



Skills Course

for law students
Only study guide for
SCL1014

University of South Africa, Pretoria

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Dear Student

Welcome to module SCL1014!

This module is probably your first encounter with your legal studies or the study of law. We hope that you will enjoy the course content, and that it will inspire you to become a very successful student and, ultimately, a brilliant lawyer! This is a first year module in the four-year LLB degree.

This module differs from other law modules in the sense that in it you will be required to *DO* most of the work yourself. In other words, do not approach this module the same way you approach other (more) theoretical subjects. The benefit of this module lies in the fact that you will be able to apply everything that you learn. If you can *DO* that, we can almost guarantee that you will have a successful career.

The Law Society of South Africa and the Bar of Advocates here have raised the concern that LLB graduates do not have the necessary skills to make a success in the legal profession. According to them (that is, the Law Society and the Bar), students who have completed the degree have all the necessary theoretical knowledge, but they cannot apply it.

It is thus the main purpose of this course to prepare you to study better, and to practically demonstrate your skills in law, so that you can be better equipped for the challenges that the legal practice will pose to you.

At the end of this module you should:

1. Demonstrate effective study skills (the study process, study environment, healthy diet, time management, note taking, summaries and study methods, writing of assignments, preparing for and writing examinations).
2. Demonstrate basic knowledge and applicable practical skills (eg numeric skills, communication skills, research skills, reading skills and listening skills) that relate to the daily challenges in the legal practice.

The two points mentioned above are called learning outcomes (and basically include the knowledge and skills that you should demonstrate by the time you complete this module). In order to determine that you have successfully achieved the learning outcomes, they (the outcomes) will be assessed in the following ways:

Learning outcome 1

- 1.1 Studies are planned with the help of the right time management as shown in the exercises in the Workbook.

- 1.2 Assignments are done in the correct format.
- 1.3 Students prepare early for the examinations.
- 1.4 Conducive study environments are used.
- 1.5 Students follow a healthy diet.
- 1.6 Students choose and analyse study methods according to the exercises in the Workbook.

Learning outcome 2

- 2.1 Numeric skills will be demonstrated by the solution of numeric problems.
- 2.2 Communication skills will be demonstrated by the good answering of questions in the Workbook after students shall have watched the DVD.
- 2.3 Research skills will be demonstrated by the good answering of questions in the Workbook after students shall have watched the DVD. Students should also, on their own, find Acts/Statutes and court cases in order to be able to answer the questions in the Workbook.
- 2.4 Reading skills and Research skills go hand in hand. Therefore, as soon as the student finds the Act, court case or journal article, he/she should read them and answer the questions in the Workbook.
- 2.5 Listening skills will be assessed through students watch-listening to the DVD and then answering questions in the Workbook.

The abovementioned outcomes of this module will help you to achieve certain outcomes of the (LLB) degree.

SCL1014 comprises **5 study units**. You should organise your available time for study in such a way that these 5 study units could be completed in one semester. If you register early, a semester comprises approximately 16 weeks of study time. We urge you to spend three weeks on each skill, and the rest of the semester on revision and preparation for the examination.

This study guide comprises the following study units:

■ **Study unit 1: Study Skills**

In this study unit we will teach you how to study effectively; so that you become an excellent student. Lawyers should be fond of study, cover lots of facts and use time economically.

■ **Study unit 2: Reading Skills**

This study unit and the following unit go hand in hand. As soon as you find legislation or court cases, you should also know how to read them.

■ **Study unit 3: Research Skills**

It is very important for a lawyer to be able to do research. After studying this chapter, you will know where to find the common law, legislation, court cases, and journal articles.

■ **Study unit 4: Communication Skills**

This is a comprehensive section, and addresses non-verbal communication, group work, oral advocacy (skills) as well as how to set out arguments logically.

■ **Study unit 5: Numeric Skills**

In this study unit we highlight certain skills to work with numbers. These include addition, subtraction, multiplication and division, fractions, apportionment of damages and interest. Numeric skills are very important in any lawyer's practice.

You will receive a DVD which forms part of Study Units 3 and 4.

You should study all the 5 study units plus the DVD for the examination. Remember that the purpose of this module is not only for you to pass the examination, but to also equip and prepare you for the world of practice that awaits you. You will also receive tutorial letters during the course of the semester. These tutorial letters form part of the study material for the examination.



