

THE LEGAL PRACTITIONERS ACT, 1967

No. 34



of 1967

**AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO THE
ADMISSION AND ENROLMENT AND PRACTICE OF LEGAL PRACTITIONERS
IN BOTSWANA AND MATTERS ANCILLARY THERETO**

Date of Assent: 11.10.67.

Date of Commencement: 13.10.67.

ENACTED by the Parliament of Botswana

PART I

PRELIMINARY

Short Title

1. This Act may be cited as the Legal Practitioners Act, 1967.

Interpretation

2. In this Act, unless inconsistent with the context —

- “advocate” means any person duly admitted to practise as an advocate in Botswana;
- “articled clerk” means any person duly bound to serve under articles;
- “articles” means any contract in writing whereby any person is duly bound to serve an attorney for a specified period in terms of this Act;
- “attorney” means any person duly admitted to practise as an attorney-at-law in Botswana;
- “British subject” includes a British protected person;
- “committee” means the committee established under section 25;
- “conveyancer” means any person duly admitted to practise as a conveyancer in Botswana;
- “Court” means the Chief Justice or any judge of the High Court;
- “Courts of Botswana” means the Court of Appeal for Botswana, the High Court of Botswana and the Subordinate Courts established under the Subordinate Courts Proclamation (Chapter 5) and all tribunals to which practitioners have a right of audience; but, subject to the provisions of any other law and of the Constitution does not include any African Court or African Court of Appeal established under any law relating to such courts;
- “legal practitioner” means any person entitled to practise under this Act as an advocate, attorney, notary or conveyancer;
- “Master” means Master of the High Court;
- “notary” means any person duly admitted as a notary public in Botswana;
- “Registrar” means the Registrar of the High Court and includes an Assistant Registrar;
- “removed from the roll” means permanently to deprive of the right to practise;
- “roll” means the roll kept by the Registrar in terms of section 12;

“State Counsel” means any professional assistant appointed to assist the Attorney General ;

“suspend” means temporarily to deprive of the right to practise.

Saving of Rights and Non-application to Law Officers

3. (1) Nothing in this Act contained with reference to the admission of advocates, attorneys, notaries public or conveyancers shall apply to any person whose name, at the commencement of this Proclamation, appears on the roll kept by the Registrar in terms of section 11 of the Legal Practitioners Proclamation (Chapter 146); unless such person thereafter withdraws his name from the roll at his own request or has been struck off the roll in terms of this Act or the Legal Practitioners' Proclamation.

(2) Notwithstanding anything in this Act contained each of the following persons shall be entitled, in connection with the duties of his office, to exercise any of the functions of a legal practitioner, that is to say the Attorney-General, Deputy Attorney-General, the Legal Draftsman, any State Counsel and any person delegated by the Attorney-General to appear on behalf of the State in criminal matters in the Courts of Botswana.

PART II

ADMISSION AND ENROLMENT OF LEGAL PRACTITIONERS

Admission of Legal Practitioners

4. Any fit and proper person who possesses the qualifications hereinafter prescribed may apply to the Court upon written petition to be admitted and enrolled as an advocate, attorney, notary or conveyancer, as the case may be, and the court shall, unless cause to the contrary is shown to its satisfaction, admit and enrol such person as an advocate, attorney, notary or conveyancer.

Proof of Qualifications

5. Every person who applies to be admitted and enrolled as a legal practitioner shall produce to the satisfaction of the court proof of the possession by

him of the qualifications prescribed by this Act in respect of such admission and enrolment.

Service on the Attorney-General

6. (1) A copy of every petition for admission as a legal practitioner, together with copies of supporting affidavits and certificates, shall be served upon the Attorney-General not less than ten days before the hearing of such petition and such service may be effected personally or by registered post or by lodging a copy with the Registrar :

Provided that if the Court is satisfied that the application is urgent it may, in cases of application for admission and enrolment as an advocate or as an attorney, dispense with such service.

(2) The Attorney General and any legal practitioner may request the leave of the Court to appear as *amicus curiae* to oppose the granting of such petition.

Oaths to be Taken and Fees Paid

7. No person shall be enrolled as a legal practitioner until he shall have taken before the Registrar the oath or affirmation of office set out in the Schedule and shall have paid the fees prescribed by section 12.

