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Rules of the Council of Legal Education.

RULES RELATING TO THE QUALIFICATION AND ADMISSION OF CANDIDATES.

*The 17th day of October, 1962.

IN pursuance of the authority in this behalf conferred upon the Council of Legal Education by the *Legal Profession Practice Act 1958*, the said Council hereby makes the following Rules which may be cited as the Rules of the Council of Legal Education 1962, and which are divided into Parts, Divisions, and subdivisions as follows:—

PART I.—Preliminary, rr. 1-4.

PART II.—The Board of Examiners, rr. 5-8.

PART III.—Legal Education Committee, rr. 9-11.

PART IV.—Qualifications, rr. 12-46.

Division 1.—Introductory, rr. 12-13.

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*These Rules came into operation on the 4th day of January, 1963, being one month after their transmission to the Governor in Council—*Legal Profession Practice Act 1958*, s. 14 (7).

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PART I.—PRELIMINARY.

- Consolidation and amendment.** 1. These Rules are hereby declared to be Rules consolidating and amending all the Rules of the Council in force immediately prior to the coming into operation of these Rules.
- Repeal and saving.** 2. (1) All the Rules of the Council in force immediately prior to the coming into operation of these Rules are hereby repealed, but this repeal shall not—
- (a) revive any Rule of the Council not in force at the time at which the repeal takes effect; nor
 - (b) affect the previous operation of any Rule so repealed or anything duly done thereunder; nor
 - (c) affect any admission, right, privilege, obligation, or liability made, acquired, accrued, or incurred thereunder.
- (2) Notwithstanding the repeal of any Rules formerly in force or anything contained in these Rules, any person who has before the coming into operation of these Rules—
- (a) qualified for the Degree of Bachelor of Laws at the University of Melbourne or the Australian National University; or
 - (b) passed at any annual examination of the University in any subject in which he was required to pass at the University under the Rules then in force relating to candidates not obtaining the Degree of Bachelor of Laws; or
 - (c) under the former Rules—
 - (i) obtained a certificate that he is a managing clerk; or
 - (ii) being an official, obtained a certificate entitling him to exemption from articles; or
 - (iii) being a person who served in the war of 1914-1921, obtained a certificate that he is fit to pursue the articulated clerk's course; or
 - (d) entered into articles of clerkship under the former Rules—
- may qualify for admission to practise as a barrister and solicitor, pursuant to those Rules:
- Provided that every such person shall comply with Part V. of these Rules and shall be deemed to have thereby complied with the provisions relating to admission in the former Rules.
- (3) If and so far as any subject of examination prescribed by any Rules formerly in force is not prescribed by these Rules, the Faculty shall determine what subjects or subject or part of a subject prescribed by these Rules may be passed in lieu thereof, and a person who has passed therein shall be deemed to have complied with the requirements of the former Rules with regard to the first-mentioned subject.
- Interpretation.** 3. (1) In these Rules unless inconsistent with the context or subject-matter—
- (a) "Admission" means admission to practise as a barrister and solicitor and "admitted" has a corresponding meaning.
 - (b) "Barrister and Solicitor" means barrister and solicitor of the Supreme Court.
 - (c) "Board" means the Board of Examiners.
 - (d) "British practitioner" means any person duly admitted and at the time of his application for admission under these Rules entitled to practise as a barrister, advocate, counsel, attorney, writer to the signet, or legal practitioner howsoever styled of the superior Courts of England, Scotland, Northern Ireland, or the Republic of Ireland, and includes a law agent of Scotland duly enrolled as such.
 - (e) "Council" means the Council of Legal Education.
 - (f) "Faculty" means the Faculty of Law of the University.
 - (g) "Institute" means the Law Institute of Victoria.

- (h) "Interstate practitioner" means any person duly admitted and at the time of his application for admission under these Rules entitled to practise as a barrister or solicitor or attorney or a barrister and solicitor or a legal practitioner howsoever styled of the Supreme Court of any State of the Commonwealth.
- (i) "New Zealand practitioner" means any person duly admitted and at the time of his application for admission under these Rules entitled to practise as a barrister and solicitor or barrister or solicitor of the Supreme Court of New Zealand.
- (j) "Supreme Court" means the Supreme Court of the State of Victoria.
- (k) "University" means the University of Melbourne.
- (l) "Victorian candidate" means a person, not previously admitted, who desires to be admitted and who is not an "Interstate Practitioner" or a "British practitioner" or a "New Zealand practitioner."
- (m) Words importing the masculine gender shall be deemed and taken to include females and the singular to include the plural and the plural the singular.

(2) The headings of the Parts, Divisions, and subdivisions into which these or any subsequent Rules of the Council are divided shall be deemed to be part of the Rules, but neither marginal notes nor footnotes to the Rules shall be deemed to be part thereof.

4. When these Rules provide that any document shall be in the **Forms** form prescribed by these Rules, such document shall be in the form in the Schedules hereto applicable for the purpose or shall be in such other form as the Board approves either generally or in respect of any particular case as being in substantial compliance with the Rules for the time being in force.

PART II.—THE BOARD OF EXAMINERS.

5. There shall be a Board of Examiners for barristers and **Board** solicitors.

6. The Board shall consist of Her Majesty's Attorney-General **Constitution** for Victoria, Her Majesty's Solicitor-General for Victoria and six practising barristers and solicitors, who shall be appointed by the Judges of the Supreme Court in December of each year to act during the ensuing year. In the event of a vacancy occurring during the year, the Judges may fill that vacancy.

7. At its first meeting in each year the Board shall elect one **Chairman** of its members to be chairman.

8. (a) The Board shall meet seven days before the first day of **Procedure** each sitting of the Full Court, and at other times as occasion may require.

(b) The chairman, or in his absence an acting chairman appointed by the members present from their number, shall preside at meetings of the Board.

(c) Three shall form the quorum for the transaction of business.

(d) The Board may adjourn its meetings from time to time as it finds convenient, and for the purpose of adjourning a meeting it shall not be necessary that a quorum be present.

(e) Unless otherwise provided, all questions shall be decided by a majority of those present, and the chairman or acting chairman as the case may be shall have a casting vote as well as a deliberative vote.

(f) Unless the Board otherwise determines, a Master of the Supreme Court, to be designated by the Chief Justice, shall be the secretary of the Board of Examiners.

