STUDENT MANUAL: ASSESSMENT POLICY

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1. AIM OF THIS MANUAL

This manual contains the law faculty's official policy regarding the **answering of problem-type questions** and sets out clear **guidelines** that students must follow when answering a problem-type question.

Lecturers may require students to draft particular **documents** from time to time. Students must follow the **form and format** set out in this manual when drafting these documents. Students are also referred to Kok, Nienaber and Viljoen *Skills Workbook for Law Students* (2001).

2. PROBLEM SOLVING: GENERAL GUIDELINES

The following general structure must be followed when answering a problem-type question:

Step		Weight
1.	Identify the problem.	10
2.	State the relevant legal principles.	15
3.	List authority for the stated principles.	15
4.	Apply the principles to the facts.	50 (at least)
5.	Reach a clear conclusion.	10

		100

If an **open book approach** is followed, less weight may be attached to the legal principles and authority for the principles, and more weight may be attached to the **application** of the principles to the specific facts.

Example: Problem-type question

Find and read *The Promotion of Equality and Prevention of Unfair Discrimination Act* 4 of 2000 and answer the following question.

During the perusal time slot for the supplementary exams a female student asks her male lecturer why she did not receive marks for a correct answer. The lecturer examines her answer and compares it with the memorandum. He gets up and locks his office door. He then tells her: "I cannot award the marks to you. But if you come home with me and bring me breakfast in my bed tomorrow morning, I'll make a plan. You help me and I help you. No one knows and no one ever finds out about it because you tell no one and I tell no one." She is very upset and demands that he unlocks the door and let her go. He unlocks the door and smiles at her. His parting words to her are "So I'll see you in my class next year". She consults you. Does she a have a claim in terms of the Act? What relief will be appropriate? Substantiate your answer comprehensively.

Example: Model answer

1. Identify the problem.

The relevant Act must be analysed to ascertain whether the Act identifies a possible cause(s) of action, and whether an appropriate remedy exists.

2. State the relevant legal principles.

The Act prohibits harassment.

3. List authority.

Section 1(xiii) read with section 11 prohibits harassment.

Courts may have interpreted these sections, in which case the student should refer to these cases. (See the format below that must be followed when court cases are discussed.) Previous cases are either analogous (comparable) or distinguishable. Regarding the example above, perhaps a case exists that held that harassment was not present because the student did not suffer harm. The student should compare the facts of the previous case and should argue why previous case(s) constitute good authority, or why a particular case should not be followed.

4. Apply the relevant principles to the facts.

Students generally do not pay nearly sufficient attention to this aspect of problem solving. Usually students simply list authority and then "jump" to the conclusion, usually by merely stating something like "based on above cases X is guilty". Actual problem solving is something much more comprehensive – each of the appropriate principles must be applied to the specific facts. Lecturers will as far as possible not rely on existing cases when drafting problem-type questions; they will set **original problems** that will force students to identify the underlying principles, rather than identifying facts from existing cases. A "problem" question that relies heavily on facts from existing cases constitutes a memory test and does not assess problem-solving skills.

Actual problem solving will expect something like the following:

The definition of harassment in section 1(xiii) of the Act reads as follows:

''harassment'' means unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to—

(a) sex, gender or sexual orientation; or

(b) a person's membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group.

Each of these components must be analysed in the answer:

"unwanted conduct": It is reasonably clear from the facts that the lecturer's conduct was unwanted – the student became upset at his suggestion and demanded that the door be unlocked and she be let go. Maybe cases have been decided in a labour law context that set out which standard should be followed to ascertain if conduct was unwanted – the reasonable person, the reasonable complainant, or the reasonable harasser (if such a test could exist) – these principles should then be applied to the facts.

"persistent or serious": According to the facts the lecturer made an inappropriate suggestion once and his conduct cannot be described as "persistent". The other option is that his conduct must have been "serious" and the question once again arises as to the standard that should be applied. If existing caselaw does not present a clear answer, the student must make a decision and must substantiate it properly. The original question could also have read that the student must argue that harassment took place, in which case the student must identify the facts that tend to show that the conduct was "serious".

