COUNCIL ON HIGHER EDUCATION

Higher Education Qualifications Sub-Framework

Qualification Standard

for

Bachelor of Laws

(LLB)

The process of drafting this standard is described in the Introduction.

May 2015

HIGHER EDUCATION QUALIFICATIONS SUB-FRAMEWORK

STANDARDS DEVELOPMENT: POLICY AND PROCESS

Introduction

National policy and legislative context

In terms of the National Qualifications Framework (NQF) Act, 67 of 2008, the Council on Higher Education (CHE) is the Quality Council (QC) for Higher Education. The CHE is responsible for quality assurance of higher education qualifications.

Part of the implementation of the Higher Education Qualifications Sub-Framework (HEQSF) is the development of qualification standards. Standards development is aligned with the *nested approach* incorporated in the HEQSF. In this approach, the outer layer providing the context for qualification standards are the NQF level descriptors developed by the South African Qualifications Authority (SAQA) in agreement with the relevant QC. One of the functions of the QC (in the case of higher education, the CHE) is to ensure that the NQF level descriptors 'remain current and appropriate'. The development of qualification standards for higher education therefore needs to take the NQF level descriptors, as the outer layer in the *nested approach*, into account. An ancillary function is to ensure that they 'remain current and appropriate' in respect of qualifications awarded by higher education institutions. This means that they need to be responsive to the distinctive features of each field of study.

A secondary layer for the context in which qualification standards are developed is the HEQSF. This framework specifies the types of qualification that may be awarded and, in some cases, the allowable variants of the qualification type. An example of variants is the provision for two variants of the Master's degree (including the 'professional' variant). Another example is the distinction, in the Bachelor's degree type, between the 'general' and 'professionally-oriented' variants. The HEQSF also specifies the purpose and characteristics of each qualification type. However, as indicated in the *Framework for Qualification Standards in Higher Education* (CHE, 2013), neither NQF level descriptors nor the HEQSF is intended fully to address, or indeed capable of addressing, the relationship between generic qualification-type purpose and the specific characteristics of that qualification type in a particular field of study. One of the tasks of standards development is to reconcile the broad, generic description of a qualification type according to the HEQSF and the particular characteristics of qualifications awarded in diverse fields of study and disciplines, as defined by various descriptors and qualifiers.

Framework for standards development

Development of qualification standards is guided by the principles, protocols and methodology outlined in the *Framework*, approved by the Council in March 2013. The focus of a standards statement is the relationship between the purpose of the qualification, the attributes of a graduate that manifest the purpose, and the contexts and conditions for assessment of those attributes. A standard establishes a threshold. However, on the grounds that a standard also plays a

developmental role, the statement may include, as appropriate, elaboration of terms specific to the statement, guidelines for achievement of the graduate attributes, and recommendations for above-threshold practice.

A qualification standard is a statement that indicates how the purpose of the qualification, and the level on the NQF at which it is awarded, are represented in the learning domains, assessment contexts, and graduate attributes that are typical for the award of the qualification. Qualification standards are not the same, in either scope or effect, as other modalities used for the establishment of standards in higher education, for example, resource allocation standards, teaching and learning standards, or standards used for the grading of individual students. Matters such as actual curriculum design, tuition standards and standards for resource allocation for a programme are the responsibility of the institution awarding the qualification. Nor does the standard prescribe the duration of study for the qualification. It establishes the level on the NQF on which it is awarded, and confirms the minimum number of credits as set by the HEQSF. The standard relates to all programmes leading to the qualification, irrespective of the mode of delivery, the curriculum structure, and whether or not a prior qualification at a lower or the same level on the NQF is a prerequisite.

The process of development

The CHE is engaged in a pilot study, involving a selection of qualification types, offered in various fields of study. The aim of the study is to explore the extent to which the principles, procedures, content and methodology of standards development meet the requirements of all relevant parties: the institutions awarding the qualifications, the CHE as quality assurer of the qualifications, the graduates of those qualifications, and their prospective employers.