Qualifications for Admission as an Advocate

8. The following persons shall be qualified to be admitted and to practise as advocates —

- (a) any Botswana Citizen or British subject who shall have been admitted as Barrister in England, Northern Ireland, the Republic of Ireland or as an advocate in the Court of Session of Scotland and who at the date of such petition is still entitled to practise as such Barrister in England, Northern Ireland or the Republic of Ireland or as an advocate in Scotland ; or
- (b) any Botswana Citizen or British subject who shall have been admitted to practise as an advocate in any Division of the Supreme Court of South Africa or in the High Court of Rhodesia, and who at the date of such petition remains enrolled as an advocate of such Supreme Court or High Court and has practised exclusively as an advocate of such Court and not in partnership with any attorney of such Court ;
- (c) any Botswana Citizen or British subject who has obtained by examination —
 - (i) the degree of LL.B of the University of Botswana, Lesotho and Swaziland ;
or
 - (ii) such other degree in law as may be prescribed ;together with such additional qualifications, if any, as may be prescribed :

Provided that no such person shall be admitted to practise as an advocate of the Courts of Botswana or, after having been so admitted, shall continue to practise as aforesaid, who shall either himself be carrying on directly or indirectly, the business of an attorney, or be directly or indirectly interested in the business of any attorney or firm of attorneys in any Province of the Republic of South Africa or in Rhodesia or Botswana.

Qualifications for Admission of an Attorney

9. The following persons shall be qualified to be admitted and subject to the provisions of section 13 to practise as attorneys —

- (a) any Botswana Citizen or British subject who being an attorney or solicitor of any of the Courts of Record in London, Belfast or Dublin, or being a Writer to the Signet or a solicitor or law agent admitted to practise in the Court of Session of Scotland, is not under any order of suspension in any such Courts respectively;
- (b) any Botswana Citizen or British subject who has been admitted to practise as an attorney or solicitor in any Division of the Supreme Court of South Africa or in the High Court of Rhodesia, and who at the date of such petition remains enrolled as an attorney of such Court and is not under any order of suspension in any such Court;
- (c) any Botswana Citizen or British subject entitled under this Act to be admitted as an advocate of the Courts of Botswana:

Provided that —

- (i) he satisfies the court that he has not practised as an advocate for a period of three months immediately preceding his application for admission as an attorney under this Act;
- (ii) where he is entitled to admission as an advocate under the provision of section 8 (c) he possesses such additional qualifications, if any, as may be prescribed;
- (d) any Botswana Citizen or British subject who has entered into articles in the manner, and for the term, specified in Part III and has duly served under those articles for that term and passed such attorney's admission examinations as maybe prescribed.

Rights of Advocates and Attorneys

10. Advocates and attorneys (not being persons removed from the roll or suspended) whether entitled to practise as such at the commencement of this Act or admitted and enrolled in terms of this Act shall subject to the provisions of section 13 have a right of audience in the Courts of Botswana:

Provided that no advocate shall have a right of audience in any such Court unless he is acting on the instructions of a person entitled to practise as an attorney or on the instructions of the Attorney-General or of the Court.

Qualifications of Notaries Public and Conveyancers

11. There shall be qualified to be admitted and to practise —

(a) as a notary public any Botswana Citizen or British subject who has been —

(i) admitted as an attorney of the Courts of Botswana whether before or after the date of commencement of this Act and who has also been admitted to practise as a notary public by any Division of the Supreme Court of South Africa or by the High Court of Rhodesia and who at the date of such petition remains enrolled as a notary public in such Court and is not under any order of suspension in any such Court ;

(ii) admitted as an attorney of the Courts of Botswana whether before or after the date of commencement of this Act, and who has passed such examination as may be prescribed in the practices, functions and duties of a notary ;

(b) as a conveyancer any Botswana Citizen or British subject who has been —

(i) admitted as an attorney of the Courts of Botswana whether before or after the date of commencement of this Act, and has also been admitted to practise as a conveyancer by any Division of the Supreme Court of South Africa or by the High Court of Rhodesia, and who at the date of such petition remains enrolled as a conveyancer in such Court and is not under any order of suspension of any such Court ;

(ii) admitted as an attorney of the Courts of Botswana whether before or after the date of commencement of this Act, and who has passed such examination as may be prescribed in the practises, functions and duties of a conveyancer.