Each study unit has activities. You must do these activities in your *Workbook* in order to benefit from this module. Feedback in respect of the activities will be sent to you by way of tutorial letters during the course of the semester.

It is very exciting to study law; but you will quickly discover that it is not simple. Do not hesitate to consult your lecturers, whose particulars appear in tutorial letter 101, should you experience any problems with the work.

We hope you will enjoy this module!

The lecturers for SCL1014



Study unit 1: Study Skills

STUDY UNIT



STUDY SKILLS

In this unit we are going to look at the various activities and principles that have been found by educationists and psychologists to be useful in the enhancement of one's study process and learning. Although we will take you through the various topics in this field, you will have to consult additional sources should you not understand everything or have difficulty in studying.

NOTE: Only what is written in this study guide is relevant for the examination. See your *Unisa: Services and Procedures* for information on the Bureau for Student Counselling who will be able to help you with study problems. You can order the book *Effective Study* from Unisa Press. The details for ordering copies of this book are also in your *Unisa: Services and Procedures*.

1.1 Outcomes

At the end of this unit you should be able to:

- Know your learning style and environment
- Understand the study process
- Manage time effectively
- Form study groups and understand group work
- Make notes and summaries
- Prepare for and write assignments, tests and examinations

1.2 Introduction

We study in order to learn. Many people tend to confuse *studying* and *learning*. Although these concepts are different, they are at the same time closely related. As a first year student at university, you are probably anxious about whether you will cope with your studies. Some of you may have had a very long break from serious academic study and want to “come back”, and others may have been students in other fields and would like to start a career in law.

It is factors such as these that make us want to teach you study skills. No one is born an effective student. Research (and our experience) has shown that there are certain ways of doing things (for example, academic skills) that, if seriously considered and practised, almost become part of you, and thus enhance your chances of being successful as a student. We will consider these elements as we go along in this study unit.

1.3 The study process

In order to understand what the study process involves, we need to go back to the concept of *learning*. There is no way in which we can be satisfied with our activities if our study process or methods do not make us learn. Everything we do from the moment we sit at the desk (that is, reading, underlining, making notes, etc) until we leave again, should be focused on learning to take place. It is important from the start for us to indicate that learning is an **active** process. Being a process suggests that it involves a lot of activities. For a long time learning has been confused with the mere absorption (memorisation) of information. As a pupil you knew nothing, your brain was empty and the teacher was expected to fill it with facts/information. And such information had to be safely stuck in your brain until examination time when it would be expected to be regurgitated on to the examination answer sheet (probably to be marked by the same teacher who stored that information in your brain!).

That is not learning! Learning involves that the pupil (learner) actively, and as a subjective being, gets involved and participates in the process. It brings about a more or less permanent change in the learner. Participation in this sense will involve:

- Questioning or interrogating the information and, if necessary, change or re-interpret it.
- Gathering new ideas and information and 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, and so on.

You can already see that this process (learning) demands that the student should take responsibility. It is in this sense (of wanting you to learn) that we want to focus on teaching you the skills of studying. However, you need to participate.



ACTIVITY 1

1. Think back to how you were taught in the past. Would you say you were made to *learn* or were facts or information simply stuck in your brain? How do you intend to study in future?
2. Think of the many things you have learnt or you know today, which you did not really have to study. Can you list them?

Before we go deeper into the content of this unit let us pause to consider what type of student you are. You will be able to do this if you honestly, and in writing, respond to the following statements/claims on a decent sheet of paper which you should keep very safe. (These claims have been adapted from Van Schoor, *et al.*, *Effective Study* pp. 12–14.)

1. I have a fixed place or I am used to one place where I study.
2. When I study I am able to distinguish between more important facts and less important ones and then make notes about important things only.