The drafting of this standards statement is the work of a group of academic experts in the field of study, convened by the CHE. They were invited after consultation with the South African Law Deans Association (SALDA). Members of the Standards Development Working Group participate in their individual capacity, not as representatives of any institutions or organisations. Members of the Group are listed in Annexure B.

The Group met on a number of occasions during the period 2013-15, and the standard statement has been through a number of iterations and revisions. In late 2014 a draft version was presented at regional meetings, to which all higher education institutions and, by invitation, the Law Society of South Africa and its affiliates, and the General Bar Council of South Africa, were invited. The working group has taken into account comments and recommendations from those meetings, as well as from written submissions received subsequently. The standard, therefore, is cognisant of both academic and professional interests. It has been endorsed, in revised form, by the Group. It has also been sent to higher education institutions offering the qualification, for comment. All comments submitted have endorsed the statement.

QUALIFICATION TITLE

Bachelor of Laws

QUALIFICATION TYPE AND VARIANT

Bachelor's degree *(Professional)*

BACHELOR'S DEGREE (PROFESSIONAL): GENERAL CHARACTERISITCS

There are two types of Bachelor's Degrees, namely general and professionally-oriented Bachelor's Degrees. Both types of degree may be structured as a 360-credit qualification with an exit at level 7 or as a 480-credit qualification with an exit at level 8 on the National Qualifications Framework....The 480-credit Bachelor's Degree at NQF level 8 has both a higher volume of learning and a greater cognitive demand than the 360-credit degree at level 7 and should prepare students to be able to undertake Master's level study by providing them with research capacity in the methodology and research techniques of the discipline.

The primary purpose of both the general and the professional Bachelor's Degree is to provide a well-rounded, broad education that equips graduates with the knowledge base, theory and methodology of disciplines and fields of study, and to enable them to demonstrate initiative and responsibility in an academic or professional context. Both the 360- and 480-credit Bachelor's Degrees may require students to undertake research in a manner that is appropriate to the discipline or field of study in order to prepare them for postgraduate study.

The professional Bachelor's Degree prepares students for professional training, post-graduate studies or professional practice in a wide range of careers. Therefore it emphasises general principles and theory in conjunction with procedural knowledge in order to provide students with a thorough grounding in the knowledge, theory, principles and skills of the profession or career concerned and the ability to apply these to professional or career contexts. The degree programme may contain a component of work-integrated learning.

(*Higher Education Qualifications Sub-Framework*, CHE, 2013)

STANDARD FOR BACHELOR OF LAWS (LLB)[1]

PREAMBLE

In light of South Africa's history and the material conditions of her people, law is fundamental to the consolidation of the constitutional democratic project. Law has played a critical role in the country's transition to democracy and remains key to entrenching and consolidating the constitutional democratic project. The interstitial manner in which law operates means that it is fundamental to the infrastructure of nation building. Law is central to creating a cohesive and successful society, it plays a significant role in facilitating economic development and most importantly, it is pivotal to entrenching the ethos and values of the country's constitutional democracy. "There is only one system of law. It is shaped by the Constitution which is the supreme law and all law, including the common law [and customary law], derives its force from the Constitution and is subject to constitutional control."[2]

The South African constitution is transformative in nature. "Our constitutional democracy seeks to transform our legal system. Its foundational values of human dignity, the achievement of equality and the advancement of human rights and freedoms, introduce a new ethos that should permeate our legal system."[3] Therefore, legal education cannot be divorced from transformative constitutionalism.[4] "It is when adherence to the word is taken too far, when the upholding of a law obscures or ignores that law exists to try, however difficult, to ensure justice, that formalism becomes dangerous. It is this type of conservative or formalist approach to law that is inconsistent with a transformative Constitution. At the heart of a transformative Constitution is a commitment to substantive reasoning, to examining the underlying principles that inform laws themselves and judicial reaction to those laws".[5]

These sentiments are unachievable without appropriate legal education as the foundation to foster the ideals of transformative constitutionalism. Legal education as a public good should be responsive to the needs of the economy, the legal profession and broader society. It must produce skilled graduates who are critical thinkers and enlightened citizens with a profound understanding of the impact of the Constitution on the development of the law, and advancing the course of social justice in South Africa. Moreover, the law graduate must be equipped to discharge his or her social and professional duties ethically and efficaciously . Therefore, higher education must also be responsive to globalisation and the ever evolving information-technology.

