a study on what knowledge work is valued in the admission exams for attorneys. I am investigating what knowledge, skills and competences are assessed by the attorneys' admission exams administered by the South African Legal Practice Council. I am working under the supervision of Prof. Lee Rusznyak.

I invite you to participate in my research project. Your involvement would be to complete an online survey that should take 20 minutes of your time to complete.

I have been given Ethics Clearance from the University of the Witwatersrand Ethics Committee. To ensure that my research is ethical, I assure you that your personal details will never be revealed in my study. You are also able to withdraw participation at any time. You will not be remunerated for participating, but your response will contribute to a deeper understanding of what knowledges, procedures and competences are valued in the admission exam. Participation in this research is entirely voluntary and you may withdraw from the study at any time with no negative consequences. If you do choose to participate, all information about you will be completely confidential and anonymous. All data (electronic and material) will be secured in a password protected database where your name and any identifying details will be anonymized. We also request whether you give your permission for your responses to be used in future studies with a research team led by Prof Lee Rusznyak.

If you are willing to participate, please complete the Informed Consent section and then respond to the questions that follow. If there are any questions you have about this research, you may email me or my supervisor (Lee.Rusznyak@wits.ac.za).

Thank you for considering my invitation.

Yours sincerely,

Thulani Nkosi (0420176X)

nkosit3@gmail.com

1. Email *
2. **Have you read the letter inviting you to participate in the research project "What knowledge work is valued in the admission exams for attorneys"?**

Mark only one oval.

Yes, I have read the invitation letter

3. **Please indicate that you understand that your identity will never be revealed in the research and publications that come from this study.**

Mark only one oval.

I understand that if I participate in the study, my privacy will be maintained.

4. **Please indicate that your participation is voluntary and that you are aware that you may withdraw from the study at any point with no consequences**

Mark only one oval.

I understand that my participation in this study is voluntary and that I may withdraw my consent at any time without consequences.

5. Do you give your consent to be a participant in this study and complete an online survey?

Mark only one oval.

Yes, I would like to participate in the study.

No, I do not wish to participate in the study.

6. Please indicate whether you are willing to make your responses to the survey available to the research team for further studies?

Mark only one oval.

Yes, the research team may use my responses to the survey in further studies on professional learning in teacher education.

No, the research team may not use my responses to the survey in further studies on the professional learning of preservice teachers.

7. Please provide your email address so that we can withdraw your response if needs be.

8. How is your Practical Vocational Training similar to your university work?

9. How is your Practical Vocational Training different to your university work?

SURVEY: Your preparation in the practical vocational training (PVT) programme.

Which of the following aspects of legal work have you encountered during your practical vocational training?

If possible, provide an example.

10. 1a. During your PVT, have you had to explain legal concepts and/or principles to others?

Mark only one oval.

Yes, I've done this a lot.

Yes, I've done this sometimes.

Yes, I've done this occasionally.

No, I have not done this at all.

11. 1b. If your answer to the above was "Yes" please provide an example.

12. 2a. During your PVT, have you had to draw on knowledge of statutes, court procedures and/or legal precedents?

Mark only one oval.

Yes, I've done this a lot.

Yes, I've done this sometimes.

Yes, I've done this occasionally.

No, I have not done this at all.

13. **2b. If your answer to the above was 'Yes" please provide an example.**

14. **3a. During your PVT, have you had to give legal opinion?**

Mark only one oval.

Yes, I've done this a lot.

Yes, I've done this sometimes.

Yes, I've done this occasionally.

No, I have not done this at all.

15. **3b. If your answer to the above was 'Yes" please provide an example.**

16. **4a. During your PVT, have you had to provide a justification for a legal opinion or position?**

Mark only one oval.

Yes, I've done this a lot.

Yes, I've done this sometimes.

Yes, I've done this occasionally.

No, I have not done this at all.

17. **4b. If your answer to the above was 'Yes" please provide an example.**

18. **5a. During your PVT, have you had to turn specialized legal language into simple everyday language?**

Mark only one oval.

Yes, I've done this a lot.

Yes, I've done this sometimes.

Yes, I've done this occasionally.

No, I have not done this at all.

19. **5b. If your answer to the above was 'Yes" please provide an example.**

20. **6a. During your PVT, have you had to turn everyday language into specialized legal language?**

Mark only one oval.

Yes, I've done this a lot.

Yes, I've done this sometimes.

Yes, I've done this occasionally.

No, I have not done this at all.

21. **6b. If your answer to the above was 'Yes" please provide an example.**

22. **7. During your PVT have you needed to draw up legal documents in the specialised format required by the courts?**

Mark only one oval.

Yes, I've done this a lot.

Yes, I have done this sometimes.

Yes, I've done this occasionally, or partially (with support from others).

No, I have not done this at all.

- 23. **7b. If the answer to the above was 'yes' please provide an example.**
- 24. **8. Is there anything you are doing a lot in your PVT that has not be mentioned here?
Please give details.**
- 25. **9. Is there anything you expected to do during your PVT but you are not doing at all?**
- 26. **10. What do you expect to be asked to do or explain in the admission exam?**

APPENDIX C: Ethics clearance certificate



SCHOOL OF EDUCATION ETHICS COMMITTEE

CONSTITUTED UNDER THE UNIVERSITY HUMAN RESEARCH ETHICS COMMITTEE (NON-MEDICAL)

CLEARANCE CERTIFICATE

PROTOCOL NUMBER: 2023ECE025M

PROJECT TITLE

What knowledge work is valued in admission exams for attorneys? An analysis of their focus and basis of legitimization

INVESTIGATOR

Nkosi Thulani

SCHOOL/DEPARTMENT OF INVESTIGATOR

Wits School of Education

DATE CONSIDERED

12 June 2023

DECISION OF THE COMMITTEE

Approved unconditionally

RISK LEVEL

Minimal risk

EXPIRY DATE

Date of submission of the Research Report

ISSUE DATE OF CERTIFICATE

26 June 2023

cc: Prof. Lee Rusznyak

CHAIRPERSON

Dr. Batseba Moloto-Mbokane

DECLARATION OF INVESTIGATOR

To be completed in duplicate and ONE COPY returned to the Chairperson of the School/Department ethics committee.

I fully understand the conditions under which I am authorized to carry out the abovementioned research and I guarantee to ensure compliance with these conditions. Should any departure to be contemplated from the research procedure as approved I/we undertake to resubmit the protocol to the Committee.

Signature

Date

27, 07, 2023