Records to be Kept by Registrar

12. (1) The Registrar shall keep a roll of legal practitioners entitled or admitted to practise in terms of this Act and every person so admitted shall pay a fee of R10 for a certificate of admission and enrolment under the hand of the Registrar in the form prescribed in the Schedule.

(2) Such roll shall be in the form of separate alphabetical lists recording the names of advocates, attorneys, notaries public and conveyancers respectively, entitled to practise by reason of section 3 or admitted to practise under this Act with the dates of such admission and the relevant addresses.

(3) Whenever the High Court makes an order removing from the roll or suspending from practise any legal practitioner, or whenever any legal practitioner applies to have his name removed from the roll or the Registrar is required to remove the name of an attorney from the roll under section 13 (5) the Registrar shall forthwith enter on the roll kept by him, a note or minute of such order or removal opposite the name of the legal practitioner concerned.

Practising Certificates for Attorneys

13. (1) No attorney shall be entitled to practise as such in the Courts of Botswana in any year unless he is in possession of a practising certificate for that year issued under this section :

Provided that this subsection shall not apply during the month of January in any year in respect of any attorney who has held a practising certificate for the immediately preceding year.

(2) The Registrar shall issue a practising certificate for any year in such form as the Chief Justice may determine to any person admitted and enrolled as an attorney under this Act or any previous law who applies for the same in accordance with the provisions of subsection (3) and pays the fee prescribed in subsection (4).

(3) Every attorney applying for a practising certificate under this section shall deliver to the Registrar a written application in such form as the Chief Justice may determine stating the name and place or places of business of the applicant and the date of his admission and enrolment as an attorney and signed by him or his duly authorised agent.

(4) The fee to be paid to the Registrar in respect of every practising certificate issued by him shall be R2.00 in the case of an attorney ordinarily resident in Botswana and R50.00 in the case of any other attorney :

Provided that where an attorney ordinarily resident outside Botswana is the partner, employer or employee of an attorney who is in possession of a practising certificate for any year the fee payable by such attorney for a practising certificate for that year shall be R2.00.

(5) If any attorney fails to obtain a practising certificate under this section for any year, the Registrar shall notify such attorney of the provisions of this section by means of a registered letter posted to him at his last known address, and if within 90 days of the posting of such letter the attorney has not obtained such certificate the Registrar shall remove the name of such attorney from the roll.

(6) A practising certificate issued under section 11A of the Legal Practitioners Proclamation shall be deemed to have been issued under the provisions of this section.

PART III

ARTICLES OF CLERKSHIP

Information to be Placed Before Registrar by Persons Intending to be Articled

14. Every person intending to serve an attorney under articles shall produce to the Registrar —

- (a) proof to the satisfaction of the Registrar that he is, or may lawfully become, a Botswana citizen or a British subject ;
- (b) his birth certificate or, if no birth certificate is available, satisfactory evidence of the date and place of his birth and of his parentage ; and
- (c) evidence to the satisfaction of the Registrar that he —
 - (i) is a fit and proper person ;
 - (ii) is not an unrehabilitated insolvent or undischarged bankrupt, whether under the law of Botswana or under the law of any other country ;
 - (iii) has passed the Cambridge Overseas School Certificate or the matriculation examination conducted and controlled by the Joint Matriculation Board of the University of South Africa or an examination which, in the opinion of the Registrar, is equivalent or superior thereto.

Articles to be Lodged with Registrar

15. (1) The original and duplicate original articles shall be lodged within two months of the date of such articles, with the Registrar for the purpose of registration and shall be accompanied by an affidavit testifying to the signatures and date thereof and where the articles were executed.

(2) The Registrar shall not register any articles lodged under the provisions of subsection (1) unless the provisions of section 14 have first been complied with.

(3) If the articles are not registered within two months of the date of such articles the service shall, subject to such relief as the Court may grant under section 22 be reckoned to commence only as from the date of such registration.

(4) Within one month of the date on which the clerk commences service under him, the attorney shall file an affidavit with the Registrar as to the date upon which the clerk commenced service.

Cession of Articles

16. (1) The articles of any articulated clerk may be ceded to any other attorney who may be willing to accept cession —

- (a) with the mutual consent of the cedent attorney and such articulated clerk ; or
- (b) if the Court on the application of the clerk on the death, insanity, insolvency, conviction for crime, imprisonment for debt, suspension, striking off the rolls, discontinuance of practise of the attorney under whom such clerk is serving or for other similar and sufficient cause, directs that such articles be ceded ; the Court may, if it thinks fit further direct that the whole or any part of any period between the date of the death, insanity, insol-

vency, conviction for crime, imprisonment for debt, suspension, striking off the rolls, discontinuance of practise of the attorney or other similar cause and the date of cession, shall be reckoned as part of the period for which the clerk is bound to serve under articles.