"demeans or humiliates or creates a hostile or intimidating environment": the conduct is demeaning because the student is in effect objectified – if she satisfies the lecturer's physical needs, she will pass.

"or is calculated to induce submission by actual or threatened adverse consequences": It is not clear from the facts if the student deserved to pass, or not. If she was entitled to the marks but the lecturer declined to award the marks on condition that she spends the night with him, it is clear that his conduct was calculated to induce submission, as adverse consequences will follow if she does not accede to his suggestion – she will fail. If she does not deserve the marks, it is not clear that this component of the test is present – which adverse consequences will follow if she does not accede to the request? It is in any event not necessary to prove this aspect of the test, as the sentence fragment is introduced by the word "or".

"which is related to sex, gender or sexual orientation": This part of the test is also present, among others because the facts relate to an unequal power relationship - between a lecturer and student and a male and female.

Remedies: section 21 of the Act lists an extensive array of remedies. In this case a prohibitory interdict and a money payment as satisfaction (*genoegdoening*) would most likely be the most effective remedy. The University could also be ordered to develop and implement an effective policy on harassment.

5. Conclusion.

The Act lists harassment as a possible cause of action. The female student will most likely succeed with her claim against the lecturer. (Evidentiary aspects are ignored in the answer.)

Memoranda to these kinds of questions should allow for **alternative solutions**. If a student argues persuasively but comes to a different conclusion, marks should still be awarded.

3. FORM AND FORMAT

3.1 Introduction

The suggestions below expect a student to pay attention to **structuring** his/her answer, to **apply** legal principles to the stated facts and to **argue**.

The format according to which problems may be solved may take any of the following forms:

- short article (or note);
- letter to a client;
- office memorandum (legal opinion);
- heads of argument; or
- a judgment.

Lecturers may also set a **research assignment** instead of a semester test, which has to be drafted according to the style requirements of the above documents. The aim of such an assignment is to give students an opportunity to do independent research. Students have to identify a legal "problem", find sources on this issue, read and understand these sources, and formulate a written "answer" in a motivated, clear and structured manner. The process of writing is aimed at developing research, reading and writing skills.

Each of the possibilities serves a different purpose and should conform to certain stylistic requirements.

3.2 Short article (or note)

An **article** is an academic discussion of a law-related topic, prepared for publication in a law journal, such as the *South African Law Journal* or *De Jure*. The purpose of such an article is to make a contribution to academic (theoretical or principled) discussion about a particular topic. Ideally, the topic addressed should relate to a new development (such as a new statute) or to an academic controversy (eg where decisions or authors differ on an issue).

Footnotes should be used to acknowledge authority or otherwise refer to a source.

For an example, see Murray, R "A feminist perspective on reform of the African human rights system" (2001) 2 *African Human Rights Law Journal* 205.

A short article is, in principle, the same as a "note" ("aantekening" in Afrikaans). These are used only in a number of journals. The main difference between "short articles" and "notes" is the way in which authority or sources are acknowledged. Whilst footnotes are used in articles, regardless of length, in notes acknowledgements and references appear in the text (between brackets).

For an example of a note, see Van Eck, BPS "Misuse of the Internet at the Workplace" (2001) 34 *De Jure* 364.

An article/note must have a proper structure:

· Introduction
  - Identify the "problem"; provide a broad overview of the structure of the article to follow

· Argument(s)

  - Each argument in a separate paragraph

  - Use headings and subheadings

· Conclusion

  - Broad summary of the main arguments; provide a (final / tentative) "solution".

Almost every academic journal sets it own style requirements. The guiding principle is that references must be **complete** and **consistent**. If a bibliography is used, the references in footnotes may be abbreviated. If a bibliography is not used, the first reference to a source in a footnote must be complete and subsequent references may be abbreviated.

Two different sets of style requirements are set out below as examples. Lecturers may require the use of one of these or may require an alternative style.

3.2.1 *De Jure*

The complete style requirements for *De Jure* are available on the faculty's website at

http://www.up.ac.za/beta/academic/law/dejure/eng/djedpol.doc

The most important requirements follow below:

Court cases

References to judgments appear as follows:

Lindsey City Council v Marshall 1936 2 All ER 1076 (HL); *Wessels v Hugo* 1985 4 SA 262 (O) 268J-269A. "NO", "and others", "at", "on page" are not used. Subsequent references: *Wessels v Hugo supra*, the *Marais* case/decision.

