

# SKILLS COURSE FOR LAW STUDENTS

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### STUDY UNIT 1- STUDY SKILLS

#### The study process

- Learning is an active process- it involves a lot of activities
- Learning involves that a pupil actively, and as a subjective being, gets involved and participates in the process
- Participation in this sense involves:
  - ❖ Questioning or interrogating the information and, if necessary, change or re-interpret it
  - ❖ Gathering new ideas and information making it your own
  - ❖ Relating that information to one's own life and applying it in relevant situations in a meaningful way
  - ❖ Interacting or discussing with fellow students or the teacher
  - ❖ Sharing ideas etc
- The exploration phase:
  - ❖ Entails the generalizing of activities
  - ❖ Background info, start planning and managing your time
  - ❖ Contacting fellow students to sort out problems
  - ❖ Discuss the topic with lecturers
  - ❖ Identify and clarify difficult concepts
  - ❖ Get an overview of the contents of the learning material
  - ❖ Identify questions you have to answer
  - ❖ Make summaries for intensive study later
- The fixation phase:
  - ❖ That stage of the study process where you actually get to grips with the real concepts of the subjects, topic or text
  - ❖ Intensive reading, fully concentrate on detail to be able to report on material
  - ❖ Consolidation of facts
  - ❖ Summarizing facts
  - ❖ Memorizing/Rehearsal
- The testing phase:
  - ❖ Asses your understanding of the material

#### The study environment

- The environment that has the following elements could be helpful to you:
  - Good relationships with people around you
  - Physical space:
    - Ensure you have a particular place where you study
    - Be comfortable
    - Lighting and ventilation
    - Temperature control
    - No interruptions
    - No distractions

#### Motivation

##### External motivation

- Weaker than internal motivation
- External motivation can be either negative or positive (e.g. if you don't study you'll fail, if you pass you'll get a bursary)

##### Internal motivation

- Is intrinsic to the individual
- Long-term goals: months or years

- Clear set out goals may help you to focus on your studies
- Short-term goals: sometimes referred to as objectives. Few minutes or days
- A learning contract; is an agreement with your self to stick to your study programme
- Internal motivation should be developed more than external motivation
- When you are self-motivated, have the right attitude to your work and the necessary confidence, you can practically deal with many factors or challenges that the environment may pose for you

### **Healthy diet and lifestyle**

- Avoid substances such as alcohol and nicotine or even coffee
- Eat a lot of fruit and veg
- Eat small meals on a regular basis
- Avoid refined foods and refined sugars
- Get enough sleep
- Exercise regularly and in moderation

### **Time management**

- You have to balance
- A key element in time management is one's ability to prioritize one's work or activities
- Prioritizing: wants are sacrificed for the things you should do i.e. you want to party but you have to study for tomorrow's exam
- You have to know what is your priority in order to deal effectively with such conflicts
- Time planning:
  - ❖ Timetables will help you deal with problems such as procrastination, working only when under pressure, imbalance in terms of time allocation
  - ❖ Make sure your timetable accommodates breaks
  - ❖ Burns and Sinfield: points to consider in making your timetable:
    - Whether you are a morning, afternoon or evening person
    - How much time would you like to give friends and family
    - How much time you have to work or perform chores
    - Whether you will be able to keep all your hobbies and interests going
    - Time for rest and relaxation

### **Study groups**

- Human beings are naturally group orientated
- Belonging to a group helps us develop most of our thoughts and other behavioral patterns
- Why study groups? Conversation/argumentation shows gaps in knowledge and abilities and can also force one to work out conclusions, implications or applications which you were not aware of previously
- What makes groups work? The key feature of functional groups is the element of respect or integrity
- Important characteristics of a group:
  - The group members must have and understand their common objective
  - Group members must observe the basic house rules (be on time, one person speaks at a time etc)
  - Group members must have their roles defined
  - Members must have confidence and trust in one another
  - The group must be manageable
  - Each member must contribute to the discussion
  - Members must work co-operatively and with preparedness
  - Constructive criticism is essential
- Benefits of a study group
  - A group can serve as a pool for motivation
  - Being a member of a small group can give you confidence to actively engage or participate in discussions
  - If you have to present something to the group you will be forced to prepare so that you do not end up disappointing your fellow members or embarrassing yourself

- You will benefit from, at least hearing other people talk about issues and concepts which you have only read by yourself
- Other members may bring other perspectives you never thought about i.e. fresh ideas
- Comparing notes enables clarification and a better understanding
- Should you prepare or present a topic you will find you become an expert on that topic
- Groups add a social and/or interactive element to the study process
- Disadvantages of study groups
  - Some students may not work hard enough and parasite of the contribution of others
  - Some members may be arrogant and bully others
  - Some may be passive and not participate at all
  - Students may not prepare for the discussion
  - You have to contend with logistics such venue and so on
- Some ways in which a group can function:
  - The central figure:
    - The person in the middle is responsible for the flow of communication
    - Suitable for simple tasks
    - Disadvantage is that the central figure can be overloaded with info or can block the flow of info
    - Used in most meetings where all members address their comments through the chairperson
    - The success of the method depends on the leadership abilities of the chairperson
  - Decentralized group:
    - Communication flows freely between the group members
    - Suitable for small groups
    - Unstructured, it can lead to “talk shows” while nothing really gets done. Advisable to have free flow of communication while still having a leader
  - Free flow of communication + chairperson:
    - Group members can freely talk to each other and the leader is also available. This model is used with the most success