PART III.—LEGAL EDUCATION COMMITTEE.

- Powers.** 9. There shall be a Legal Education Committee which, on behalf of the Council and subject to its directions, shall have authority:—
- (a) to prescribe the scope and content and to approve of and supervise the conducting of courses of tuition for Victorian candidates seeking to qualify for admission by taking the course for articled clerks or as managing clerks in the manner provided for in Rules 21 and 24;
 - (b) to nominate lecturers and tutors for appointment by any institution providing approved courses of tuition for such candidates;
 - (c) to hold or approve of the holding by any institution of examinations for the purposes of Rules 21 and 24, to appoint or approve the appointment of examiners for any such examinations and to direct how, when and where such examinations shall be held and to determine the standards to be applied thereat;
 - (d) to determine the eligibility of any person to seek to qualify for admission in the manner provided for in Rules 21 and 24 and to exercise, by the unanimous decision of those present, in relation to persons seeking to qualify under those Rules the powers exercisable by the Board of Examiners under Rule 53 in relation to other persons;
 - (e) to perform such other functions as are assigned to it under these Rules.
- Constitution.** 10. (1) The Legal Education Committee shall consist of two Judges of the Supreme Court appointed by the Chief Justice, the person for the time being holding the office of Solicitor-General, a person appointed by the Faculty, a person appointed by the Council of the Institute, and a person appointed by the Victorian Bar Council.
- (2) Each of the powers to appoint conferred by the preceding sub-rule shall carry with it a power to remove and a power to fill any vacancy whether arising from a removal or otherwise.
- Chairman.** 11. (1) The senior in point of judicial service of the Judges who are members of the Legal Education Committee shall be the Chairman thereof.
- (2) Meetings of the Legal Education Committee may be convened by or with the authority of the Chairman or any two members thereof by notice in writing to the members specifying the time and place of the meeting.
- (3) The Chairman, or in his absence an acting chairman appointed by the members present from their number, shall preside at meetings of the Legal Education Committee.
- (4) Three shall form the quorum for the transaction of business.
- (5) The Legal Education Committee may adjourn its meetings from time to time as it finds convenient and for the purpose of adjourning a meeting it shall not be necessary that a quorum be present.
- (6) All questions shall be decided by a majority of those present at the meeting and the Chairman or acting chairman, as the case may be shall have a casting as well as a deliberative vote.
- (7) The Secretary for the time being of the Board of Examiners shall be secretary of the Legal Education Committee.

PART IV.—QUALIFICATIONS.

Division 1.—Introductory.

12. No person shall be admitted who is not a British subject aged 21 years or more. Personal qualifications.

13. A Victorian candidate may qualify under these Rules for admission— Victorian candidates.

(a) by obtaining the degree of Bachelor of Laws at the University of Melbourne or the Australian National University; or

(b) by taking the course for Articled Clerks; or

(c) as a managing clerk—

and by complying with such of the provisions of these Rules as to service under articles and otherwise, and of any Statute and Rule of Court relating to his qualification and admission, as may be applicable to his case.

Division 2.—Interstate, British, and New Zealand Practitioners.

14. An interstate practitioner, subject to the payment of the fees prescribed by or under any Statute and to compliance with such of these Rules as are applicable to his case, may be admitted. Interstate practitioners. Rule 49.

15. A British practitioner, subject to the payment of the fees prescribed by or under any Statute and to compliance with such of these Rules as are applicable to his case, may be admitted. British practitioners. Rule 49.

16. A New Zealand practitioner, subject to the payment of the fees prescribed by or under any Statute and to compliance with such of these Rules as are applicable to his case, may be admitted. New Zealand practitioners. Rule 49.

17. For the purposes of this Division an interstate practitioner, a British practitioner, and a New Zealand practitioner shall be deemed to be entitled to practise, although he has not a current practising certificate, if it appears to the Board that he would be entitled to obtain that certificate as of course on paying the usual fees. Who is entitled to practise.

Division 3.—Candidates obtaining the Degree of Bachelor of Laws.

18. A Victorian candidate to qualify for admission by obtaining the degree of Bachelor of Laws shall— Bachelor of Laws.

(a) obtain his degree at the University of Melbourne or the Australian National University;

(b) pass at the University, either as part of the course for the degree or otherwise, in Procedure, Accounts, Professional Conduct, Evidence and Taxation, provided that—

(i) a candidate who, pursuant to Rules then in force, has passed in any subject which the Faculty certifies to be the substantial equivalent of any subject prescribed herein shall be deemed for the purpose of this Rule to have passed in the subject so prescribed;

(ii) a candidate who has passed an examination or examinations conducted by any university or any other examining authority approved for the purpose by the Faculty as substantially equivalent to the examination at the University in any subject prescribed by these Rules may be exempted by the Board from passing in that subject; and

(c) after qualifying to obtain his degree serve in accordance with the provisions of these Rules for a period of at least one year as a clerk under articles.

*Division 4.—Candidates taking the Course for Articled Clerks.*Articled
clerks.

19. A Victorian candidate to qualify for admission by taking the course for articled clerks shall—

(a) either—

(i) obtain from the Registrar of the University a certificate that he has matriculated or is qualified to matriculate or has satisfied the requirements for University entrance as an adult; or

(ii) being a person who was engaged in war service as defined in these Rules obtain a certificate under these Rules that he is fit to pursue the course for articled clerks; and

(b) after obtaining such of the certificates referred to in sub-rule (a) as are applicable to his case pass at the University in the manner hereinafter prescribed in the following subjects, namely:—

1. Introduction to Legal Method.
2. Principles of Contract.
3. Criminal Law and Procedure.
4. Tort.
5. Constitutional Law.
6. Mercantile Law.
7. Principles of Property in Land.
8. Domestic Relations.
9. Evidence.
10. Principles of Equity.
11. Conveyancing.
12. Taxation.
13. Company Law.
14. Private International Law.
15. Law Relating to Executors and Trustees.
16. Procedure.
17. Accounts.
18. Professional Conduct.

Provided that—

(i) subject to the provisions of Rule 20 a candidate who, pursuant to Rules then in force, has passed in any subject which the Faculty certifies to be the substantial equivalent of any subject prescribed herein shall be deemed for the purposes of this Rule to have passed in the subject so prescribed;

(ii) a candidate who has passed an examination or examinations conducted by any university or any other examining authority approved for the purpose by the Faculty as substantially equivalent to the examination at the University in any subject prescribed by these Rules may be exempted by the Board from passing in that subject; and

(c) after he has passed at the University in the subject of Introduction to Legal Method, Principles of Contract, Criminal Law and Procedure, and Tort, serve in accordance with the provisions of these Rules for a period of at least four years as a clerk under articles.