Books; LAWSA; Dissertations

References to books appear as follows:

Van Oven *Leerboek van Romeinsch Privaatrecht* (1948) 92; Coetzee in Van Jaarsveld *Suid-Afrikaanse Handelsreg* 2 (1988) 1223. Subsequent references: Van Oven 96; Coetzee 305.

References to LAWSA:

Rabie *LAWSA* (ed Joubert) 6 (1981) par 117. Subsequent references: Rabie *LAWSA* 6 par 118.

Dissertations and theses:

Viljoen *Realisation of Human Rights in Africa through Inter-Governmental Institutions* (LLD dissertation 1997 UP) 77. It is not necessary to state whether the dissertation has been publsihed or not. Subsequent references: Viljoen 77.

Journal articles

References to articles and notes are as follows: Snyman "Die misdaad sameswering" 1984 *SASK* 3; Thomas "The Rental Housing Act" 2000 *De Jure* 235. In subsequent references the title is omitted.

Only the accepted abbreviations of journal names may be used.

The volume and number of the journal are omitted, eg 1971 *THRHR* 12 and not 1971 (34 1) *THRHR* 12.

Newspapers

References to newspaper articles are as follows:

Mail and Guardian (2002-01-15) 12.

Acts

Foreign legislation and its abbreviations are printed in italics.

Refer to an Act as follows:

the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. Refrain from using commas or "No".

section 2(1)(a)(a) in the text, s 36bis(3)(a) in the footnotes.

3.2.2 *Skills Workbook for Law Students*

In the *Skills Workbook for Law Students* different possibilities are set out:

Book

In footnotes:

[19] Schmidt (1999) 442 (author is Schmidt, book published in 1999, information taken from page 442.)

or

[23] Neethling (1994) *Law of delict* 112.

In the bibliography:

Allott A (1970) *New essays in African law* London: Butterworths

Schmidt CWH & Rademeyer H (2000) *Bewysreg* Durban: Butterworths.

Bekker PM *et al* (1999) *Strafprosesreg-handboek* Kenwyn: Juta

Journal article

Swanson ascribed the absence of a court to a "jealous guarding of state sovereignty".[136]

_____

136 (1991) 12 *NY Sch Jnl of Intl and Comp Law* 307 at 330.

First reference to article in text.[1]

Second reference to the same article, same page and follows directly after the first reference.[2]

Further references to the same article, but a different page.[3]

_____

1 De Vos (1999) 20 *SALJ* 216.

2 *Ibid.*

3 De Vos (1999) 20 *SALJ* 222.

"At best lesbians and gays are tolerated".[8]

_____

8 Morgan (1995) 20 *Melbourne University L R* 204-206.

In the bibliography:

Morgan W & Walker K "Tolerance and homosexuality: a policy of control and containment" (1995) 20 *Melbourne University Law Review* 204

Acts of Parliament

The first reference should contain the entire short title, number and year; and this information appears in the bibliography as well.

The Promotion of Equality and Prevention of Unfair Discrimination Act[23]…

_____

23 4 of 2000, hereafter the "Equality Act".

Court cases

There is a series of cases in South Africa in which the father of a minor applied for and was granted an interdict.[65]

_____

65 *L v H* 1992 (2) SA 594 (E); *Meyer v Van Niekerk* 1976 (1) SA 252 (T).

Subsequent references:

[98] *Meyer supra* n65. or

[98] *Meyer* above n65. or

[98] *Meyer* (n65).

In the bibliography:

L v H 1992 (2) SA 594 (E)

Meyer v Van Niekerk 1976 (1) SA 252 (T)

3.3 Letter to a client

A letter to a client expects a student to analyse a given set of facts, to identify the relevant legal principles, and to present appropriate advice to a client. If the client is a legal advisor, the letter may contain typical lawyer's language (jargon), references to cases, etc. If the client is a layperson, the student should rather present the relevant principles and advice in plain English.