### **Note-making**

- Reading techniques: Speed-reading, skimming, scanning and study reading
- The reason why we make notes is to have at our disposal a ready record of important things to be used whenever we may need it
- For your notes to be useful they have to be adequate and effective. Ensure that they have main ideas, details and illustrations or examples
- Points on the note taking process:
  - ❖ Good notes develop from effective reading and listening strategies
  - ❖ Note making is an active process and promotes learning
  - ❖ Not making helps you sustain your concentration when you study
  - ❖ Write notes in your own words as far as possible
  - ❖ Leave spaces to fill in for later
  - ❖ Notes serve as a way of reinforcing what we have read
  - ❖ Notes serve as a record for future use when we would need them
  - ❖ Use a format that you are comfortable with
  - ❖ Write note quickly to save reading time e.g. use abbreviations
  - ❖ Upon completion of the reading session go over your notes o ensure they are effective
  - ❖ Use A4 or a notebook
  - ❖ Separate books for separate modules
  - ❖ Write legibly
- Note-making styles:
  - Visual notes- mind maps, spider grams, branching notes, tables flow charts etc
  - Narrative notes- linear notes, lists, time-line notes, keywords and paragraph method, segment and label etc

- The choice of particular note making style will depend on your individual learning style, the kind of subject matter you are recording; whether you are far from examinations or whether it is the first time you are studying that particular topic. A combination of the various styles will help you succeed

### **Study methods**

- Mnemonics/ memory strategies:
- The key point is for you to be able to 'think' through the ideas or arguments that you are reading
- Various memory strategies:
  - Acronyms, acrostics, keywords, association, imagery etc.
  - Acronyms: each letter serves as a cue to an item or word that you need to remember. It is a combination of letters that is used to memorise a list of words, phrases etc
  - Classification: information relating to the same theme or topic is brought together and given a name or heading that best describes or summarises it. The basic element of classification is the reader's ability to group relevant or associated pieces of information together

### **Summaries**

- A summary is a short or brief way of representing the contents of the original text. Only the main important parts of the ideas of the original text will find space in the summary
- Start by reading the original text thoroughly. You should be able to tell in about a sentence or so what the text is all about. Ensure that your summary does not deviate from the original text

### **Hints on making good summaries:**

- ❖ Do not try to change the content and ideas of the original text
- ❖ Read the whole text to ensure that you grasp the main ideas
- ❖ Find the key points or details the writer uses to illustrate their point or argument
- ❖ Identify the keywords
- ❖ Include definitions of principles or theories if there are any
- ❖ Write in simple language
- ❖ Be objective and factual
- ❖ Make sure the points in your summary are coherent
- ❖ Do not look at the summary as a replacement of the original text

### **Dealing with assessment/testing**

- How we assess or test ourselves as to whether we have mastered the learning outcomes
- Tests, assignments and examinations

### **Writing assignments**

- Read the questions thoroughly to ensure that you know what to do
- Start your preparations in time so that you have the opportunity to do the necessary research. revise notes etc
- Do not copy someone else's work
- The purpose of the assignment is to make sure that you go through the work on your own
- Assignments play a critical role in determining whether you proceed to the next level or not
- Complete and send the assignment before the due date
- Assignments usually take various forms
- In problem questions- make sure you stick to the required length of the essay
- Your assignment should consist of 3 sections:
  1. An introduction: it should be short, outlining the main argument and focusing on the question
  2. A body: the body is the main part of your assignment and will be the longest part of your essay. Develop your argument, supply examples and details, support your claims with facts etc
  3. A conclusion: must summarise the main argument, focus on the question and be brief

### **Preparing for examinations:**

- Physical and mental: get enough sleep, eat well and exercise
- Understand why you have to be tested
- Start in advance with your studies
- If possible go through previous exam papers
- Be on time
- Don't stress

### Writing exams

- Dress neatly you'll feel more confident
- Believe in yourself
- Do not take notes into the exam hall
- Read the exam paper thoroughly
- Plan your answers
- Do the answers you know best first
- Write neatly

## **STUDY UNIT 2- READING SKILLS**

### **When are you an effective reader?**

- An effective reader is someone who can read fast, but also effectively
- They can:
  - ❖ Apply different reading techniques
  - ❖ Understand the purpose of reading a specific text and act accordingly
  - ❖ While reading, see both the bigger picture as well as the detail
  - ❖ Identify the structure of different kinds of texts
  - ❖ See the interrelations in the text as well as with the reality outside the text and link them
  - ❖ Make the correct assumptions regarding what is not directly said (or implied)
  - ❖ Evaluate the text for its purpose, content, usefulness, objectivity and scientific correctness
  - ❖ To interpret and understand, you must:
    - Have the physical and psychological skills to read
    - Have a broad general knowledge and meaning of words and expressions
    - Understand literal and figurative speech
    - Do not read word for word, read for meaning
    - Be able to recognise the most important facts
    - Be able to understand the nature of the message