3. I believe I have the ability to pass any course.
4. I work according to a time table on which I have planned and written out my daily/weekly study and recreational activities.
5. Once I have completed my main tasks for the day, I use every possible opportunity to study.
6. My concentration does not get weaker when I study a piece of work. I do not think of other things when I study.
7. I do not write down verbatim (word for word) everything that I read from a text.
8. I use my own shorthand method when taking notes.
9. I am studying at university because I decided to, not because others expect me to.
10. I do not accept everything I read at face value.
11. When faced with a difficult piece of work I do not give up.
12. It is important to me to do well in my studies.
13. I know exactly why I am doing the course for which I have registered and how I am going to use it one day.
14. My relations with my family are bad and I worry about this a lot.
15. I test myself to find out whether I know the work when I finish a study session.
16. I plan how much time I spend on each question when writing a test or examination.
17. I first skim (read quickly) through the work and try to identify the main themes before I begin reading carefully for study purposes.
18. I think lecturers try to catch learners out in assignments.
19. I do not procrastinate (put off or delay) when it comes to doing assignments, then submit them late.
20. At the end of the test or an examination, I never look at my answers again, even if I have time to spare.
21. I use the library because I know how it operates.
22. After a lecture I go through my notes and organise them so that they will be easier to follow and understand later.
23. I do not take tranquilisers or stimulants before an examination.
24. I make notes in my own words and my own style.
25. I know how to use the latest research to trace sources on a specific subject.
26. I need to be in touch with fellow learners.
27. I study at a well-lit desk.
28. I study with a radio, tape recorder or television set on in the background.
29. When I begin working on an assignment, I make notes while I read and immediately arrange them under my proposed headings to help me to write a good answer.
30. I tend to daydream.
31. There is a lot of noise in and around the place where I normally have to study.
32. In an examination I begin with the questions that I can answer best.
33. The people I share my home with, know my study programme and do not disturb me.
34. The place where I study is peaceful and quiet.
35. I prepare for group discussions by reading the work to be discussed before I go to the class.
36. I study by asking myself questions and trying to gain insight into the work.

37. When I write an assignment, I carefully plan the dates by which I have to finish certain sections.
38. In class I never ask or answer a question unprompted (without the lecturer calling on me) because I am afraid that I may forget what I wanted to say.
39. Before I do an assignment, I plan carefully what headings and subheadings I will use.
40. I have many extramural activities that encroach on my study time, which means that I do not spend the amount of time I want to spend on my studies.
41. As I read, I make notes of the most important arguments.
42. I have a comfortable table or desk at which to study.
43. My friends know when I am studying and do not trouble me at those times.
44. When I have finished reading, I cannot remember what I have read and have to start all over again.
45. I cannot study at home.

The purpose of the above statements is to alert you or bring to your consciousness some of the things that you do (and are not supposed to do) to become an effective student. But remember each person is unique. Thus, despite the fact that we urge you to consider certain activities as you study, you have to start thinking about yourself: your background, your life style, your relationships, emotions and so on. Such knowledge about yourself may be helpful to make your studies effective.

In other words, no particular style of learning or studying can be prescribed for everybody. You must look at your own situation and see how best you can make use of your available resources to get the most out of your study process.

Some authors (see Van Schoor *et al.* pp. 3–8) seem to view the study process as comprising three phases: exploration, fixation and testing.

1.3.1 The exploration phase

This phase entails the generalising of activities whereby you try to find information about the topic or programme. In other words you get background information so that you become familiar with the work. In this sense you would start planning and managing your time. Thus, you do not intensively engage with the subject or topic, but put yourself in a position where you could ease into the matter especially during intensive study. Some of the things you would normally do during this phase are:

- Contacting fellow students to sort out problems.
- Discussing the topic with lecturers etc.
- 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.

1.3.2 The fixation phase

This phase relates to that stage of the study process where you actually get to grips with

the real contents of the subject, topic or text. In other words, it is the period during which you would be expected to do intensive reading. This is the time when you have to fully concentrate on detail to be able to report on the material. Note that intensive reading is dealt with in another LLB course (see ENN106J).

Some of the things that one may be expected to do during this phase are:

- Consolidation of facts: whatever you do to ensure that you really understand the material.
- Summarising facts: Having satisfied yourself that you have really understood the material you will have to make useful summaries of what you consider to be the most important elements of your material. As you may already know, in summary-making you are expected to separate the more important points from the less important. If you cannot do this, it means you did not understand the material (in the consolidation phase). After discerning these points you would then write these down as your notes (note making will be discussed later on).
- Memorisation/rehearsal: Depending on the nature and type of activity at this stage, you have to ensure that you absorb these facts.