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[1] Henceforth referred to as the "LLB".

[2] *Pharmaceutical Manufacturers Association of SA and Another in re Ex Parte President of the Republic of South Africa and Others* 2000 (2) SA 674 (CC) [44].

[3] *Director of Public Prosecutions, Transvaal v Minister of Justice and Constitutional Development, and Others* 2009 (4) SA 222 (CC).

[4] Karl Klare has defined "transformative constitutionalism" under the South African Constitution as "a long-term project of constitutional enactment, interpretation, and enforcement committed (not in isolation, of course, but in a historical context of conducive political developments) to transforming a country's political and social institutions and power relationships in a democratic, participatory, and egalitarian direction. Transformative constitutionalism connotes an enterprise of inducing large-scale social change through nonviolent political processes grounded in law." K Klare "Legal Culture and Transformative Constitutionalism" (1998) 14 *South African Journal on Human Rights* 146 at 150.

[5] P Langa. "Transformative Consitutionalism" (2006) 17 Stell LR 351 at 357.

PURPOSE

The LLB degree prepares students for entry into legal practice, into a wide range of other careers which require the application of law, and for post-graduate studies in law.

The purpose of the LLB is to offer a broad education that develops well-rounded graduates with –

- a knowledge and appreciation of the values and principles enshrined in the Constitution;
- a critical understanding of theories, concepts, principles, ethics, perspectives, methodologies and procedures of the discipline of law;
- ability to apply the above appropriately to academic, professional and career contexts; and
- capacity to be accountable and take responsibility in academic, professional, and relevant societal contexts.

NQF LEVEL AND CREDITS

The exit level of the qualification is **NQF level 8**. The minimum number of credits allocated to the qualification is 480 credits if awarded as a self-standing qualification, or 240 credits if awarded as a follow-up to a first general bachelor's degree.

STANDARD FOR THE AWARD OF THE QUALIFICATION

The qualification may be awarded when the qualification standard has been met or exceeded. The *purpose* and *level* of the qualification will have been achieved when the following attributes are evident.

Knowledge

The graduate has a comprehensive and sound knowledge and understanding of the South African Constitution and basic areas[6] or fields of law. This relates to the body of South African law and the South African legal system, its values and historical background. Basic areas must include:-

(a) aspects of private, public, mercantile and formal law;

[6] 'Basic areas or fields of law' are informed by the second-order categories of the Classification of Educational Subject Matter (CESM 12).

(b) international and comparative aspects of law, perspectives on law and the legal profession; and

(c) the dynamic nature of law and its relationship with relevant contexts such as political, economic, commercial, social and cultural contexts.

The graduate also has:

(d) some knowledge[7] of a discipline other than law; and

(e) advanced knowledge of select area(s) of the law or specialisation in one or more area(s) of the law[8] or in clinical legal education.

Skills

1. Critical thinking skills

The graduate is able to:

(a) recognise and reflect on the role and place of law in South African society and beyond;

(b) analyse a text and/or scenario to find the key issues, i.e., distinguish between relevant and irrelevant information and distinguish between legal and non-legal issues;

(c) address the issues presented in a text or scenario and generate appropriate responses to the legal issues contained in a text and/or scenario;

(d) make critical judgments on the merits of particular arguments and make and present reasoned choices between alternative solutions;

(e) analyse, synthesise, judge critically and evaluate problems and situations; and

(f) demonstrate familiarity with legal discourse – knowledge of the conventions (and terminology) of legal discourse and the ability to use them appropriately.

2. Research skills

In theoretical and applied research-based contexts, the graduate is able to:

(a) find, select, organise, use, analyse, synthesise and evaluate a variety of relevant information sources;

(b) determine the relative authority of relevant information sources;

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[7] "Some knowledge of a discipline other than law" is explained in Guideline no. 1 below.