### **To read and understand and act of parliament**

#### The text

- A signed text is signed by the president after it has been approved by parliament
- The short title of the act is the name of the act
- The long title of the act is a piece printed in bold under the word act. It explains the purpose of the act
- After the long title of the act you will find the contents
- Chapter 1 is definitions
- A comprehensive reference is usually used only the first time reference is made to the act
- Context: the bill of rights says that a court in interpreting any act has to be able to take cognizance of the spirit, purport and objectives of the bill of rights
- The will investigate the reason why the act was necessary. They might consider the socio-economic and political or historical scenario in which the act was formulated
- Presumptions
  - Legislation does not contain meaningless sections
  - Legislation doesn't want to change existing laws unnecessarily
  - Unreasonable or unfair consequences are not envisaged
  - Legislation only applies in future and not retrospectively

**Latin terms**

<b><i>A fortiori</i></b>	the more so
<b><i>A quo</i></b>	whence; from which (e.g. court <i>a quo</i> )
<b><i>Ab initio</i></b>	from the beginning/start
<b><i>Ad hoc</i></b>	for a specific occasion; for the present purpose
<b><i>Ad hominem</i></b>	relating to the person
<b><i>Ad idem</i></b>	of one mind; unanimous
<b><i>Ad infinitum</i></b>	for ever, without end
<b><i>Amicus curiae</i></b>	friend of the court (an advocate requested by the court to appear in a certain case).
<b><i>Animus</i></b>	intention
<b><i>Animus iniuriandi</i></b>	intention to injure
<b><i>Animus testandi</i></b>	intention of making a will
<b><i>Audi alteram partem</i></b>	to give a person the chance to state his/her side of the matter; both sides of the story are heard
<b><i>Bona fide</i></b>	in good faith (and honest intention)
<b><i>Boni mores</i></b>	good morals
<b><i>Causa</i></b>	cause; consideration; inducement; motive; reason for doing something
<b><i>Contra bonos mores</i></b>	against good morals
<b><i>Culpa</i></b>	fault; neglect; negligence
<b><i>Cur adv vult (curia advisari vult)</i></b>	the court wishes to consider its verdict; reserves judgement
<b><i>Curator ad litem</i></b>	person appointed by the court to assist another in litigation
<b><i>Curator bonis</i></b>	curator of property
<b><i>De facto</i></b>	in fact; in deed; as a matter of fact
<b><i>De iure</i></b>	of right; in law; judged by the law
<b><i>De minimis non curat lex</i></b>	the law does not concern itself with trifles
<b><i>De novo</i></b>	afresh; anew
<b><i>Diligens paterfamilias</i></b>	reasonable person
<b><i>Ex contractu</i></b>	from a contract
<b><i>Ex delicto</i></b>	from a delict
<b><i>Ex lege</i></b>	by force (operation) of law; as a matter of law; according to the law
<b><i>Id est</i></b>	it is; namely
<b><i>In absentia</i></b>	in his/her absence
<b><i>In camera</i></b>	behind closed doors; in chambers; in private; eg a court that is not open to the general public
<b><i>In casu</i></b>	in the present matter
<b><i>Infra</i></b>	below
<b><i>In re</i></b>	in the case of
<b><i>Inter alia</i></b>	amongst others
<b><i>Interim</i></b>	meanwhile
<b><i>Inter partes</i></b>	between the parties
<b><i>Ipso facto</i></b>	within the powers/competence of...
<b><i>Ipso iure</i></b>	by the law as such
<b><i>Ius</i></b>	a right; the law
<b><i>Locus standi</i></b>	right to be heard
<b><i>Mala fide</i></b>	in bad faith
<b><i>Mutatis mutandis</i></b>	with the necessary amendments, changes
<b><i>Nomine officio (NO)</i></b>	in official capacity
<b><i>Obiter dictum</i></b>	a remark in passing
<b><i>Pendente lite</i></b>	pending the case
<b><i>Per se</i></b>	by himself; on its own
<b><i>Postea</i></b>	afterwards
<b><i>Prima facie</i></b>	at first sight; on the face of it

<b>Pro Deo</b>	literally “for God’s sake”; defence at state expense of an accused lacking the means of briefing counsel
<b>Pro non scripto</b>	as if it has not been written
<b>Pro rata</b>	proportionally
<b>Quantum</b>	amount (eg of damages)
<b>Ratio decidendi</b>	reason for the court’s ruling
<b>Spes</b>	hope; expectation
<b>Stare decisis</b>	abide by decided decisions
<b>Sub iudice</b>	a trial that is still pending
<b>Sui generis</b>	peculiar to itself; distinctive
<b>Subpoena</b>	summons; eg in a criminal case a witness is subpoenaed to give evidence in the court
<b>Supra</b>	above
<b>Ultra vires</b>	exceeding authorisation
<b>Verbatim</b>	word for word; literally
<b>Versus</b>	against
<b>Vice versa</b>	the other way round
<b>Viva voce</b>	verbally eg oral evidence
<b>Volenti non fit iniuria</b>	to one consenting no wrong is done
<b>Vide</b>	view

### How to read a court case

- Three types of reported cases: civil, criminal and constitutional cases

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#### Case name

- “S” stands for state in a criminal case. State v the accused
- Before “S” the used “R” standing for royal as in the Latin for king or queen Rex and Regina
- In civil cases (between citizens) plaintiff v defendant, on appeal the appellant v the respondent
- In action proceedings the procedure is started by means of a summons, used when there is a fundamental difference between the parties as the facts of the case are concerned
- In application proceedings, the procedure is started by way of motion, there is no fundamental difference between the parties as far as the facts of the case are concerned *Ex Parte*...