The format is as follows:

Own address (physical and postal address)

(fax, e-mail, file reference etc)

Date

Client's address

Opening salutation (Dear Mr Brown / Dear Joe)

Descriptive Heading (use either **bold print**, CAPITALS or <u>underlining</u>)

1. Introductory paragraph

2. Facts

3. Analysis of legal position (legal rule(s)/ principles; application of law to facts)

4. Recommendations and substantiation of recommendation

5. Closing paragraph

Closing salutation (Yours sincerely / Yours faithfully)

(Signature)

NAME (IN CAPITALS)

3.4 Office memorandum (legal opinion)

A legal opinion (legal memorandum) is also based on a real or hypothetical set of facts directed at colleagues in a law firm, a government official, client or the like. The purpose of a legal opinion is to analyse and provide a substantiated solution to a legal problem or issue. Authority and other sources should be acknowledged. A bibliography should also be provided.

The format is as follows:

LEGAL MEMORANDUM

To: ……..

From: ……...

Re: ……

Date: ……

I Statement of facts

II Questions presented (question of law)

III Short answer

IV Applicable law

V Application of law to the facts

for each issue:

- rule or authority
- application to facts
- conclusion
- weaknesses in case considered

VI Summary and recommendation

VII Bibliography

3.5 Heads of argument

Heads of argument are based on a real or hypothetical problem (set of facts), directed at a judicial officer (judge or magistrate). The purpose of heads of argument is to set out arguments in a clear, concise and convincing way. Authority should be acknowledged, either in footnotes or included in the text. Numbering should be used. The heads of argument should contain a bibliography.

Heads of argument must be structured as follows:

In the …….. Court of the Republic of South Africa

Case number: ……..

In the matter between

Applicant/

The State/

Plaintiff/

Appellant

and

Respondent/

Accused/

Defendant/

Respondent

…….'s Heads of Argument

Table of contents

(on a separate page, with page numbers)

I. Introduction

- background, developments, charge, etc.

II. Facts

III Question(s) of law

- keep issues separate (arising from facts)

IV. Applicable law

- authority (statute, case law, other)

V. Application of law to facts

- keep issues separate

- answer questions of law
- **argue** to reach conclusion

VI. Conclusion

- what do you seek from the court (remedy, action must succeed, appeal should succeed)

Signed on (day and month) ……. 200…… at (place) ……

Advocate for the …… (applicant accused, etc)

Copy to: ……..

……..

VII. List of authorities (Bibliography)

- in alphabetical or chronological sequence
- keep books, journal articles and cases separate
- references must be complete and consistent

Short example of heads of argument

In the magistrate's court for the district of Germiston held at Germiston

Case No 9708/98

In the matter between:

Carmen Ballistrada Plaintiff/Respondent

And

Roman Pizzaz 1st Defendant

And

TAB Worldwide (Pty) Ltd 2nd Defendant/Applicant

Applicant's heads of argument

Introduction

1. This is an application for leave to amend the Applicant's (2nd defendant) plea by withdrawing the admission that Mr Bernardi was acting within the course and scope of his employment with the applicant when the collision as set out in paragraph 5 of the respondent's (plaintiff) particulars of claim occurred.

Legal position

2. A court will require a reasonable explanation both of the circumstances under which the admission was made and of the reasons why it is sought to withdraw it.

Amod v South African Mutual Fire & General Insurance Company Limited 1971 2 SA 611 (N) at 614H-615A

Bellairs v Hodnett 1978 1 SA 1109 (A) at 1150

Watersmet v De Kock 1960 4 SA 734 (E)

3. An error of judgment is also a proper basis for permitting an admission that had been made in error, to be withdrawn.

Fleet Motors v Epson Motors 1960 3 SA 401 at 403G-H

4. If the parties cannot be put back for the purposes of justice in the same position as they were in when the pleadings it is sought to amend was filed, the application will be refused.

Moolman v Estate Moolman 1927 CPD 27

Zarug v Parvathie NO 1962 3 SA 872 (D) at 876

Rishton v Rishton 1912 TPD 718

5. If the result of allowing the admission to be withdrawn will cause prejudice or injustice to the other party to the extent that a special order as to costs will not compensate him the application to amend will be refused.

Amod (supra) at 615A

6. The fact that the amendment will cause the respondent to lose his case is not of itself prejudice or injustice in the sense as set out in 5 above.