Sequence of
subjects.

20. (1) Subject to the provisions of these Rules, such a candidate shall, whether before, during, or after service under articles, pass the subjects prescribed in the last preceding rule in the sequence indicated therein, or in such other sequence as in particular cases to meet special circumstances the Faculty decides.

Provided that—

(i) a person who fails in any subject may with the permission of the Faculty present himself for examination therein otherwise than in such sequence;

(ii) any subjects passed at the same examination shall be deemed to have been passed in the sequence indicated in the last preceding rule;

(iii) a candidate shall not except with the permission of the Faculty present himself for examination in more than four subjects at the one examination.

(2) A candidate shall for the purposes of these Rules be deemed not to have passed in Introduction to Legal Method, Principles of Contract or Criminal Law and Procedure unless he has studied those three subjects concurrently and has passed in those three subjects at the one examination. Provided that any candidate exempted by the Board from passing in one or two of those three subjects may satisfy the requirements of this sub-rule by passing at the one examination in the remaining two subjects or in the remaining subject and at least one other prescribed subject approved by the Faculty.

(3) The provisions of sub-rule (2) hereof shall not apply to—

(i) a candidate who enrolls at the University for external studies in Introduction to Legal Method, Principles of Contract and Criminal Law and Procedure and passes in those three subjects or any of them as an external student, or

(ii) a candidate who—

(a) enrolls at the University as a part-time student for Introduction to Legal Method and Principles of Contract,

(b) studies those two subjects concurrently,

(c) passes in those two subjects at the one examination, and

(d) satisfies the Faculty that he was engaged, apart from study in the University, in paid employment requiring substantial service during the academic year in which he passed in those subjects, or

(iii) a candidate who has passed in or been deemed to have passed in or been exempted from passing in one or more of Introduction to Legal Method, Principles of Contract and Criminal Law and Procedure before the Thirty-first day of March, 1959, and who passes in the remaining subject or subjects by the Thirty-first day of March, 1960, or with the approval of the Faculty expressed to be given for this purpose, by some later date.

(4) For the purpose of these Rules the Annual examination of the University and any special or supplementary examination held in connexion therewith shall be deemed to be one examination.

21. In relation to any Victorian candidate who, being otherwise eligible to study the subject "Introduction to Legal Method" at the University, has been prevented from doing so by the operation of a quota system in the Faculty, these Rules shall be read and have operation—

Application of
University
Quota System

(a) as though in paragraph (b) of Rule 19 for the words "pass at the University in the manner hereinafter prescribed" there were substituted the words "pass in the manner hereinafter prescribed at examinations held or approved by the Legal Education Committee";

(b) as though in Rules 19 and 20 for the words "the Faculty", wherever appearing there were substituted the words "the Legal Education Committee";

(c) as though in paragraph (c) of Rule 19 the words "at the University" were deleted;

(d) as though for sub-rule (3) of Rule 20 there were substituted the following sub-rule:—

"(3) The provisions of sub-rule (2) hereof shall not apply to a candidate who—

(i) studies Introduction to Legal Method and Principles of Contract concurrently;

(ii) passes in those two subjects at the one examination;

(iii) satisfies the Legal Education Committee that he was engaged in paid employment requiring substantial service during the year in which he passed in those subjects”;

(e) as though in sub-rule 4 of Rule 20 the words “ of the University ” were deleted.

Examinations. 22. (1) The examinations referred to in Rule 21 shall be held once in each year at times and places determined or approved by the Legal Education Committee.

(2) No candidate shall be admitted to the examination in any subject without the approval of the Legal Education Committee unless on or before the first day of September preceding the examination he has notified the Secretary of the Legal Education Committee in writing of his desire to sit and paid to the Secretary, or as he directs the examination fee, if any, fixed by the Legal Education Committee in respect of that subject.

(3) Examination fees received by the Secretary of the Legal Education Committee shall be applied by the Legal Education Committee in or towards defraying the expenses of conducting examinations.

(4) The Legal Education Committee may provide courses of lectures and tutorial classes for candidates referred to in Rule 21 and may charge such fees for admission to the courses and classes as it considers necessary to defray the expenses of providing them.

Division 5.—Managing Clerks.

Managing clerks. 23. A Victorian candidate to qualify for admission as a managing clerk shall—

- (a) obtain a certificate from the Council of the Institute that he is a managing clerk;
- (b) at least ten clear days before the first day of the sittings in which he applies for admission file the same in the office of the Prothonotary, together with an affidavit of verification; and
- (c) either before or after he obtains the certificate pass at the University in the subjects prescribed for candidates taking the course for articled clerks in the same manner, but not subject to the provisions of Rule 20 (2), as is prescribed for those candidates.

Provided that a candidate who has passed an examination or examinations conducted by any university or any other examining authority approved for the purpose by the Faculty as substantially equivalent to the examination at the University in any subject prescribed by these Rules may be exempted by the Board from passing in that subject.

Application of University Quota System to Managing Clerks. 24. In relation to any candidate referred to in Rule 21, paragraph (c) of Rule 23 shall be read and have operation as though the words “ at the University ” were deleted therefrom and the proviso to Rule 23 shall be read and have operation as though for the words “ the Faculty ” there were substituted the words “ the Legal Education Committee ”.

Qualifications. 25. (1) Before granting a certificate the Council of the Institute shall satisfy itself that the candidate has for not less than the period referred to in sub-rule (2) hereof, and in accordance with the conditions and provisions of sub-rule (3) hereof, as a clerk to and under the immediate direction and supervision of a barrister and solicitor practising in Victoria (in this Division called “ the principal ”)—

- (a) directed at least one other clerk (not being a typist or office-boy or messenger) in the employ of the principal; and

(b) managed—

- (i) the practice of the principal; or
- (ii) the Common Law or Conveyancing Department and in either case some other Department of that practice; or
- (iii) the Common Law or Conveyancing Department of that practice so long as the transactions of either of those Departments have been of so extensive and varied a character as to have required him to devote the whole of his time and attention thereto.