Year and volume: the number in brackets shows the volume of the report that contains the case

Series of law reports: the letter that appear after the date and volume

The page where the report starts: appears after the abbreviation of the reports name

The court where the case was decided: letters appearing immediately after the page number. “*The court of first instance*” is used to refer to the court in which the case was heard for the first time and “*court a quo*” is used to refer to the court where the case was heard before it came to the current court on appeal

- S v M 1993 (1) SACR 160 T
- This case can be found in the first volume of 1993
- And can be found in the South African Criminal law Reports on page 160
- And was decided on in the Transvaal provincial high court

**SACR**: South African Criminal law reports

**SA**: South African Law reports

**CLR**: Commercial law reports

**SALLR**: South African Labour Law reports

**BCLR**: Butterworth’s Constitutional Law reports

- Only civil and criminal cases are reported the important ones
- Magistrates court cases are not reported
- Only certain decisions of the high court are reported



- All constitutional cases are reported!

**CC/KH:** Constitutional Court (GP)

**SCA/HHA:** Supreme Court of appeal replaces the appellate division

**C/K:** Cape Provincial division

**E/OK:** Eastern Cape provincial division

**SE/SOK:** South East Cape Provincial division

**N:** Natal provincial division

**D/D+C/D+K:** Durban and Coastal local division

**NC/NK:** Northern Cape division

**O:** orange Free State Provincial Division

**T/TPD/TPA:** Transvaal Provincial division

**W/WLD/WPA:** Witwatersrand local Division

Judges names: appears under the name of the court where the matter was heard. The letters that appear after the judge's names indicate their title.

### **Up to November 2001:**

#### **Constitutional court**

P – President (*President*)

DP/AP – Deputy President (*Adjunkpresident*)

J/R – Judge/Justice (*Regter*)

#### **Supreme Court of Appeal**

CJ/HR – Chief Justice (*Hoofregter*)

DCJ/AHR – Deputy Chief Justice (*Adjunkhoofregter*)

JA/AR – Judge of Appeal (*Appelregter*)

AJA/WnAR – Acting Judge of Appeal (*Waarnemende Appelregter*)

#### **High Courts**

JP/RP – Judge President (*Regter-president*)

DJP/AdjRP/ARP – Deputy Judge President (*Adjunkregter-President*)

J/R – Judge (*Regter*)

AJ/WnR – Acting Judge (*Waarnemende Regter*)

### **After November 2001:**

#### **Constitutional Court**

CJ/HR – Chief Justice (*Hoofregter*)

DCJ/AHR – Deputy Chief Justice (*Adjunkhoofregter*)

J/R – Judge/Justice (*Regter*)

#### **Supreme Court of Appeal**

P – President (*President*)

DP/AP – Deputy President (*Adjunkpresident*)

JA/AR – Judge of Appeal (*Appelregter*)

AJA/WnAR – Acting Judge of Appeal (*Waarnemende Appelregter*)

Note that the titles of the judges of the High Courts remain unchanged.

Date on which the case was heard: is normally written/appears, under the names of the judge or judges who preside over that case

Catch phrase (flynote): are the most important points with which the judgment is concerned

Headnotes: is a summary of the case. It usually includes the area of law that the case is concerned with as well as the *ratio* of the case

Legal representatives: the persons who represented the parties in court, appears after the head note

Summary of heads of argument: the summary of heads of arguments and authorities, which the lawyers presented to the court

Date on which judgment is given: when judgment is given on a different day to the day on which the case was heard, the words "*Cur adv vult*" will appear. Means "the court wishes to consider the verdict". These words are followed by the "*postea*" (followed by a date), which is Latin for afterwards

Judgment: if in a particular case *postea* appears, the name of the judge will then appear again below it. The name of the judge is given to indicate which of the judges, if there is more than one, gave the judgment.

Most judgments take the following form:

1. The facts are given
2. There is a discussion of the relevant principles
3. The existing law is applied to the facts of the case
4. A decision is given in light of the relevant facts
5. The order is given
6. An order regarding costs is made

### Different kinds of judgments

- ❖ Majority judgments- Means a majority of the judges give the same judgments based on the same reason. One judge gives the judgments and the others concur. The *ratio decidendi* of the majority judgments creates the precedent to be used in future cases and is binding.
- ❖ Minority judgment- the judge disagrees with the majority and reaches a different conclusion. In such a case a judge differs from the majority of judges as far as the judgment and the reason for the judgment is concerned. Such a judgment does not establish a precedent. It can however, have persuasive force in the future. It is also possible for judges to concur with the minority judgment of another judge.
- ❖ Separate judgment- Sometimes a judge does not disagree with the conclusion of the other judges, but has different reasons for his/her judgment. The *ratio decidendi* is only to be found in the majority judgment. It is also possible for a judge to concur with the separate judgment of another judge.

Order of the court: "In the result I would like to make the following order..." "The result is that..." "The application must consequently be refused..."