(2) The original and a duplicate of each cession of articles shall, within one month of the date thereof, be lodged for registration with the Registrar and shall be accompanied by an affidavit by the cedent as to the due and proper service and as to the date at which the articted clerk left his employment, and by an affidavit by the cessionary as to the date at which the said clerk entered his employment.

(3) Upon production of the cession and affidavits and upon payment of such fees as may be prescribed, the Registrar shall, upon being satisfied that the cession is in order, register such cession.

(4) Where the Court has, in terms of paragraph (b) of subsection (1), directed that the articles of any clerk be ceded, the cession of the articles shall be deemed to have been validly executed if it is signed on behalf of the attorney under whom such clerk has served by such person as the Court may direct, and a certificate given under the hand of such person containing the particulars set forth in subsection (2) shall be deemed to be the affidavit of the cessionary for the purposes of this section.

(5) No cession shall be registered if it is lodged for registration otherwise than within one month of the date thereof, without an order of the High Court.

Amendment of Articles and Cessions

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

Only Practising Attorneys to Have Articted Clerks

18. (1) No attorney shall have or retain any clerk under articles unless such attorney —

- (a) is residing in Botswana; and
- (b) is practising the profession of attorney in Botswana on his own behalf or as a member of a partnership of attorneys; and
- (c) has duly practised such profession in Botswana for a continuous period of not less than —
 - (i) five years; or
 - (ii) two years and, in addition, has immediately before being admitted as an attorney in Botswana practised for not less than three years as an attorney or solicitor in any country or before any court mentioned in section 9;

(2) No attorney shall at any time have more than two articted clerks:

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

Period of Articles and Service Thereunder

19. (1) No person shall be admitted as an attorney in accordance with the provisions of section 9 (d) unless he has entered into articles and duly served under those articles for a term of —

- (a) three years in the case of any person who before entering into articles has taken at any university a prescribed degree, not being an honorary degree;
- (b) five years in the case of any other person.

(2) Service by a clerk to any attorney not entitled to have or retain a clerk under articles under section 18 or in terms of any articles which are not registered in accordance with the provisions of this Part shall not be deemed to be good or sufficient service for the purposes of the Act.

(3) Subject to the provisions of section 22 every clerk articted to an attorney shall, during the whole term of service specified in the articles of clerkship, be and continue to be in the actual service of the attorney and in the office and under the direct personal supervision of that attorney or his partner or partners or manager being an attorney.

Articted Clerk not to Engage in Other Business

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

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

When articles Clerk May Appear in Court

21. Any articted clerk who —

- (a) has served three years of his articles or, in the case of a clerk to whom the provisions of section 19(1) (a) apply, two years;
- (b) has satisfied all the requirements for the examinations prescribed by rules made under section 29 and has served at least one year of his articles;

shall be entitled to appear in any court in which his principal may lawfully appear (other than the High Court and Court of Appeal) on behalf of his principal who shall be entitled to charge the fees for the appearance as if he himself had appeared.

Powers of Court

22. (1) Where any person articted to an attorney under the provisions of this Act has not served under articles strictly in accordance with the provisions of such law, the High Court, upon being satisfied that such service, though irregular, is substantially equivalent to regular service may permit such person, upon such conditions as it may deem fit, to present (if otherwise qualified) his petition for admission as an attorney in the same manner as if the service in question had been regular and in conformity with the provisions of this Act.

(2) Where an articted clerk is absent from the offices of the attorney to whom he is articted for any period exceeding six weeks in any one year his articles shall be deemed to have been terminated upon the expiry of that period unless the Court has previously authorised such absence or later, upon cause shown, condones such absence.

(3) Where articles of clerkship have been terminated or abandoned before the completion thereof, the Court may, in its discretion and subject to such conditions as it may think fit to impose, direct that part or all of the period served under the articles so terminated or abandoned, be deemed to be service under any new articles for the purposes of section 19.