(2) The period referred to in sub-rule (1) hereof shall be—

- (a) ten years, if at any time he has passed in the subject of English at any public examination of the University; or satisfied the Council of the Institute that his educational acquirements in English are equal to the standard of such public examination; or
- (b) five years, if before the commencement of that period he has either—
 - (i) completed in the office of any barrister and solicitor practising in Victoria a period of clerkship of not less than ten years and passed in the subject of English at any public examination of the University or satisfied the Council of the Institute as aforesaid; or
 - (ii) completed as aforesaid a period of clerkship of not less than five years and obtained the School Intermediate Certificate or passed an examination of the University or of any other teaching or examining authority which in the opinion of the Council of the Institute is substantially equivalent thereto; or
- (c) three years, if before the commencement of that period he has—
 - (i) completed as aforesaid a period of clerkship of not less than five years; and
 - (ii) obtained the School Leaving Certificate or passed an examination of the University or of any other teaching or examining authority which in the opinion of the Council of the Institute is substantially equivalent thereto.

(3) The conditions and provisions referred to in sub-rule (1) hereof are as follows:—

- (a) The period of management and when applicable the period of previous clerkship must have been continuous or substantially continuous, but may have been served in the office of more than one principal and either before or after or partly before and partly after the coming into operation of these Rules.
- (b) The managing clerk must not during the period of his management have been engaged during the ordinary hours of business of the office of his principal in any work relating to any office or in any trade, business, occupation, or employment other than his employment with the principal unless he has obtained the consent thereto in writing of the principal and also the sanction of the Council of the Institute.
- (c) The work of a Common Law Department managed as aforesaid must have included the preparation of matters for hearing in the Supreme Court or the High Court of Australia.

26. An application for a certificate under this Division shall be made not more than one year after the period of management relied on by the applicant has expired. Time for applying.

Division 6.—Officials.

- Dispensation of service under Articles.** 27. Service under articles shall be dispensed with where any person—
- (a) has completed a period of ten years' service in the offices of the Supreme Court, or of the Registry of the High Court of Australia, or of the Attorney-General, Solicitor-General, or Crown Solicitor for Victoria or the Commonwealth or any Deputy Crown Solicitor for the Commonwealth (or partly in one and partly in another); and
 - (b) obtains from the Council of the Institute a certificate that the said Council is satisfied that during the last five years of the period aforesaid his duties, and the work performed by him, have been such as to require a knowledge of the law, and to give a training in the practice of the law which may reasonably be accepted in lieu of service under articles.

Division 7.—War Service.

- Definition.** 28. For the purpose of this Division—
- (a) War service means continuous service in the Naval, Military or Air Forces of the Commonwealth, or in some other like Force of Her Majesty or Her Majesty's allies—
 - (i) for a period which commenced on or after the third day of September, 1939, and before the third day of September, 1945; or
 - (ii) in an operational area prescribed under section 107B (i) of the Commonwealth Repatriation Act 1920-1961.
 - (b) A person shall be deemed to have been engaged on war service during any period while he was a prisoner of war if he became such whilst on war service and also during any period after the termination of his war service during which he is through ill health or other disability arising from his war service incapacitated from serving under articles or acting as a managing clerk or official for the purpose of these Rules.
 - (c) The period of such war service may in all cases be sufficiently proved by a certificate from the Naval, Military, or Air Force authorities, or by such other evidence as the Board of Examiners or the Faculty as the case may be deems sufficient.
- Preliminary qualifications.** 29. (1) A person who has been engaged for at least six months on war service may apply to the Faculty for a certificate that he is fit to pursue the course for articulated clerks.
- (2) The Faculty may grant such a certificate either absolutely or subject to such conditions as it thinks fit.
- (3) A person who obtains such a certificate may qualify for admission as an articulated clerk although he has not qualified to matriculate; provided that if the certificate is granted, subject to any conditions, he shall comply with those conditions.
- Subjects passed elsewhere.** 30. A person who has been on war service and has passed an examination or examinations conducted by any University or any other examining authority approved for the purpose by the Faculty as substantially equivalent to the examination at the University in any subject prescribed by these Rules shall be deemed to have passed in that subject for the purpose of and at the time and in the manner required by these Rules.
- Legal Education Committee's Course.** 31. In relation to any candidate referred to in Rule 21, Rules 29 and 30 shall be read and have operation as though for the words "the Faculty" wherever appearing therein there were substituted the words "the Legal Education Committee."

32. When any Victorian candidate establishes to the satisfaction of the Board that he was on war service and that he has suffered hardship by reason of such service— ^{Partial exemptions.}

- (a) if he is a Bachelor of Laws or is taking the course for articled clerks—
 - (i) the period of service under articles required in his case, may, in the absolute discretion of the Board, be reduced by a period up to but not exceeding one-half of the prescribed period or a period equal to the period during which he was on war service, whichever is the less;
 - (ii) the period of service as an official required by these Rules may in the absolute discretion of the Board be reduced by a period up to but not exceeding one year or a period equal to the period during which he was on war service, whichever is the less;
- (b) if he proposes to qualify for admission as a managing clerk the period of management required in his case may in the absolute discretion of the Board be reduced by a period up to but not exceeding one year or a period equal to the period during which he was on war service, whichever is the less.

33. The fact that—

- (a) the period of clerkship and management of a person applying for a certificate that he is a managing clerk; or ^{Interruption of clerkship.}
- (b) the period of ten years' service of a person claiming exemption from articles as an official—

has been interrupted by war service shall not of itself be sufficient to prevent such clerkship, management, or service from being regarded as continuous or substantially continuous.

34. In reckoning the period of one year within which a person must apply for a certificate that he is a managing clerk, any time in which he was on war service shall be excluded. ^{Lapse of time.}

Division 8.—Service Under Articles.

35. (1) Articles of clerkship for the purpose of these Rules may be served in the State of Victoria, or subject to these Rules, in any other State or territory of the Commonwealth, England, Scotland, Northern Ireland, or the Republic of Ireland: ^{Where articles may be served.}
Provided that—

- (a) Articles may not be served outside Victoria except with the approval of the Board;
 - (b) not more than one year shall be served in England, Scotland, Northern Ireland, or the Republic of Ireland.
- (2) With the approval of the Board the period of service may be divided so that periods served in different States, Territories, or countries may be added together to make up the period of service required by the Rules.
- (3) The Board may give its approval under either of the last-preceding sub-rules, at any time before the candidate is admitted, and subject to such conditions as it thinks fit.