Order as to costs: the presiding officer makes an order. This order will stipulate which party has to pay which costs. These orders are called "orders to cost" and are given at the end of the case. Sometimes, no order as to cost is made

Attorneys: the names of the attorneys of the parties involved in the case appear after the judgment

Letters of the alphabet: Along the side of every page of the judgment are consecutive letters of the alphabet. These letters are a reference tool- in the sense that, they help to refer to specific parts of the judgment.

## **Reading and understanding a journal article**

Aspects to consider:

- When was the article published?
- Was it published before or after the new constitution?
- Who is the author/writer of the article? Is he/she an authority on the topic? Has he/she also written other articles in the same field?

The structure of the letter:

- ⇒ A title
- ⇒ An abstract
- ⇒ An introduction
- ⇒ Arguments
- ⇒ Conclusion

**Reading an article:**

- ⇒ Read the title as well as the abstract
- ⇒ Skim-read the article
- ⇒ Read the article again in full detail
- ⇒ Read the article again including footnotes as the footnotes sometimes contain valuable information

**Things to think about the article:**

- ⇒ Which aspects is the author addressing and why?
- ⇒ Which solutions are given?
- ⇒ Is it relevant information that can make a difference?
- ⇒ Which sources are referenced? And are they authoritative?

**STUDY UNIT 3-RESEARCH SKILLS**

**Primary sources:** Common law, legislation, court cases and custom

**Secondary sources:** Textbooks, journal articles and the Internet

**Plagiarism:** you commit plagiarism when you take the words, ideas or thoughts of another person and present them as your own. It is a form of theft, which includes a number of academic activities. Examples of plagiarism:

- ❖ The direct copying or repeating of paragraphs, sentences, one sentence or a meaningful part of a sentence
- ❖ The repeating of thoughts, research results, statistics, designs and so on, without giving recognition to the original designer or researcher
- ❖ The paraphrasing of another's work, with small changes, but the essence kept;
- ❖ To base your argument on a specific idea or interpretation which is not yours without giving recognition to the person whose idea it is
- ❖ To copy and paste from numerous sources and present it as original work
- ❖ To pretend that you have done the work alone, whereas you did it with someone else
- ❖ To submit a part or the whole piece of work of another student
- ❖ To be dishonest in an exam either by using crib notes or to copy from a fellow student

**Finding primary sources:**

Important because they are the law at any given moment, they have authoritative value which is more than pure persuasive

**Finding legislation:**

- Legislation includes: national legislation, provincial legislation and local legislation.
- Legislation is published in the government gazette
  - The index is divided into 3 sections:
    1. An alphabetical list of titles
    2. The subject list
    3. The chronological list of acts
- Make sure the legislation you refer to has not been repealed or that the position did not change by way of amendment

**Finding Court cases:**

- You have to find the court cases in which the courts interpreted the act
- Using the reference to the case
- If you have the name of one of the parties or both you can find the case reference by consulting the indexes to court cases

- If you have no reference information but you want to find out whether there is any court case on a specific topic or if there is a court case based on a certain act you should also consult the indexes. It contains subject as well as legislation indexes.

#### Finding Common law:

- ⇒ South Africa does not have one specific book (or code) containing a list of all the possible crimes. Therefore, South African law is not codified.

#### **Finding Secondary sources**

Secondary sources have persuasive authority only! Secondary sources are influenced by personal arguments and views, which are not necessarily correct

#### Finding books

- The content of law books can become easily outdated- note the date of publication!!
- Look at the place of publication so that you can be sure which legal system is applicable

#### Finding Journal articles

- ❖ Via an annual index
- ❖ Or by using ISAP (Index to South African Periodicals), which is an online database which is made available through SABINET

### **Presenting research results**

#### Style:

##### ⇒ General layout:

- ⇒ Write as clearly as possible, be consistent in your presentation
- ⇒ All work submitted must be typed
- ⇒ All headings must be to the left hand side of the page
- ⇒ Justify your text, type in 12pt and 1 ½ spacing
- ⇒ Footnotes should be typed in 10pt

##### ⇒ Headings:

- ⇒ The main title must be printed in capital letters and in bold
- ⇒ Main heading with one number must be printed in bold; secondary headings must be printed in bold and italics; tertiary headings must be printed in italics and all other headings plain letter typing
- ⇒ There is no full stop after a heading

#### Footnotes and bibliography

- ⇒ The golden rule for any legal publication is that if any information contained in the text (or in the footnotes or endnotes) has been obtained from an outside sources- and is therefore not the writers own ideas, thoughts or arguments- it is absolutely necessary that a reference to that source be provided
- ⇒ Your research must be supplied with a bibliography of the sources used
- ⇒ A table of cases as well as a table of statutes must be provided
- ⇒ Books:
  - ❖ As a general rule always use the latest edition of a book unless there is a good reason to refer to an older edition
  - ❖ Author, title, publisher, edition, area
  - ❖ Title in italics
- ⇒ Journals:
  - ❖ Title in “ “, in lower case and is followed by the date and volume of the journal
  - ❖ The titles of journals were possible should be abbreviated and in italics. Most law journals prescribe on their editorial pages, how the journal title should be referred to in abbreviated form
  - ❖ Newspaper reports are reported similarly
- ⇒ Old authorities:

- ❖ Give the Latin or Dutch title of the book you cite, not the title of the translation in English
- ❖ The principal parts of the *Corpus Iuris Civilis* of Justinian of the mid-sixth century are the *Institutiones*, the *Digesta* and the *Codex*. It is customary to refer to them by the English translations: Institutes, Digest and Code. In citations the abbreviations I, D and C are used

⇒ The internet:

- ❖ Is acknowledged by reference to the particular website, followed by the date when the website was visited

## **STUDY UNIT 4- COMMUNICATION SKILLS**

What is non-verbal communication? Your body; your attitude; your face and your clothes also send out their own message.