1.3.3 The testing phase

Here you assess your grasp and understanding of the material. This you will do by asking yourself questions that cover the material you have studied. You will have to honestly answer these questions to satisfy yourself that you know and understand what you have studied.

There are various ways in which you can frame these questions. “Action words” normally tell you what to do and how such questions should be answered.



ACTIVITY 2

Explain what the following verbs expect you to do:

- Compare
- Discuss
- Criticise
- Explain

There are many other action words that you may come across in your examination papers or even assignments. Make sure you know what each of them requires you to do. Here are some of them: *evaluate, define, describe, distinguish, name, illustrate or give*. We will briefly come back to this aspect (and these action words!) in another section later in this study unit (see Writing Assignments/Examinations).

1.4 The study environment

The environment in which we study is often the least valued aspect of the study process. We seldom consider the space around us as a key element of our success in our studies. However, it is the environment that forms the basis for our inspiration to achieve. It is also a factor that may break us. Thus, it becomes very necessary to ensure that the environment around us is conducive to studying and learning.

No matter how bad your environment may be, the environment that has the following elements can be helpful to you:

- **Good relationships with people around you.** This forms the crux of your social environment. Check the kind of people or social space around you; master it and know how to get the best out of it. It is clear that the environment shapes your life. For instance, the strategies and study patterns that you may adopt when you live alone in an apartment will be different from those of a parent-student who lives with his/her family (children, spouse etc). In the latter case you may find studying at an alternative place (eg the library) very convenient.
- **Physical space:** In terms of this aspect it is generally agreed that the following factors need to be taken into full consideration:
 - (a) Ensure you have a particular place where you study. This is because a familiar place will make you calm and make it easier for you to settle. Your mind will not be easily distracted, and it will help you to get into a working mood quickly. Another advantage is that you will know where your materials are at any given time.
 - (b) **Be comfortable:** Make sure that your study place gives you the chance to relax (though not too relaxed, otherwise you will slumber). Decide what is helpful for you: studying at a table or desk, on a sofa or couch; or on a bed and even in the library. Normally a table and a chair are good when doing serious academic studies. Ensure that the table is big enough for the number of materials needed during your studies. In order to avoid distraction, you will have to ensure that your desk and chair are not in front of a window.
 - (c) **Lighting and ventilation:** In order to work effectively, make sure your study place has enough lighting that does not cause eye strain. For this you have to make sure that you have a good study lamp. The lamp should, for example, not cause shadows. The room should also have enough fresh air. Make sure there are proper windows to allow fresh air to come through. Stuffy rooms are not good for long periods of study.
 - (d) **Temperature control:** You cannot study effectively and sustain your concentration level if you study at a place that is either too cold or too warm. Warm temperature usually causes you to slumber, whereas extremely cold temperature makes you uncomfortable and causes you to lose focus. Make sure that the temperature level in your study room is comfortable.
 - (e) **No interruptions:** You need to have extended periods of studying without being interrupted. If you master the social space, you will not have such problems as the people around will understand your plight and be supportive. Interruptions may also be caused by phones. When you study make sure that your cell phone is switched off; or your landline is off hook.

- (f) **No distractions:** We normally get the best out of our study process when we study in a quiet place. This is because our concentration and focus are not disturbed. Make sure that your study place has no such distractions (noisy areas). For example, master your environment, and if you know that it is quiet towards midnight or so, you may need to adjust your study time table in such a way that you study when your environment is quiet. If you prefer studying when music or the radio is playing in the background, ensure that the volume is kept very low.



ACTIVITY 3

1. Consider your own situation/environment and identify elements or factors that you think are helpful to you as a student. List them.
2. Draw another list of elements which you consider to be hurdles in your study environment. How can you compensate for these?

1.5 Motivation

As already hinted, motivation is a very significant aspect of studying especially when you consider the environment in which you study. Motivation can be looked at from two perspectives: internal and external motivation. Both these perspectives will shape you; and thus suggest or influence the type of learning styles or study patterns that you will adopt.

1.5.1 External motivation

External motivation springs from the ‘outside’ of the individual (eg a father who forces his son to study). It is for this reason that it is generally said that external motivation is weaker than internal motivation (ie motivation from ‘inside’ the student, eg his/her ideal to improve his/her position). However, as already said, individual students are unique, and you may find that some students achieve better when influenced by external forces. Examples of external motivation may be either positive or negative. Here follow examples:

Negative external motivation:

- If you do not pass your skills course (SCL1014) you will **not** be allowed to register for another LLB course.
- If you do not pass all your first year courses, you will **not** get a bursary.