PART IV

TRUST ACCOUNTS AND NOTARIES' PROTOCOLS

Trust Accounts

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

(2) The Attorney-General may himself or through his nominee at public expense inspect the books of account of any such attorney, notary or conveyancer to satisfy himself that the provisions of subsection (1) are being observed:

Provided that, if it is found upon such an inspection that the attorney, notary or conveyancer has not complied with the provisions of subsection (1), the reasonable cost of the inspection shall be paid by the attorney, notary and conveyancer.

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

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

(4) Upon application made by the Attorney-General and upon good cause shown, the Court may prohibit any attorney, notary or conveyancer from operating in any way his trust account and, if there is reason to believe that trust moneys have been improperly deposited in any other account, such other account, and may appoint a *curator bonis* to control and administer such accounts.

(5) Upon the death of insolvency of, or the assignment of his estate by an attorney, notary or conveyancer or in the event of an attorney, notary or conveyancer being struck off the roll or being suspended from practice or being declared by a court of competent jurisdiction to be incapable of managing his own affairs, or abandoning his practice, the Master may, upon application made by the Attorney-General or by any person having an interest in the trust account of the attorney, notary or conveyancer, approve a *curator bonis* to control and administer the trust account.

(6) Any person aggrieved by a decision of the Master under subsection (5) may, within thirty days after the decision became known to him, appeal to the Court which may confirm or vary the decision of the Master or give such other decision as in its opinion, the Master ought to have given.

(7) Nothing in subsections (5) or (6) shall be construed as preventing any attorney, notary or conveyancer who was practising in partnership with an attorney, notary or conveyancer referred to in subsection (5) from continuing to operate on the trust account of that partnership.

(8) Any bank at which an attorney, notary or conveyancer keeps such trust account shall not, by reason only of the name or style by which the account is distinguished, be deemed to have knowledge that the attorney, notary or conveyancer is not entitled absolutely to all moneys paid or credited to the said account :

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

(9) A bank at which an attorney, notary or conveyancer keeps a trust account shall not, in respect of any liability of the attorney, notary or conveyancer to the bank, not being a liability arising out of or in connection with the said account, have or obtain any recourse or right, whether by way of set off, counter-claim, charge or otherwise, against moneys standing to the credit of the said account.

Examination of Protocol and Registers of Notaries

24. (1) Every notary practising in Botswana shall keep a book to be called the protocol register, in which he shall register all deeds enacted by him in the order in which they are executed.

(2) The protocol register shall contain in columns the —

- (a) distinguishing number ;
- (b) date of execution ;
- (c) nature and designation of the deed ;
- (d) full names of the appearers ;
- (e) date of registration ;
- (f) amount of stamp duty affixed to each deed.

(3) After receiving twenty-four hours' written notice, a notary shall produce his protocols and registers to a commissioner appointed for that purpose by the Attorney-General for inspection at such time and place as he may direct.

(4) Notaries shall cause all instruments to be neatly and securely bound together when they amount in number to one hundred.

(5) If any notary public ceases to practise as such, he, or if he is dead, his executor, shall within a reasonable time deliver the notary's protocol and register to the Registrar who shall file them on record.

(6) The commissioner appointed under subsection (3) shall make his examination as soon as possible after the first day of January and the first day of July in each year and report the results of his investigations to the Attorney-General.

PART V

LEGAL PRACTITIONER'S COMMITTEE

Establishment of Legal Practitioners' Committee

25. (1) There shall be a committee, to be styled the Legal Practitioner's Committee which shall consist of —

- (a) a person to be nominated by the Chief Justice ;
- (b) the Attorney-General ;
- (c) a person being either an advocate or attorney in private practice, nominated by the Chief Justice in consultation with the Attorney-General to represent the legal profession :

Provided that where the Chief Justice is of the opinion that neither an

advocate nor an attorney can adequately represent the whole legal profession he may nominate both an advocate and an attorney.

(2) The persons nominated under paragraphs (a) and (c) of subsection (1) shall hold office at the pleasure of the Chief Justice who may, in addition, where he is of the opinion that any nominated member of the committee may have an interest in a matter which has been brought before the Committee under this Act or is absent or unable for any cause to attend a meeting of the committee nominate a person to act in the place of such member at such meetings, or for such period, as he may direct.

(3) The decision of the Committee shall be the decision of majority of its members.