[8] "Select areas" refers to fields already covered and where in-depth study is required. "Specialisation" refers to niche areas of law. See Guideline no. 2 below.

(c) read, interpret and summarise information sources;

(d) present and make a reasoned choice between alternative solutions;

(e) use techniques of legal reasoning, methodology and argumentation to reach a plausible conclusion;

(f) use appropriate referencing style guidelines; and

(g) demonstrate academic integrity in research.

Applied competence

1. **Ethics and integrity**

The graduate has knowledge of relevant ethical considerations in law and is able to conduct her/himself ethically and with integrity in her/his relations within the university and beyond, with clients, the courts, other lawyers and members of the public.

2. **Communication skills and literacy**

The graduate is proficient[9] in reading, writing, comprehension and speaking in a professional capacity, to specialist and non-specialist alike, and is therefore able to:

(a) communicate effectively by choosing appropriate means of communication for a variety of contexts;

(b) demonstrate effective oral, written, listening and non-verbal communication skills;

(c) apply communication skills to situations and genres relevant to professional practice; and

(c) engage with diverse audiences as identified by culture, language[10] and gender.

3. **Numeracy**

The graduate is able to perform basic numeracy tasks related to the fields of law.

4. Information technology

The graduate is able to:

(a) access information efficiently and effectively; and

(b) use technology as a tool to research, organise, evaluate and communicate information.

[9] See Guideline no. 3 below.
[10] See Guideline no. 4 below.

5. **Problem solving**

The graduate is able to identify and define the relevant issues in legal problems; identify and select the most relevant sources and research methods (including electronic databases) likely to assist in solving such legal problems and generate reasoned solutions.

6. **Self-management and collaboration**

The graduate is able to:

(a) function effectively in independent and collaborative settings;

(b) make meaningful contributions to work efforts in a group context, including problem solving;

(c) address a particular aspect of a problem or project and integrate her/his own efforts into a collaborative effort; and

(d) critically reflect on and assess her/his own work and critique the work of others in a reasoned and formative manner.

7. **Transfer of acquired knowledge**

The graduate is able to:

(a) apply knowledge to different, new and unfamiliar fields of law;
(b) deal with the development of the law on a continuous basis[11]; and
(c) transfer legal knowledge to others.[12]

8. **Agency, accountability and service to the community**

The graduate is able to recognize, reflect and apply social justice imperatives:

(a) acknowledging the capacity, agency and accountability of the legal practitioner in shaping and transforming the legal system, promote social justice goals of fairness, legitimacy, efficacy and equity in the legal system; and
(b) understand the professional responsibilities of the legal practitioner in service to the community.

[11] See Guideline no. 5 below.
[12] See Guideline no. 6 below.

CONTEXTS AND CONDITIONS FOR ASSESSMENT

Appropriate assessment of graduate attributes is informed by the following assumptions.

1. A variety of assessment methods and types, including summative and formative assessment, is used.[13] Assessment opportunities occur regularly throughout the course of study.
2. Students engage in some independent research that is assessed.
3. Assessment includes authentic problem-solving either in real life work contexts or simulated teaching and learning activities by staff appropriately qualified to effect meaningful assessment.[14]
4. Adequate teaching and learning and physical resources are available to implement effective assessment activities, which, in order to achieve the particular purpose of the qualification, include:
    a. an adequate student:staff ratio[15];
    b. adequate access to resources such as library and e-resources in order to meet the problem-solving and research attributes of the qualification.
5. IT resources are available to enable graduates to achieve the purposes of the qualification.
6. Regular and constructive feedback is given to enable graduates to achieve the problem-solving, research, literacy and communication skills for the attainment of the qualification.

PROGRESSION

A Bachelor's Degree is the minimum entry requirement for admission to a Bachelor Honours Degree or Postgraduate Diploma. A level 8 Bachelor's Degree with 480 credits may also meet the minimum requirement for admission to a cognate Master's Degree. Entry into these qualifications is usually in the area of specialisation or in the discipline taken as a major in the Bachelor's Degree.