36. (1) Where articles of clerkship are served in the State of Victoria they shall be served with a barrister and solicitor duly admitted who, during the whole period of the articles— ^{With whom articles may be served.}

- (a) has continued to be on the roll of the Supreme Court;
- (b) has been the holder or for the purposes of the Legal Profession Practice Acts is deemed to have been the holder of a practising certificate; and
- (c) has practised within the State of Victoria.

(2) Where articles of clerkship are served outside Victoria they shall be served with a barrister and solicitor or legal practitioner howsoever styled duly admitted and during the whole period of the articles entitled to practise and practising in the place in which the articles are served.

(3) Notwithstanding anything contained in sub-rules (1) and (2) hereof, a permanent member of the Public Service of the Commonwealth may serve his articles with the Crown Solicitor for the Commonwealth or a Deputy Crown Solicitor for the Commonwealth and a permanent member of the Public Service of the State of Victoria may serve his articles with the Crown Solicitor for the State of Victoria.

(4) The barrister and solicitor or legal practitioner or the Crown Solicitor or Deputy Crown Solicitor with whom articles are served in accordance with this Rule is in this Division and the schedules to these Rules referred to as the "principal".

Restrictions
on number of
clerks.

37. Save with the approval of the Board no clerk shall enter into articles in Victoria with any barrister and solicitor who has not been in practice for a continuous period of five years, and no clerk shall be articled to any barrister and solicitor who has at the time more than one articulated clerk or to any member of a firm of two barristers and solicitors the members of which have more than three nor to any member of a firm of three or more barristers and solicitors the members of which have more than four articulated clerks. Notwithstanding anything in this Rule, the Crown Solicitor of Victoria may have five articulated clerks serving articles of clerkship with him at any one time: Provided that in ascertaining the number of articulated clerks for the purposes of this Rule—

(a) an articulated clerk who is absent from service under articles on war service as defined in Rule 28; and

(b) a clerk entering into supplementary articles in consequence of any such absence—

shall not be counted.

Restriction
on other
employment.

38. An articulated clerk during the period of his service under articles for the purposes of these Rules shall not be engaged in any work relating to any office or in any trade, business, occupation, or employment other than his employment with the principal or with any other barrister or solicitor or legal practitioner in whose office he is employed temporarily under the provisions in that behalf in these Rules—

(a) during hours outside the ordinary hours of business of the office of the principal or of the barrister and solicitor or legal practitioner in whose office he is so employed, unless he obtains the consent thereto in writing of the principal, or, if the principal refuses consent, unless he obtains the sanction of the Council of the Institute; or

(b) during the ordinary hours of business of the office of the principal or of the barrister and solicitor or legal practitioner in whose office he is so employed, unless he obtains the consent thereto, in writing of the principal and also the sanction of the Council of the Institute.

Holidays.

39. Every articulated clerk may as part of his period of service in addition to the public holidays be allowed—

(a) fourteen days' holiday for each year of service;

(b) leave of absence for the purposes of study and attendance at examinations not exceeding four days in respect of each subject for which he presents himself for examination; and

(c) in case of illness, leave of absence not exceeding seven days in all for each year of service.

Such holiday and sick leave may be allowed proportionately for any portion of a year which forms part of the period of service. Any day, other than a Saturday, Sunday, or public holiday, on which the principal's office is not open for business shall be reckoned as part of the clerk's holiday leave.

40. (1) An articed clerk without obtaining the approval of the Board may serve under the provisions of his articles or under supplementary articles, for such period as is necessary to complete the full period of service required by these Rules, in cases where in addition to the holidays and sick leave allowed by these Rules he has been absent from the service of his principal—

- (a) on duty for any period as a member of any naval, military, air, civil, or other force or service (howsoever designated) raised or formed by or under the authority of any Government for or in connexion with the defence of the Commonwealth of Australia or any other part of the British Commonwealth or Empire;
- (b) in case of illness for any period not exceeding three months in any year of service;
- (c) for any further period not exceeding thirty days in any year of service with the consent of his principal or in his absence his principal's partner.

(2) Notwithstanding anything contained therein articles may with the consent of the parties be assigned from one principal to another and a clerk may enter into supplementary articles, but the approval of the Board shall be obtained to any such assignment and to any supplementary articles except as provided in sub-rule (1) hereof. In granting such approval the Board may impose such conditions as it thinks fit, including the service of an additional period.

(3) Supplementary articles shall recite that the original contract has been terminated by mutual consent, death, or otherwise as the case may be and service under supplementary articles shall be deemed to be equivalent to service for a like period under the original articles.

41. With the consent of his principal, a clerk serving under articles may be employed temporarily in the office of another barrister and solicitor or legal practioner for the purpose of gaining additional experience for a period or periods not exceeding in all one-quarter of the period for which he is required to serve articles of clerkship: Provided that such other barrister and solicitor or legal practioner shall be a person with whom articles might have been served by such clerk under Rule 36. Any such period or periods not exceeding in all the length of time permitted by this paragraph for which the clerk is so employed shall be deemed to be service under his articles of clerkship for the purpose of these Rules; and in the articles of clerkship all references to service with the principal shall be deemed to include the employment permitted by this Rule.

42. Articles of clerkship shall be in the form prescribed by these Rules, and, when the clerk is a minor, shall contain covenants by an adult person for due performance of the articles by the clerk.

Schedule A.

43. (1) Every candidate required by these Rules to serve under articles of clerkship shall within one month (or, in the case of articles entered into in England, Scotland, Northern Ireland, or the Republic of Ireland, three months) after entering into articles (including supplementary articles) produce to the Board—

- (a) the articles;
- (b) an affidavit of verification thereof in the form prescribed by these Rules;
- (c) if the candidate proposes to qualify by obtaining the Degree of Bachelor of Laws—evidence that he has obtained or is qualified to obtain that degree; or
- (d) if the candidate proposes to qualify by taking the course for articed clerks—such of the certificates required to be obtained before entering on that course as are applicable to his case; and
- (e) such evidence as the Board may require that the articles are for a period sufficient in his case under these Rules.

Approval of articles.

Schedule B.