Positive external motivation:

- If you pass your first year courses you will be given a bursary.
- If you pass SCL1014 with distinction you will get automatic promotion at your work or you will get a car as a reward from your spouse, and so on.

1.5.2 Internal motivation

This kind of motivation is intrinsic (internal) to the individual. The individual knows and pushes him/herself from his/her own conscience or heart to do well. Normally you evince internal motivation when you have certain goals that you know you want to achieve. You as a student already know that you have to study or do well in order to achieve that goal. What this tells us is that if you set goals or standards for yourself you would obviously want to achieve them. No one will have to push you. The goals that you set for yourself may either be long or short term.

Long-term goals — these are really those that shape you as a student. They are the type of goals that are set over a considerably long period; say for months or even a few years. Examples in this regard could, for instance, be (i) aiming to pass the examination or (ii) aiming to pass your LLB degree.

Clearly set out goals may help you to focus on your studies because it would be like you having a destination to reach. It would also require you to have tools (signposts) to help you to reach that destination. In terms of the study processes, planning your studies (eg time tables, weekly/monthly or even year plans) is necessary.



ACTIVITY 4

Jot down long-term goals that you have set for yourself. What is it that could disturb you in your endeavour to reach these goals? How do you think you could overcome these difficulties?

Short-term goals — these are sometimes referred to as “objectives”. These are targets that you may set for yourself and achieve in the next few minutes, hours or a few days. For example: to read a text, a chapter or study unit. Short-term goals will obviously help in terms of motivation when you are actually engaged in the study process. They may serve as milestones or small successes that may encourage you to keep on going.

One easy way of ensuring that you stay motivated or focused on your studies is the idea of having a pact or agreement with yourself that you will stick to your programme of study. Sometimes these are called *learning contracts* whereby you practically write this agreement and put it in your study room to keep on reminding yourself about your goals and commitments.



ACTIVITY 5

Write and sign a learning contract which you enter with yourself to the effect that you bind yourself to passing the SCL1014 course. Be specific as to the various short-term goals, tasks and related commitments. List also your long-term goal to finish the LLB degree. Do not forget to involve two witnesses, who are also expected to sign this contract. Read it regularly.

Although human beings are unique and do have unique styles, it is generally agreed that

internal motivation should be developed more than external motivation. It is in this sense that it is believed that when you are self-motivated, have the right attitude to your work and the necessary confidence about your work/studies, you can practically deal with many factors or challenges that your environment may pose to you. If your motivation level is low, you will easily succumb to the negative environment around you.

1.6 Healthy diet and lifestyle

When talking about studies, we seldom think about how important diet and general lifestyles are to the study process. We do not wish to prescribe a particular diet or lifestyle for you to follow. We are convinced that you know yourself better than we do. However, we may give you the following tips in this regard:

- Avoid substances such as alcohol and nicotine or even coffee. One of the disadvantages of consuming coffee or other tonics to keep you 'studying' till late is that they exhaust you and may be harmful, especially when you have to write a test or examination the following day.
- Eat a lot of fruit and vegetables.
- Eat small meals on a regular basis.
- Drink lots of water.
- Avoid refined food (eg pastries) and refined sugar in cool drinks and sweets.
- Get enough sleep.
- Exercise regularly and in moderation.

1.7 Time management

Think of the many things you have to do as a student. How do you allocate your available time for each of these things? As a UNISA student, you may find that you also have other responsibilities such as work, parenting and so on, that need a portion of the time that you have.

A very important aspect in time management is the ability to recognise that being a student does not mean you are not a human being anymore. You have to balance your life. For instance, you cannot spend 80% of your available time on sleep and study! Your time planning should be realistic.

It is widely believed that at university level your ability to use time effectively plays a positive role in your life as a successful student. Therefore, it is crucial that you learn the skill of managing time effectively as soon as possible for you to succeed. The reason why time management is so crucial is very clear. Think of the pressures that are time-driven at university. Bear in mind that you do not only do the SCL1014 module, there are assignments in other courses which also have their own deadlines!