The importance of non-verbal communication for a lawyer: to give credibility to your appearance in court while arguing a matter. 35% of your message is communicated verbally, while 65% of the message is transmitted through non-verbal communication. Verbal communication usually referred to information or facts, while non-verbal communication transfers feelings, emotions and attitude

Examples of non-verbal communication:

Clothes- dress professionally

Body language- must compliment your professionalism

Eye contact- looks the magistrate in the eye when you make your submissions. Show respect to everyone.

Up to 87% of all information is conveyed through the eyes, only 9% is conveyed through the ears and 4% through the rest of the senses.

Facial expressions- shows sympathy and interest. Never look at your watch while interviewing a person

Tone of voice- speak loud enough so that everyone can hear you

Non-verbal communication also includes other professional behavior and service delivery such as answering phone calls and responding to messages. Be punctual and behave professionally!

### **Interviewing**

Why interviewing skills? To consult with witnesses, experts or other role players in a specific matter or issue. Know what kind of questions to ask, how to ask these questions, and how to conduct yourself when interaction with these people in order to obtain the information relevant for your case.

Maughan and Webb: functions of an interview:

- To establish the interpersonal dimensions of a lawyer-client relationship;
- To identify the issues and obtain sufficient detailed information to advance the matter
- To determine the clients objectives, and so far as possible, advise accordingly;
- To prepare the way for further action on behalf of the client

### **Preparing for interviews**

- Know the kind of information you will need for the file
- Research the applicable law
- Jot down the relevant facts or aspects that you consider essential to the case, or that which you think you might need to prove your case.
- Write down the relevant questions for the information you want to obtain from the person you are going to interview
- Think of possible questions that your opponent may ask your client

### **The actual interview**

- Beginning:
- One of the approaches you may take is start by showing in the client or witness

- Do not rush into the main issue that has necessitated the interview. You should allow them to relax
- Enquire about the name he/she would like to be called.
- Talk about general things
- If possible provide him/her with something to drink
- If you are interviewing a witness you need to tell them who you are acting for
- Reassure the witness about the confidentiality of the discussion or interview
- Specific detailed questions:
- A safe approach is to ask the client or witness to give a short outline of what happened. You should do this to give yourself an opportunity to get the general sense of the story
- Take notes as he/she speaks so that you have the necessary information
- After this initial run, you may politely ask him/her to start from the beginning
- At this stage you should check inconsistencies, and whether there are any deviations
- You should, again, be free to stop him/her and politely ask him/her to clarify such deviations. Take notes
- Remain focused on the facts of the "story" In this way you should be able to sift away his/her emotions or opinions and stick to the facts
- During all this, remember to listen
- Ensure that the client or witness gives you the information that is relevant to the questions you considered before the consultation and that such information will help you develop your argument as far as the "issues in dispute" are concerned.

### **Listening skills**

Why listening skills? Failures to listen to the client's story will not only limit the accuracy of your information gathering and advice, but may damage your ability to build up a rapport and gain the client's confidence

Listening is a skill- skills are acquired, not natural abilities

Hearing is mostly passive, spontaneous and rather indifferent; whereas listening is a more active, conscious and deliberate exercise by the interlocutor to receive certain messages and sounds

### What is a good listener?

Would be someone who understands why he/she has to listen to something, in the first place. He/she knows what he/she wants from the context in which he/she is listening.

### Points that characterise a good, and effective, listener:

- ❖ Be empathetic.
- ❖ A good listener keeps eye contact and responds to the speaker accordingly
- ❖ A good listener also listens with his/her eyes
- ❖ A good listener also participates in the interaction, silently, by active body language
- ❖ A good listener would thus also encourage the speaker that he/she is actively involved and is interested in the interaction by using both receptive language and non-verbal cues
- ❖ He/she seeks clarification where there is any misunderstanding, or signs that there is coherence in what is being presented.
- ❖ He/she cares about the speaker and other role players in the listening context, and value of the messages
- ❖ A good listener shows interest in, and commitment to, the interaction
- ❖ A good listener must be open-minded

### Ways of listening

Listening may be passive or active

You can listen in 2 ways:

1. Listening for facts
2. Listening while also taking cognizance of feelings or emotions

Listening for facts: listen for what is being said

- Think about the topic before attending
- Read about the topic before attending
- Listen for main arguments
- Note which arguments support the main ideas
- Try to remain objective
- Take notes
- Ask questions for clarification

Listening while taking cognizance of feelings:

- Do not judge the speaker
- Use non-verbal communication to help the speaker relax and trust you
- Do not interrupt the speaker
- Avoid disturbances like phone ringing etc
- Do not quote examples from your own life
- Do not give advice unless you are asked for it
- Ask questions if you need clarification

Logic and legal arguments

- ⇒ Argumentation forms the basis of all forms of legal argumentation or oral advocacy
- ⇒ As a lawyer your role is to look at a problem that has to be solved by application of the relevant laws. This should be done in such a way that you are able to persuade the courts (that is the judge or magistrate) about the validity of your argument
- ⇒ *Legal argumentation* is this activity by a lawyer to apply the relevant law to a particular legal problem
- ⇒ The ability to argue in the legal practice, as in many other social situations, depends on how one is able to construct sensible and fluent chain of ideas, which leads to a probable or acceptable conclusion
- ⇒ The ability to argue effectively depends on how logically your ideas are organised with reference to sequence, combination and reaching acceptable conclusions

What is logic?