(2) Every such candidate shall also deliver to the Board a copy of the articles, and copies of the affidavit, evidence and certificates so produced, which shall be retained by the secretary subject to the directions of the Board.

(3) The Board shall consider the articles, affidavit, evidence and certificates and if it is satisfied that the candidate has duly complied with such of these Rules as are applicable to him and that the articles comply with these Rules and have been duly entered into, it shall certify its approval on the articles by the signature of a member of the Board and the secretary, and production of the articles so certified shall establish that the requirements of these Rules as to the matters in this sub-rule mentioned have been complied with.

(4) In any case where the Board is not satisfied that the articles comply with these Rules it may in its discretion either reject the same or give leave to the candidate to withdraw and re-submit the same within such period as the Board allows with such amendments as are necessary for compliance with these Rules. Upon production to the Board of the said articles so amended within such period as aforesaid together with an affidavit verifying the making of such amendments the Board may certify its approval of the said articles in manner aforesaid and articles so approved shall for the purpose of these Rules be deemed to have been validly made as from the date of their first execution.

Filing. 44. Articles of clerkship shall be filed in the office of the Prothonotary within one month of being approved by the Board, together with the affidavit of verification.

Termination of articles. 45. The Board may terminate existing articles on application to it either by the principal or by the clerk if the Board is satisfied that the clerk has ceased substantially to derive any benefit under the articles, or that the clerk is not receiving satisfactory general instruction or that for any other reason it is advisable to terminate the articles.

English practice. 46. In all matters not hereinbefore provided for relating to articles of clerkship and service thereunder the practice prevailing in England shall be followed.

PART V.—ADMISSION.

Notice of intention to apply for admission. Schedule C. 47. Every Victorian candidate shall not less than one month before the first day of the sittings in which he proposes to apply for admission—

- (a) serve the Secretary of the Board with written notice, in the form prescribed by these Rules of his intention to apply to be so admitted; and
- (b) post a copy of the notice at the office of the Prothonotary.

Filing of certificates. Affidavits and certificates. 48. Every Victorian candidate shall twenty-one clear days, or such lesser time as in any particular case the Board may determine, before the first day of the sittings in which he proposes to apply for admission*—

- (a) deliver to the Secretary of the Board—
 - (i) (when applicable) a certificate that he has obtained the degree of Bachelor of Laws in the University of Melbourne or the Australian National University (as the case may be);
 - (ii) a certificate that he has passed in the subjects and in the manner prescribed for his case by these Rules;
 - (iii) a certificate as to character in the form prescribed by these Rules signed by two barristers and solicitors neither of whom shall be a person with whom the candidate has served under articles or served as a clerk or managing clerk; and
 - (iv) in appropriate cases the certificate required in the case of an official;

* See also Rule 23 (b) as to managing clerks.

(b) file in the office of the Prothonotary—

- (i) an affidavit by his principal of service under Schedule D. articles (if by these Rules service under articles is required of the candidate) in the form prescribed by these Rules; and
- (ii) an affidavit by himself in support of his Schedule E. application in the form prescribed by those Rules.

49. (1) Every interstate practitioner and every New Zealand Admission of
practitioner applying to be admitted shall not less than two^{Interstate,}
months and every British practitioner shall not less than three^{New Zealand,}
months before the first day of the sittings in which he proposes^{and British}
to apply—^{practitioners.}

- (a) deliver to the secretary of the Institute a statement Schedule F.
signed by himself in the form prescribed by these Rules;
- (b) deliver to the Secretary of the Board a copy of that Schedule G.
statement signed by himself and a certificate as to character signed by two barristers and solicitors in the form prescribed by these Rules;
- (c) post a notice in the form prescribed by these Rules of Schedule C.
his intention to apply to be admitted at the office of the Prothonotary.

(2) Every such practitioner shall also twenty-one clear days, Schedule H.
or such lesser time as in any particular case the Board may determine, before the said first day of the sittings make and file in the office of the Prothonotary an affidavit of qualification in the form prescribed by these Rules so far as applicable to his case.

50. (1) Every person applying to be admitted to practise Application to Board of
shall in person make application to the Board of Examiners^{Examiners.}
for a certificate in the form prescribed by these Rules so far^{Schedule J.}
as the same is applicable to his case.

(2) The Board shall consider the application and if it appears to the Board that he is a fit and proper person to be admitted and that he has complied with the provisions of these Rules applicable to his case and has paid the fees required by law the Board shall give him a certificate in the form prescribed Schedule J.
by these Rules.

(3) Before granting a certificate the Board may require any applicant to supply further evidence in such form as it deems fit of any matter relevant for its consideration.

51. (1) Every person applying to be admitted shall appear Appearance
in person in Court and the certificate of the Board or the order^{in Court.}
of the Court on which he relies shall be produced to the Court.

(2) Except by leave of the Court no motion for admission shall be made except on the first day of the sittings.

52. Any person may show cause to the Board or to the Court^{Objections.}
why an applicant should not be admitted.

PART VI.—APPLICATION AND APPEALS.

53. If it appears to the Board upon any application made Powers of
to it—^{Board.}

- (a) that the applicant has failed to comply with any provision relating to his case contained in these Rules not being a matter falling within the authority of the Legal Education Committee; and
- (b) that the provision is of such a nature that compliance with it is then impossible or would occasion undue hardship and that the failure to comply with it has not substantially diminished the value of the training or qualifications required by these Rules—

then the Board by the unanimous decision of those present may dispense with compliance with the said provision.

Applications
to Law
Institute.

54. (1) All applications under these Rules to the Council of the Institute—

- (a) shall be in writing;
- (b) shall be supported by a statutory declaration of the applicant or such other evidence and information as the Council of the Institute reasonably requires; and
- (c) may be renewed from time to time at intervals of not less than six months upon further material.

(2) (a) An application by a managing clerk or an article clerk for the sanction of the Council of the Institute to his engaging in work relating to any office or to any trade, business, occupation, or employment, other than his employment with his principal, may be made at any time whether before or after the clerk has engaged in such work, trade, business, occupation, or employment.

(b) The said Council if it grants the sanction may impose such terms and conditions, whether relating to the work or employment or otherwise, as it thinks fit.

(c) When any terms and conditions are so imposed and the clerk engages in such work, trade, business, occupation, or employment he shall before admission satisfy the Board that he has duly observed and fulfilled those terms and conditions.

Appeals.

