

National Bar Examination Board

Extracts from the report of the convenor of the NBE Board, Archie Findlay SC, of the Durban Bar

December 1997 examination

A total of 74 candidates wrote the Bar examination. Fifty three passed (of whom 23 passed with sufficiently high marks as to be exempted from oral examination, including four who had repeated pupillage). Of the remaining 50 who passed, 13 had repeated their pupillage. Of the remaining 20 who failed, one failed outright without being invited to an oral examination. One did not attend the oral examination and accordingly failed. Six of those who failed were candidates who had repeated their pupillage. This represents an overall pass of 73% which is the best pass rate achieved for some time, especially in the light of the fact that only one pupil failed outright.

The most notable feature of the written examination was the almost 100% pass rate in Legal Writing. Apart from errors in cast which were brought to light and rectified by the moderators, their reports express general satisfaction with the examination. It became necessary, because of the heavy workload of official duties imposed upon one of the moderators, to approach the Honourable Mr Justice C Botha of the Transvaal Provincial Division to assist as an additional Moderator and the Board records its gratitude to him.

A total of 49 pupils attended the orals at the four main centres and many of the pupils were able to rehabilitate themselves in the oral examinations. Notably 25 of the pupils who had failed the written paper in Motion Court, 13 in Ethics, 4 in Criminal Procedure and 6 in Civil Trials all converted their failures to passes, some attaining good marks in the oral examination, despite bad failure in the written examinations, especially in Motion Court.

One pupil applied for and was granted a special dispensation to attend the oral examination despite her not having written two papers due to illness. She, however, did not attend the oral examination.

This examination reflected (as in the past) a wide range of marks which I tabulate below.

General

This was the first occasion that the Board had to consider the situation of a pupil who did not write two papers, yet applied for permission to attend the oral examination. The Board resolved that, should this happen in the future, a pupil who does not write a paper or papers (other than the Legal Writing paper) may, in exceptional circumstances, be permitted to attend the oral examination. If a pupil does not write the Legal Writing paper, that pupil will fail the examination.

Because of problems which have been experienced with regard to the written scripts submitted to the markers and the moderators, the Board asks that the GCB request that all constituent Bars at the respective examination centres ensure that examination books are used by candidates and that no loose sheets are written on and submitted. The Board also asks that the GCB request these Bars to reflect on the cover (whether printed or as a separate stick-on sheet) a table in order that the marks assigned by the internal examiner and the moderator may be reflected per question.

The Board requests that the GCB remind constituent Bars of the requirements of Rule 8.1.2 as it is still being called upon to consider condonation applications for very late admissions taking place almost after the final Board meeting. The Board ratified the decision

of the convenor to approve condonation granted by the Natal Bar of the late commencement of pupillage because the pupils had arranged their affairs to commence on 1 March 1998 before the change came into being but it is assumed that this is unlikely to occur in the future.

Because of the increase in the workload of the judge moderators, the Board has decided to accept the offer made by the GCB that a fourth judge moderator be added to the Board as a permanent member and the convenor has been instructed to approach possible appointees after consultation with the present judge moderators.

The Board notes that there is an application presently pending before the Witwatersrand Local Division of the High Court for the setting aside of the 1996 Criminal Procedure oral examination in respect of a pupil who failed. The Board further notes that the pupil cited only one Judge Moderator (without the consent of the Judge President) and one examiner, but not the Board. As the matter is sub judice and already being opposed by the GCB which is the other respondent in the proceedings, the Board makes no further comment.* 

* *Judgment has in the meanwhile been delivered. See the note on p 60. – Editor*

EXAMINATION RESULTS

%	Legal Writing	Motion Court	Ethics	Criminal Procedure	Civil Trials
90-100	–	–	–	1	–
80-98	6	–	–	5	2
70-79	19	3	8	15	13
60-69	28	19	16	23	26
50-59	20	36	42	18	21
40-49	1	6	5	10	7
30-39	–	6	3	–	4
20-29	–	4	–	1	–
10-19	–	–	–	–	–
0-9	–	–	–	–	–

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Pupils against the GCB

ON 21 February 1998 Eloff JP gave judgment in the matter of *Matime v General Council of the Bar and Two Others* (unreported, WLD case no 30282/97). In that case a pupil sought to review a decision by the National Bar Examination Board to fail him in criminal procedure in the oral examination. The pupil joined

Joffe (who was the Judge Moderator) and Du Plessis (who as member of the Johannesburg Bar was the criminal oral examiner) as parties. Eloff JP held that their joinder was ill-founded. On the merits, the court dismissed the application on several grounds. These were that the decision to fail the pupil was not reviewable; that on

the facts no cause of action had been established; and that the delay of one year in bringing the application was fatal.

This case and also *Mkwentla v The General Council of the Bar of South Africa* (unreported, WLD case no 02253/95) will be reviewed in the next issue of *Consultus*. 

Diary

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THE Inns of Court School of Law is hosting a "Worldwide Advocacy Conference" in London from 29 June - 3 July 1998. Renowned experts will take part in the plenary and workshop

sessions on subjects ranging from "Role of the advocate" to "Comparative teaching methods".

Eberhard Bertelsmann SC of the Pretoria Bar is one of the key note

speakers of the plenary session dealing with with "The way forward".

For more details contact Elize van den Heever, Secretary of the GCB, tel: (011) 336-3976 or fax: (011) 336-8970. 

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