- ❖ Logic has to do with the ability to solve problems by argumentation
- ❖ It gives guidance on how to argue and to get to grips with issues of argumentative nature
- ❖ The focal point of traditional logic is the argument. What is an argument? It is a network of statements in which one statement is made on the strength of the rest.
- ❖ The relation between the premise and the conclusion may be of different forms. We look at the two best-known forms:
  - ❖ **Deductive reasoning:**
    - ❖ Here the conclusion follows directly and fully from the premise
    - ❖ The premise so to speak 'forces' the conclusion on us.
    - ❖ To know what the premise claims is to know the contents of the conclusion
    - ❖ Three aspects are of importance here:
      1. Form and content: the form determines the validity of the argument
      2. Truth: the premises have to be true, i.e. meaningful facts
      3. Meaning: This form of argumentation may seem rather inferior because it neither gives new knowledge nor does it guarantee truth as such. It rather provides clarity of meaning, and of, the knowledge we have. Clarification and interpretation are, however, important parts of legal involvement
  - ❖ **Inductive reasoning:**
    - ❖ Here the form is the same as for deduction but the conclusion contains something new, something more in that it goes beyond the premises. On the ground of some observations, scientists make claims that cover ALL future instances
    - ❖ The problem then is how premises can still be seen as grounds for the conclusion

- Argument from a (so-called) law: Lawyers usually argue from or on the basis of laws, and then it has to be shown that a particular instance is one covered by that law, or the other way round show why the law does not apply
- Connectedness or correlation: It is not claimed or assumed that there is a law but that two different occurrences or aspects often go together; or that there is an established correlation between the two. "Because A therefore B". This may also be a form of an excuse
- Causality: there must be some form of necessity in their interconnection. Any case, which is argued in this manner, should be built up to provide as strong a conclusion as possible. Premises should be formulated and combined in such a way that the conclusion derived from them will in the end be more acceptable than any other possible conclusions

### General remarks:

- o The nature of premises:
- o Premises in arguments are different in nature. They can be perceived or acknowledged facts, or assumptions from worldviews, about history or science, etc, or they can be meanings of words or expressions
- o They can of course also be the conclusions of an earlier argument
- o Relevance: Everything, which is put forward in an argument, should be relevant to the main point
- o Two common forms of irrelevance in arguments are (a) *argumentum ad hominem* – attacking the arguer instead of the argument. Whatever is said about a person it does not affect his/her argument. (b) Argue from authority, i.e. to introduce a name in an attempt to strengthen the argument.
- o Beware of arguing in circles:
- o Happens when a conclusion (or rather the wished-for-conclusion) is introduced (usually camouflaged) as a premise
- o Criticism:
- o In criticising an argument one can focus on the premises or on the conclusion. The conclusion may be valid but not acceptable or it may not even be valid. Premises may be rejected as untrue or irrelevant.
- o Any form of criticism has to be argued in its turn, and can and has to be treated/evaluated as such
- o The principle of reasonableness. View points/statements have to be substantiated/argued and must in principle be open to criticism and discussion. Freedom of expression and reasonableness go hand in hand
- o Non sequitur:
- o Without sensible or valid inferences, we cannot arrive at valid conclusions
- o The conclusions that do not follow the premise from that they are supposed to be derived from
- o The process of logical reasoning may help in adding to one's persuasive power; but that does not establish the truth
- o It remains your responsibility to organise the facts, find the law and formulate a logical argument that will win you the case
- o In philosophy there are several ways in which one's logical reasoning may be challenged:
  - ⇒ The argument is based on false, weak, ridiculous or unacceptable premise,
  - ⇒ Inferences/assumptions made from the premise(s) are flawed, or
  - ⇒ Where the final conclusion made does not follow the premise it is supposed to follow (*non sequitur*).