Amod (supra) at 615B

7. An amendment should not be refused simply to punish the applicant for neglect.

Commercial Union Assurance Company Limited v Waymark NO 1995 2 SA 73 at 77I

Application of the law to the facts

8. It is submitted that the applicant has set out adequately the circumstances in which the original plea was settled. Inexplicably, the information set out in the claim form and police report was overlooked. (At best for the applicant, because of a judgment error, at worst for the applicant because of gross negligence.) The plea should have been settled on a proper perusal of the relevant documents and after a consultation with Mr Brexl on all aspects, including the aspect of course and scope of employment.

9. It is submitted that the applicant has sufficiently set out the reasons why it is now sought to withdraw the admission. On trial preparation, it was discovered that the relevant documents contained information that pointed to the admission being wrongly made.

10. It is submitted that the respondent will not suffer prejudice should the amendment be allowed.

10.1 The effect of the grant of an order for leave to amend will not prevent the respondent from continuing its action against the applicant.

10.2 If the applicant had pleaded in the first instance as it now asks to be allowed to plead, the respondent would be in exactly the same position as it is now.

10.3 The respondent took a risk when he sued the applicant alone, the risk being that the applicant may not have admitted course and scope until it was too late to sue Mr Bernardi (because of prescription). The fact that a claim against Mr Bernardi may have prescribed is not something that can be attributed to the applicant.

Conclusion

11. The amendment asked for does the respondent no injustice and no injury. She is prejudiced by the decision to sue the respondent alone.

Zarug v Parvathie 1962 3 876 at 885

12. The honourable court is therefore requested to grant the relief as claimed.

Dated at Germiston this the 29th day of July 1998.

_____

Jack Crap Attorneys

Attorneys for the 2nd Defendant

123 Wacky Street

Germiston

To: The clerk of the court

Magistrate's court Germiston

And to: Tubby Attorneys

Attorneys for the plaintiff

28 Lard Street

Germiston

And to: Jerry Atric Attorneys

Attorneys for the 1st Defendant

88 Anorexia Avenue

Germiston

3.6 A Judgment

A lecturer may require students to "solve" a hypothetical problem as if the student is the presiding officer in the case and has to hand down judgment. Follow this format when drafting the judgment:

1. Relevant facts
2. Relevant legal principles and resultant legal questions
3. Application of the legal principles to the facts
4. Finding / order

4. CASE DISCUSSION

If students are requested to discuss a case(s), students must use the following format:

1. Facts
2. Legal question(s)
3. Short answer
4. Reasons for the finding

Students should be encouraged to identify the **principles** and **policy decisions** that underlie judgments, rather than uncritically memorising the specific facts of specific cases. In the allocation of marks at least 50% should be allocated to the "reasons for the finding". Only the most crucial facts should be set out.

5. PLAGIARISM

The University of Pretoria and the Faculty of Law place specific emphasis on integrity and ethical behaviour with regard to the preparation of all written work to be submitted for academic evaluation.

Although academic personnel will provide you with information regarding reference techniques as well as ways to avoid plagiarism, you also have a responsibility to fulfil in this regard. Should you at any time feel unsure about the requirements, you must consult the lecturer concerned before you submit any written work.

You are guilty of plagiarism when you extract information from a book, article or web page without acknowledging the source and pretend that it is your own work. In truth, you are stealing someone else's property. This doesn't only apply to cases where you quote word-for-word (*verbatim*), but also when you present someone else's work in a somewhat amended format (paraphrase), or even when you use someone else's deliberation **without the necessary acknowledgement**. You are not allowed to use another student's previous work. You are furthermore not allowed to let anyone copy or use your work with the aim of presenting it as his/her own.

You must provide references whenever you quote (use the exact words), paraphrase (use the ideas of another person, in your own words) or summarise (use the main points of another's opinions, theories or data.)

It does not matter how much of the other person's work you use (whether it is one sentence or a whole section), or whether you do it unintentionally or on purpose. If you present the work as your own without acknowledging that person, you are committing theft.

Even if another student gives you permission to use one of his or her past assignments or other research to hand in as you own, you are not allowed to do it. It is another form of plagiarism. You are also not allowed to let anybody copy your work with the intention of passing it off as his/her work.