(Higher Education Qualifications Sub-Framework)

[13] See Guideline no. 7.
[14] See Guideline no. 8.
[15] See Guideline no. 9.

GUIDELINES

1. 'Some knowledge of a discipline other than law'

The qualification is premised on the notion of a broad societal context. The study of 'a discipline other than law' provides the graduate with a satellite disciplinary knowledge base and methodology which can enhance appreciation and understanding of 'the dynamic nature of law and its relationship with relevant contexts such as political, economic, commercial, social and cultural contexts.' This broad contextual scope allows for a wide range of disciplines beyond law. 'Some knowledge' implies sufficient breadth and depth to provide understanding of a coherent range of fundamental concepts in the discipline and competence to perform basic tasks involving relevant knowledge and skills.

2. 'Advanced knowledge of select area(s) of the law or specialisation in one or more area(s) of the law'

(a) 'Select area(s) of the law' refers to a field or fields already covered in the preceding curriculum, but in which further study is pursued. Examples could be a module in advanced constitutional law following a first module in constitutional law or a module in specific delicts following a first module in delict.
(b) 'Specialisation in one or more area(s) of the law' refers to a study of a niche area or areas not distinctly covered in the preceding curriculum. Examples could be modules in environmental law, sports law or public procurement law.

3. 'Proficiency'

To be proficient in something is to show ability or skill at it. Abilities or skills in the context of the LLB are developed by regularly exposing law students to problem-solving and research problems and by expecting them to produce well-written, coherent answers or research reports. Language proficiency would include formal and substantive components. The formal component would include aspects such as style (consistency, e.g., use of italics for case names, consistent bibliography (alphabetical, complete), subdivision for primary sources (legislation, case law) and secondary sources (books, journal articles, etc.)), language (grammar, appropriate word choice), and appropriate diction. The substantive component would include aspects such as topic (relevance, clarity, precision), scope of the research undertaken (comprehensive, most important sources consulted), systematic and clearly structured treatment of the topic, logic and persuasiveness of arguments, and correct use of authority.

Proficiency in speaking would ordinarily be assessed in a moot court, or debating setting, or in the oral presentation or defence of a research project. Proficiency in this context would include aspects such as providing a clear and concise description of the

anticipated presentation, effectively responding to any questions posed, demonstrating a clear understanding of trial/debate procedures, presentation containing elements of spontaneity not based entirely on a prepared text, organised and well-reasoned presentation, setting out the most important facts and most important legal principles, and applying the legal principles to the facts of the case.

4. 'Language'

South Africa is a multilingual society with eleven official languages. The use and development of these languages are protected and promoted in the Constitution.

Language is the most important tool of a lawyer. In all instances a lawyer must be able to find and understand the sources of the law before s/he can convey her/his message to her/his clients, opponents and the court. The same applies to the person sitting on the bench in court as a result of the underlying guidelines contained in section 174 of the Constitution. This implies sensitivity to the language(s) of all concerned parties.

Sources of South African law, especially when one works and researches in private law, are written in Latin, Dutch, Afrikaans and English and if comparative work is to be done, German, Dutch and French law often provide insights since they are comparable systems of law. The commercial world in South Africa is dominated by English and a student wishing to embark on a career in the business and commercial world especially in the urban areas of the country would have to be proficient in English. In the more rural parts of the country, law is practised in Zulu, Xhosa, Afrikaans and the other indigenous languages. International trade takes place in a number of foreign languages.

Graduates should thus be able to acknowledge and appreciate linguistic diversity, and programmes leading to the LLB ought to take this need into account, in order to prepare graduates to practice law competently in a context of such diversity.

5. 'Continuous basis'

Graduates have the requisite knowledge-base and skills to be able keep up to date continuously with the ever changing body of substantive law, including new precedent-setting judgments, amendments to legislation and new legislation. Life-long learning is a pursuit that is essential for every law graduate to maintain throughout their careers.