### Oral advocacy

#### Important points to consider:

Certain guidelines or procedural steps that a lawyer has to follow when handling a case:

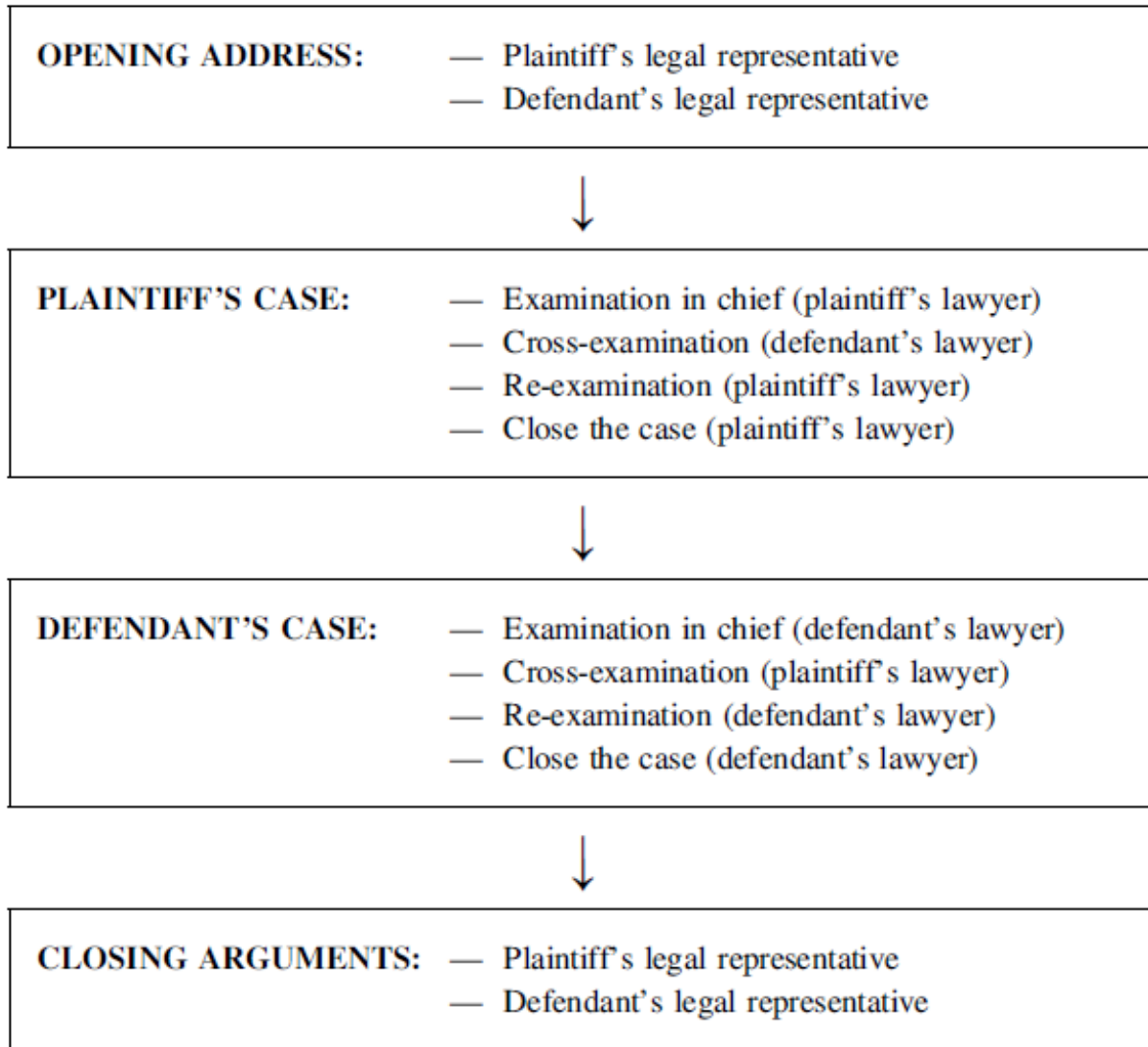
#### Preparation:

- ❖ Do research on the relevant law
- ❖ Be conversant with the contents of your file.
- ❖ Make the necessary arrangements with your clients and other important role players
- ❖ Formulate questions you will have to ask.
- ❖ Prepare your witnesses and client for the trial.



- ❖ Do not take anything for granted, as you may lose even the most simple of cases.
- ❖ Punctuality: It is important to arrive early so that you get the time to establish which magistrate will hear the case.

Procedural steps/stages in a trial:



Opening address:

The purpose of the opening address is to introduce the matter to the presiding officer (magistrate or judge) briefly and simply.

- Address the magistrate: "Your worship"
- State your name
- State for whom you act
- State what the matter is about
- State the issue in dispute
- State what evidence you will present

→ In an opening argument you should not give any arguments or evidence. Evidence is presented in examination-in-chief

#### Examination in Chief

- ❑ May only be conducted after the witness has been sworn in
- ❑ Make sure the witness tells their story logically, fluently and coherently
- ❑ Observe body language
- ❑ Ensure that your way of framing the question will prompt the witness to provide information that is relevant for your purpose
- ❑ Avoid asking leading questions- such questions purpose information which has not yet been given, generally yes or no questions except questions relating to common course

#### Cross examination

- Be careful not to inadvertently strengthen your opponents case
- Purpose is to find holes in the witness's version of the story- be robust/ aggressive

#### Re-examination

- ⇒ Purpose is to lessen the damage caused by the cross-examination
- ⇒ Only do if necessary

#### Closing argument

- ❖ Are meant to persuade the court to follow your line of argument
- ❖ You should prepare heads of argument: briefly outline the facts or background of the case; the evidence; applicable law or sources and finally ask the court for a specific order or orders

### **STUDY UNIT 5- NUMERIC SKILLS**

Assets: are what you possess

Liabilities: your debt

$100(100+\text{VAT}) \times \text{amount inclusive of VAT} / 1 = \text{amount exclusive of VAT}$