Functions of the Legal Practitioners' Committee

26. The functions of the Committee shall be —

- (a) to investigate cases of misconduct by legal practitioners and to perform such other functions in connection therewith as are prescribed in Part VI;
- (b) to examine persons in such subjects and in such manner as may be prescribed and to determine the syllabus for any examination;
- (c) to perform such additional functions as may be prescribed.

PART VI

MISCONDUCT

Removal and Suspension from Roll

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

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

(3) Where the Committee is of the opinion that misconduct has been established it may either —

- (a) warn or reprimand the practitioner concerned;
- (b) direct the Attorney-General to make application to the High Court in accordance with the provisions of subsection (4).

(4) Every application to suspend or remove from the roll shall be made by the Attorney-General by way of motion to the Court, supported by affidavit or affidavits of the facts on which the application is based:

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

(5) The Attorney-General and the members of the Committee shall not be subject or liable to any action or proceedings for damages in the *bona fide* execution of their duties and the taking of any steps or the institution of any proceedings under or purporting to be under the provisions of this section.

Definition of Misconduct

28. (1) Misconduct on the part of a legal practitioners shall include, *inter alia* the commission of any of the following acts —

- (a) touting ;
- (b) advertising ;
- (c) tendering or offering in response to advertisements, circulars or similar invitations either directly or indirectly for the performance of any work or business proper to the calling of a legal practitioner or commonly associated therewith ;
- (d) allowing his name with all or any of his qualifications of advocate, attorney, notary or conveyancer to appear by way of advertisement or notification or by way of information upon any business letter heads, accounts or other document whatsoever in conjunction with the name of a person not being an attorney ;
- (e) entering into or continuing to be a part to any contract or arrangement with an unqualified person the effect whereof is to place him under such control on the part of such unqualified person as may interfere with his independence as an officer of the Court ;
- (f) committing any act which may be prescribed as misconduct.

(2) Misconduct on the part of an attorney, notary or conveyancer shall include, *inter alia* the commission of any of the following acts —

- (a) giving or taking allowances in contravention of the provisions of this Act or of any other law ;
- (b) withholding the payment of trust moneys without lawful cause ;
- (c) in any way assisting, allowing or enabling an unqualified person to charge, recover or receive any fee or derive any remuneration in respect of or in connection with the preparation or execution of any document or the performance of any professional work which only an attorney, notary or conveyancer as the case may be, is qualified by law to prepare, sign, execute, attest or perform, or in any way conniving at any arrangement, agreement or understanding whatsoever whereby any such fee or remuneration as aforesaid is or shall be charged, recovered or received, by any such unqualified person ;

- (d) opening or maintaining any office or branch which is not under the continuous personal supervision of an attorney ;
- (e) keeping the accounts of his business as an attorney, notary or conveyancer in the books of accounts utilized in connection with any other business in which he may be interested jointly with an unqualified person ;
- (f) remunerating an employee who is an unqualified person by way of a share in the profits of his business as an attorney, notary or conveyancer ;
- (g) referring to or mentioning his professional qualifications of attorney, notary or conveyancer or any one or more of them, on his sale advertisements by a legal practitioner who also carries on the business of an auctioneer ;
- (h) assisting any unqualified person to recover charges for services rendered by including the same in any bill of costs or memorandum of charges rendered by him as a legal practitioner, without disclosing the facts in such bill or memorandum ;
- (i) entering into or continuing to be a party to any contract of partnership with or of employment by a person not being an attorney in estate and general agency the direct or indirect result whereof is to enable the unqualified person to enjoy or participate in fees reserved to a legal practitioner only or to secure for the legal practitioner the benefit of professional business solicited by the unqualified person ;
- (j) levying any charges or accepting any fee which is less than the minimum charge or fee prescribed by the rules in a tariff of minimum charges ;
- (k) accepting any premium or other consideration direct or indirect, in respect of any person entering into articles with him or in respect of his retaining any person under articles ;
- (l) committing any act which may be prescribed as misconduct.

PART VII

OFFENCES AND SUPPLEMENTARY

Rules

29. The Chief Justice may, with the approval of the Minister, make rules —
- (a) prescribing anything which in terms of this Act is to or may be prescribed ;
 - (b) to prescribe the fees or charges which may be made by the Registrar in the performance of his functions under this Act ;
 - (c) prescribing the fees or allowances payable to members of the Committee ;
 - (d) regulating the conditions of service of, and the salaries payable to, articled clerks ;

(e) generally for the better carrying out of the provisions of this Act.