6. 'Transfer legal knowledge to others'

The graduate is able to apply knowledge to different, new and unfamiliar fields of law. For example, in new fields such as IT law or energy law, the graduate will apply existing legal principles to these new fields as they develop. Sometimes the graduate first needs to understand how the common law developed and apply new legislation, read with the common law, to these new or unfamiliar fields.

The graduate is also able to understand and explain the law to lay persons, to colleagues, clients and members of the public, including community members who have had very little exposure to the law.

7. Examples of assessment methods or types

The standard does not prescribe assessment methods or types. The following are provided as examples: written and oral assignments, tutorials, collaborative work, small group work through seminars, projects, case studies, portfolios, dissertations, directed research, presentations, independent study without supervision, moot courts, examinations and tests including short or long problem-solving questions, essays and/or multiple-choice questions, role plays, mock trials, client counselling exercises, reflective journals, observation of real work in live client clinics, work done in live client clinics appropriately supervised, observation of real or simulated legal tasks, and other compulsory and voluntary activities.

8. 'Appropriately qualified to effect meaningful assessment'

'Appropriately qualified to effect meaningful assessment' refers to the knowledge, skills and applied competence of the lecturer/assessor in assessment practices. It is acknowledged that most academics in South Africa are appointed on the basis of their knowledge and research expertise in a particular field or discipline and not necessarily for their knowledge about effective assessment practices. However, in order to be suitably qualified, lecturers/assessors should not only have relevant subject knowledge, but should also be knowledgeable and competent in student assessment.

9. Student : Staff ratio:

A specific student: staff ratio is not prescribed. However sufficient resources should be allocated to a programme leading to the LLB to enable assessment models consistent with the 'Contexts and Conditions for Assessment' as set out above and in Guideline number two, according to which law students receive regular and constructive feedback on comprehensive research-and problem-based assignments. The same principle applies to clinical legal education.

ANNEXURE A

NQF LEVEL DESCRIPTORS

The qualification is awarded at **level 8** on the National Qualifications Framework (NQF) and therefore meets the following level descriptors:

a. Scope of knowledge, in respect of which a learner is able to demonstrate knowledge of and engagement in an area at the forefront of a field, discipline or practice; an understanding of the theories, research methodologies, methods and techniques relevant to the field, discipline or practice; and an understanding of how to apply such knowledge in a particular context.
b. Knowledge literacy, in respect of which a learner is able to demonstrate the ability to interrogate multiple sources of knowledge in an area of specialisation and to evaluate knowledge and processes of knowledge production.
c. Method and procedure, in respect of which a learner is able to demonstrate an understanding of the complexities and uncertainties of selecting, applying or transferring appropriate standard procedures, processes or techniques to unfamiliar problems in a specialised field, discipline or practice.
d. Problem solving, in respect of which a learner is able to demonstrate the ability to use a range of specialised skills to identify, analyse and address complex or abstract problems drawing systematically on the body of knowledge and methods appropriate to a field, discipline or practice.
e. Ethics and professional practice, in respect of which a learner is able to demonstrate the ability to identify and address ethical issues based on critical reflection on the suitability of different ethical value systems to specific contexts.
f. Accessing, processing and managing information, in respect of which a learner is able to demonstrate the ability to critically review information gathering, synthesis of data, evaluation and management processes in specialised contexts in order to develop creative responses to problems and issues.
g. Producing and communicating information, in respect of which a learner is able to demonstrate the ability to present and communicate academic, professional or occupational ideas and texts effectively to a range of audiences, offering creative insights, rigorous interpretations and solutions to problems and issues appropriate to the context.
h. Context and systems, in respect of which a learner is able to demonstrate the ability to operate effectively within a system, or manage a system based on an understanding of the roles and relationships between elements within the system.
i. Management of learning, in respect of which a learner is able to demonstrate the ability to apply, in a self-critical manner, learning strategies which effectively address his or her professional and ongoing learning needs and the professional and ongoing learning needs of others.
j. Accountability, in respect of which a learner is able to demonstrate the ability to take full responsibility for his or her work, decision-making and use of resources, and full accountability for the decisions and actions of others where appropriate.