Students who are guilty of plagiarism will forfeit all credit for the work concerned. In addition, the matter can also be referred to the Committee for Discipline (Students) for a ruling to be made. Plagiarism is considered a serious violation of the University's regulations and may lead to suspension from the University.

Information brochures on this topic are also available at the Academic Information Services.

For the period that you are a student at the Faculty of Law, the declaration that follows below must accompany all written work to be submitted. No written work will be accepted unless the declaration has been completed and attached.

PLAGIARISM FORM

I (full names and surname): _____

Student number: _____

Module and subject of the assignment: _____

Declaration

1. I understand what plagiarism entails and am aware of the University's policy in this regard.

2. I declare that this _____ (eg essay, report, project, assignment etc) is my own, original work. Where someone else's work was used (whether from a printed source, the internet or any other source) due acknowledgement was given and reference was made according to the requirements of the Faculty.

3. I did not make use of another student's previous work and submit it as my own.

4. I did not allow and will not allow anyone to copy my work with the intention of presenting it as his or her own work.

Signature _____

6. GENERAL

6.1 Perusal

The purpose of perusal is not to remark the paper. A few questions may be considered. If a question or the paper has been added up incorrectly, the lecturer must remedy it. If a question has not been marked the lecturer must remedy it. After a student has compared his/her paper with the memorandum and is of the view that a question has not been properly assessed, the lecturer must consider the student's argument. No student may expect of a lecturer to remark a question or the question paper him- or herself; the student must point out to the lecturer where he or she believes a mark that appears on the memorandum has been overlooked, or specifically where he or she believes he or she was not properly assessed, and only then must the lecturer consider it. If the lecturer and student cannot reach agreement as to the assessment of a particular question, the student may apply for a remark of the paper. When an external examiner remarks a paper, the external examiner simply indicates whether a student has "passed" or "failed". A student cannot qualify for a supplementary examination based on a remark.

6.2 Adjustment of marks

6.2.1 General

With the exception of half marks that become integers, no marks are automatically adjusted. Marginal cases that were not addressed during the perusal process are left unchanged.

6.2.2 Examination admission

In the first semester of the first year students are admitted to the examination with a semester mark of **30%.** In the second semester of the first year and thereafter students are admitted to the examination with a semester mark of **40%.**

6.2.3 Supplementary examinations

In the first semester of the first year supplementary examinations are automatically granted from **40%.** In the second semester of the first year and thereafter supplementary examinations are granted from **45%.**

6.2.4 Pass mark

The pass percentage (final mark) is 50%. 49.5% is automatically adjusted to 50%.

No other final mark is automatically adjusted to 50%.

The semester mark counts 50% of the final mark and the examination mark counts 50% of the final mark.

A student cannot pass a module if he/she passed the examination but achieved a final mark of less than 50%. In such a case the student must write the supplementary examination, should he/she qualify (ie achieve a final mark of between 45% and 49%).

6.3 Answering questions

Students must answer questions in full sentences and must present structured, logical answers. Court cases must be discussed in context. (It is sufficient if one party in a particular court case is mentioned.) A lecturer drafts a memorandum according to which the script is marked, and to be used by students that have registered for that particular module. The memorandum must broadly inform the student what the lecturer expected. In case of tests the lecturer must discuss the memorandum with students and in case of exams the memorandum must be made available during the perusal process. The purpose of the memorandum is not to teach students how to write. Throughout the semester students must be exposed to **model answers**, especially with regards to answering problem-based questions.

6.4 Handing in assignments

Students must hand in assignments timeously. Lecturers must provide clear guidelines relating to the handing in of assignments (place, date, time) and must clearly indicate what sanctions will apply to students should the guidelines not be complied with. Lecturers must monitor the handing in of assignments (eg by requiring students to sign a submission list.)

6.5 Sick tests and assignments

Students must apply, with the necessary proof, to write a “sick” test (based on illness or other exceptional circumstances). Sick tests are not automatically awarded. Lecturers must carefully consider every application.

Lecturers must provide clear guidelines as to the handing in of “sick” assignments (ie when a student was too ill to hand in an assignment on the due date.)