55. (1) Any person dissatisfied with any decision of—

- (a) the Board; or
- (b) the Council of the Institute; or
- (c) the Legal Education Committee—

may appeal to the Supreme Court or a Judge thereof.

(2) If the Board or the Council or the Legal Education Committee fails to determine any application within three months after it has been first submitted to it, the applicant may appeal as if the application had been determined adversely to him.

(3) The appeal shall be in the nature of a re-hearing and may be heard in Court or Chambers and the Court or Judge may dismiss or allow the appeal or may make such other order as it or he deems fit.

Schedule K.

(4) Every such appeal shall be instituted by notice in the form prescribed by these Rules, and the original shall be filed in the office of the Prothonotary.

Enlarging or
abridging
time.

56. (1) Upon application made for that purpose the Supreme Court or a Judge thereof shall have power, subject to such conditions as it or he imposes, to enlarge or abridge the time appointed by any of these Rules for doing any act or taking any proceeding and to dispense with the performance or observance of any requirement of these Rules, if in the opinion of the Supreme Court or a Judge thereof the enlargement, abridgment, or dispensation will not substantially diminish the value of the training or qualifications required by these Rules, and a refusal thereof would involve undue hardship.

(2) Any enlargement, abridgment, or dispensation as aforesaid may be made either before or after the requirement should be performed or observed or the expiration of the time appointed.

Notices.

57. Notice in writing of every application in the Supreme Court under these Rules and a copy of every notice of appeal and of any other document to be used upon the application or appeal shall be served on the Board or the Council of the Institute or the Legal Education Committee, as the case may be, at least two days before the application or proceeding is heard and the Board or the Council of the Institute or the Legal Education Committee as the case may be shall be entitled to appear and be heard upon such application or appeal.

58. All notices to be served on or papers to be produced or delivered to the Board or the Institute or the Legal Education Committee may be served or produced or delivered, as the case may be, by delivering the same to the Secretary of the Board or of the Institute, or of the Legal Education Committee, as the case may be.

SCHEDULE A
ARTICLES

ARTICLES OF CLERKSHIP made the _____ day of _____ One Rule 42.
thousand nine hundred and _____ between _____
of _____ barrister and solicitor of the Supreme
Court of Victoria (or as the case may be) (hereinafter called the
principal) of the first part _____ of
(hereinafter called the covenantor) of the second part and
of _____ a son (or as the case may be) of the said
(hereinafter called the clerk) of the third
part

(If the articles are supplementary, insert appropriate recitals.)

WITNESSETH as follows:

1. (If a premium be paid, insert: In consideration of the premium of _____ pounds be paid by the covenantor or the clerk (as the case may be)* to the practitioner the receipt whereof the principal hereby acknowledges) the principal covenants to take the clerk as his articulated clerk for the period of (here state the period) from the date hereof and for any further period which he may be required to serve under the Rules of the Council of Legal Education for the purpose of completing the period of service required by the said Rules. * See footnote (d).
2. The clerk of his own free will (if the clerk is a minor add and with the consent of the covenantor) binds himself clerk to and covenants with the principal for the said period faithfully and diligently to serve the principal as his clerk in his profession of a barrister and solicitor (or as the case may be) which he practises in the city (or town) of _____ at all times during the said term as a faithful clerk ought to do.
3. (If the clerk is a minor): The covenantor covenants with the principal that—
 - (a) The clerk will faithfully and diligently serve the principal as his clerk as aforesaid.
 - (b) If the principal or his partner or partners suffer any loss or damage by the neglect or improper conduct of the clerk the covenantor will make good the amount thereof to him or them.
4. The principal covenants with the covenantor and with the clerk and each of them severally (or with the clerk, as the case may be) that—
 - (a) He will take the clerk as his articulated clerk during the said period and will to the utmost of his skill and knowledge instruct the clerk or cause him to be instructed in the practise and profession of a barrister and solicitor of the said Supreme Court and will afford the clerk all practicable opportunities of gaining experience in all classes of business transacted in his office, and in particular by giving the clerk access to papers and by enabling him so far as his ability extends to take part in the preparation of advice to clients, in drawing documents and in the actual conduct of litigation, and save in special circumstances he will allow the clerk to attend lectures and courses of instruction held during office hours in any subjects in which he is required to qualify before being admitted to practise as a barrister and solicitor.
 - (b) He will at the expiration of the period of service required by the Rules of the Council of Legal Education use his best endeavours at the request and cost of the covenantor and the clerk or either of them (or of the clerk as the case may be) to procure the clerk to be admitted to practise as a barrister and solicitor of the said Supreme Court provided the clerk will have faithfully served during the period required by the Rules of the Council of Legal Education and shall have qualified himself to be admitted to practise as aforesaid.
 - (c) If during the said term the clerk should die or if the principal should cease to practise or die or if the clerk should be legally discharged from these articles the principal his executors or administrators will repay to the parent his executors or administrators the sum of £ _____ for every entire quarter of a year of the said term which may be unexpired at the time when the principal ceases to practise or dies or at the time when the clerk dies or is legally discharged as aforesaid. (If no premium has been paid, omit this sub-clause.)

In witness whereof the said parties hereto have hereunto set their hand and seals the day and year first before written.

Signed sealed and delivered by the said
and
in the presence of—

- (a) Further provisions may be inserted in the articles as required.
- (b) Supplementary Articles must contain appropriate recitals.
- (c) The foregoing form may be used by persons proceeding under any repealed Rules.
- (d) If the intended clerk is aged 21 years or upwards and there are only two parties the provisions should be framed between them accordingly.
- (e) If the intended clerk is a minor the provisions in Rule 42 relating thereto should be observed.

SCHEDULE B.

Rule 48.

AFFIDAVIT VERIFYING ARTICLES.

In the Supreme Court. In the matter of B.A. and articed Clerk.
I, S.S. of _____, gentleman, a barrister and solicitor of the Supreme Court (or as the case may be) make oath and say as follows:—

1. By articles of clerkship (now produced to me and marked "A") dated the _____ day of _____ 19____ and made between myself of the first part A.A. of the second part and the said B.A. of the third part the said B.A. for the consideration therein mentioned did place and bind himself clerk to me to serve me in the practice or profession of a barrister and solicitor of the Supreme Court from the day of the date of the said articles for the (here name the period in the articles) thence next ensuing which said articles were executed by the said A.A., B.A., and myself on the day of _____ 19____.