Exemption of Aliens

30. The provisions of section 8, 9, and 11 shall have effect in relation to any person who, although not a Botswana Citizen or British subject —

- (a) is domiciled in Botswana in terms of section 3 of the Immigration Law, 1966 (No. 19 of 1966);
- (b) is exempted in writing by the Minister for the time being responsible for immigration from the nationality requirement mentioned in those sections; or
- (c) is enrolled as an advocate, attorney, notary public or conveyancer under this Act (or in the manner mentioned in section 3);

as if he were a Botswana Citizen or British subject.

Offences

31. (1) No person, other than an advocate, attorney, notary or conveyancer admitted and enrolled, and in the case of an attorney entitled to practise in the Courts of Botswana, shall practise as such within Botswana or in any manner hold himself out as or pretend to be, or make use of any words or any name, title or addition or description implying or tending to the belief that he is an advocate, attorney, notary or conveyancer or is recognised by law as such.

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

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

(4) No attorney, notary or conveyancer shall employ in any capacity whatsoever any person who shall have been struck off the rolls (except in pursuance of section 13 (5)) or suspended from practice while such person is struck off or suspended.

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

(6) Any person contravening the provisions of subsection (1) to (5) of this section shall be guilty of an offence and liable on conviction to a fine not exceeding R200 for each offence :

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

- (a) any board of executors or trust company (not being a private company within the meaning of the law relating to companies) —
 - (i) has in its name or title words indicating that its objects or functions include work in connection with the administration, liquidation or distribution of any estate mentioned in subsection (2); or
 - (ii) on signboards, nameplates, or notices exhibited on the premises in which it carries on business, on its stationery, or on its usual annual almanacs or in any advertisement in the public press, or in its annual reports or any report of the proceedings at an annual general meeting makes known by a simple statement to that effect that its objects or functions include any such work;
- (b) any person in reply to a direct enquiry voluntarily made of him by someone else makes known the preparedness of himself or some other person to perform any such work;
- (c) any shareholder or employee of a board of executors or trust company described in sub-paragraph (a) of subsection (6) canvasses another shareholder or employee of the same board of executors or trust company on behalf of such board or company;
- (d) any attorney, notary or conveyancer or any commercial banking institution or any such board of executors or trust company indicates in any public notice required by law in connection with the liquidation or administration of any estate, that he or it does such work.

(7) Any attorney, notary or conveyancer who contravenes subsection (1) of section 23 shall be guilty of an offence and liable, on conviction, to a fine not exceeding R500 or in default of payment for imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(8) Any legal practitioner contravening subsection (2), (4), (5) or (7) shall be guilty of unprofessional conduct and shall in addition to the liability imposed by subsection (6) be liable to be removed from the roll or suspended from practice on application by the Attorney-General to the High Court in the manner prescribed in section 27 (4);

(9) Save as provided in subsection (10) any person, not being a practising advocate, attorney, notary or conveyancer, who for or in expectation of any fee, gain or reward, direct or indirect, to himself or to any other person draws or prepares or causes to be drawn or prepared any of the following documents —

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

shall be guilty of an offence and liable on conviction in respect of each offence to a fine not exceeding R200 and in default of payment thereof to imprisonment not exceeding three months :

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

- (i) the salary or emoluments of an employee if no fee, gain or reward is sought or obtained by his employer from the person on whose behalf the document was drawn or prepared ; or
- (ii) any commission or other remuneration to which any person is or may be entitled either by law or otherwise for service in his capacity as executor, administrator, trustee, curator, tutor or guardian by virtue of his appointment as such by any Court of law or under the provisions of any will or other testamentary instrument, or as agent for any person holding such appointment.

(10) The provisions of subsection (9) shall not apply to —

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

Repeal of Cap. 146

32. The Legal Practitioners Proclamation (Chapter 146) is repealed.

SCHEDULE
(section 7)

OATH OR AFFIRMATION OF OFFICE
(In the Courts of Botswana)

I.....
do swear (or do solemnly affirm) that I will truly and honestly demean myself in
the practice of an..... according to the best of my knowledge
and ability.

(In the case of an Oath here add)
So help me God

.....
Sworn (or Affirmed) before me
at this day of
..... 19.....

.....
Registrar

Passed by the National Assembly this day, the 31st August, 1967.

G. T. MATENGE,
Clerk to the National Assembly