2. On the date last aforesaid I was and still am duly admitted, the holder of a practising certificate, and practising as a barrister and solicitor of the Supreme Court of Victoria (or as the case may be).

3. I reside at _____

4. The said B.A. resides at _____

5. I have been in practice as a barrister and solicitor as aforesaid for a period of five years and upwards namely _____ and I had at the time of the execution of the said articles no other articed clerk and I had no partner (or state appropriate details to show that the provisions of the Rules as to the number of clerks allowed are being observed).

Rule 37.

Sworn, &c.

SCHEDULE C.

NOTICE OF INTENTION TO APPLY FOR ADMISSION.

Rules 47, 49.

In the Supreme Court,
To the Board of Examiners.

I (here state name, address, and designation in full) hereby give notice that I intend to apply on the first day of the sittings of the Full Court to be admitted to practise as a barrister and solicitor of this Honorable Court.

Date this _____ day of _____ 19____.

(Signature of Applicant)

SCHEDULE D.

AFFIDAVIT OF SERVICE UNDER ARTICLES

Rule 48

(b) (1).

In the Supreme Court. In the matter of B.A., an applicant for admission.

I, S.S. of _____, gentleman, a barrister and solicitor of the Supreme Court (or as the case may be) make oath and say as follows:—

1. In pursuance of articles of clerkship bearing date _____ day of _____ the said B.A. served me as my clerk in the practice or profession of a barrister and solicitor at my office situated at _____ from the day of the date of the execution of the said articles to the day of _____ inclusive.

2. The said B.A. did not at any time to the best of my knowledge, information or belief during the period of service above mentioned of his articles hold any office nor was he engaged in any trade, business, occupation or employment other than his employment of clerk to me this deponent (save here give particulars of any other employment).

Rule 38.

[If applicable, add]

2A. With my consent B.A., for the purpose of gaining additional experience, was employed temporarily in the office of X.Y., a practitioner of this court for the periods (*here state periods*). The said X.Y., has informed me that he, the said X.Y., continued throughout such periods—

- (a) to be on the roll of the Supreme Court;
- (b) to hold a practising certificate (*or as the case may be*); and
- (c) to practise within the State of Victoria (*or as the case may be*);

and that during those periods the said B.A., was absent (or not absent—*here give particulars as in the other paragraphs of this affidavit*).

3. The said B.A. was absent from my employment on account of illness on the following occasions (*specifying them*). Save as aforesaid the said B.A. was not absent on account of illness during the period of service above mentioned.

4. The said B.A. was absent on duty as a member of a naval, military, air, civil or other force or service as shown hereunder (*give appropriate details to show whether this absence was permitted by the Rules*). Save as aforesaid the said B.A. was not absent from my employment on military or other like duty during the period of service above mentioned. Rule 40 (1).

5. During the period of service my office was open for business on every day except Saturdays, Sundays, and public holidays and the following occasions (*specifying them*). In addition to Saturdays, Sundays, and public holidays and the occasions hereinbefore specified the said B.A. has been absent with my consent or that of my partner first obtained, only on the following occasions (*specifying them*) during the period of service above mentioned.

6. Save as aforesaid the said B.A. was not absent from my office and employment during the period of service above mentioned.

7. During the whole period of service above mentioned I continued—

- (a) to be on the roll of the Supreme Court;
- (b) to hold a practising certificate (*or as the case may be*); and
- (c) to practise within the State of Victoria (*or as the case may be*).

Sworn, &c.

If the articles are served elsewhere than in Victoria this form should be altered accordingly.

SCHEDULE E.

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ADMISSION BY A VICTORIAN CANDIDATE.

Rule 48
(b) (ii).

In the Supreme Court. In the matter of B.A., an applicant for admission to practise as a Barrister and Solicitor.

I, B.A., (*name in full*), of _____, in the State of Victoria make oath and say that—

1. My full name is _____

2. I am of the full age of _____ years, having been born at _____ on the _____

3. I am a British subject. (*Here recite facts on which applicant's assertion of British nationality is founded.*)

4. Produced to me at the time of swearing this my affidavit and annexed hereto and marked ("A", "B", &c.) are true copies of the documents delivered to the Secretary of the Board in accordance with the Rules.

5. I have perused the affidavit of [*principal*] sworn herein the _____ day of _____ 19 _____ as to my service under Articles. Schedule D.

6. I am the person referred to in the said documents and affidavit as B.A., and the statements therein so far as they relate to myself are true and correct.

7. I caused to be posted in the office of the Prothonotary on the _____ day of _____ 19 _____ the notice required by the Rules of the Council of Legal Education.

8. I have otherwise in all respects complied with such Rules.
Sworn, &c.

7. I am of the full age of _____ years having been born at _____ on _____
8. I am a British subject. (*Here recite facts on which applicant's assertion of British nationality is founded.*)
9. (*And in the case of a New Zealand practitioner*) I have continuously resided in Victoria from the _____ day of _____ 19 _____ to the _____ day of _____ 19 _____.
- Sworn, &c.

SCHEDULE J
CERTIFICATE

In the Supreme Court. In the matter of A.B.

Rule 50.

We hereby certify that (*name in full*) of _____ has, so far as is obligatory upon him so do in order to entitle him to be admitted to practise as a barrister and solicitor of this Honorable Court, complied with all the Rules of the Council of Legal Education applicable to his case. And we believe him to be a fit and proper person to be admitted to practise as such barrister and solicitor.

Dated this _____ day of _____ 19 _____
C.D., E.F., G.H.,
Members of the Board of Examiners.

SCHEDULE K
NOTICE OF APPEAL

In the Supreme Court. In the matter of A.B.

Rule 55.

I (*here state name, address, and designation in full*) hereby appeal to the Supreme Court against a decision of (*the Board of Examiners or the Law Institute or the Legal Education Committee*) that (*state shortly the decision*). The grounds of appeal are that (*state briefly and clearly the grounds of appeal*).

Dated this _____ day of _____ 19 _____

(*Signature of Appellant*)

On behalf of the Council of Legal Education—

E. F. HERRING, President.
J. B. HARPER, Secretary.

Transmitted to the Governor in Council,

A.G. RYLAH,
Attorney-General of Victoria,
Laid before the Governor in Council,
4 December, 1962.

N. G. WISHART,
Clerk of the Executive Council.

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