A key element in time management is one's ability to prioritise one's work or activities.

1.7.1 Prioritising

This is the practice of setting your priorities. In other words, you decide on what is or is

not important to you. As a student you will most probably at some point face a situation where you have to choose between certain things or activities. The following are some of the activities that may lead to such confusion:

- Work on an assignment
- Going to a football match
- Go out with friends
- Going to see a doctor
- Prepare for the SCL1014 examination
- Watch a movie
- Watch news on TV

When confronted with such situations, students often tend to choose the more enjoyable ones (their “*wants*”) and avoid or postpone the ones they really have to do (their “*should do’s*”). Students, for example, often choose ‘going to a football match’ over preparing for the SCL1014 semester examination.

In order to handle such conflicting ‘demands’ easily, you need to be able to say: “What is important for me? Which activities can I afford to give up?” As a result, you may have things you want to do; but find that these (when weighed up against others) need to be given up. Thus your wants are sacrificed for the things you should do.

Can you weigh up the following ‘activities’ against each other?

Wants		Should do’s
● Going to a football match	v	working on an assignment
● Going out with friends	v	having a good sleep
● Watch a movie	v	reading a text in preparation for a discussion class
● Surfing the internet	v	going to the doctor

From the above table it is clear that you have to know (identify) what is your priority in order to deal effectively with such conflicts. But the point that we want to make here is that if you plan and manage your time well, you will not experience such conflicts frequently because you will always be ready and on time with most of the things that you will do. A full *time plan* is therefore very important.

Prioritising is one thing, but getting on to doing the actual work or business another! Once you have compiled a list of your important tasks you need to draw **timetables** that would urge you to start studying at particular time slots.

1.7.2 Time planning

Timetables will help you especially to deal with problems such as:

- procrastination — when you cannot just get started.
- working only when under pressure.
- imbalance in terms of time allocation to various subjects, activities, and so on.

Make sure that your timetable accommodates breaks or gaps between the various

activities. Burns and Sinfield (2003:43) list the following points to be considered when planning your timetables:

- (a) Whether you are a morning, afternoon or evening person. Try to fit your study times around your maximum performance times. Work with your strengths.
- (b) How much time you would like to give friends and family. Your studies are important — but most of us would like to have friends and family still talking to us when our studies are over!
- (c) How much time you have to work and/or perform chores. These days we need to earn money whilst we study. We need to keep our homes at least sanitary. Watch out though — work, housework and all chores can become excellent excuses for not working [in fact, studying!]. They become displacement activities — sometimes it feels as though it is easier to completely rebuild the house rather than write an essay!
- (d) Whether you will be able to keep all your hobbies and interests going. Do you fight to keep your hobbies now — or do you plan to take them up again after your studies? Do you acknowledge time limits and decide that in the short term your studies become your hobbies? Or can you juggle time effectively and so fit more in?
- (e) Time for rest and relaxation. Studying is hard work — it can also be very stressful. It is important to get sufficient rest whilst you study and it is useful to build stress-relief activities (eg exercise) into your timetables right at the beginning of your studies.



ACTIVITY 6

Draw your own study timetable (if you do not have one yet).

1.8 Study groups

The idea of using groups in a context of studying emanates from the fact that human beings are naturally group orientated. In most cases we identify with groups; and are often part of those groups. We acquire and/or learn most things from our fellow human beings. Quite often this learning occurs unconsciously or even indirectly.

A basic example in this regard is how you have ‘learnt’ your mother tongue. By simply being part of a group has resulted in us unconsciously learning or acquiring our languages!

We form part and parcel of our families, clans or communities. Belonging to a group helps us develop most of our thoughts, social skills and other behavioural patterns. As students you have to learn how to relate to other people: be it your fellow students, your lecturers, tutors, and so on.



ACTIVITY 7

Try to think of skills in life that you have acquired or learned by simply being part of a certain group or community. List such skills and explain why you think such skills have been developed in this way.

1.8.1 Why study groups?

There are many people who do not believe in group work. Are you one of them? If you have been raised or taught in an environment of competition and individualism you will most likely feel uncomfortable studying in the context of a group. However, learning effectively from a group context is a skill that has to be learnt and developed. This echoes the point we have made earlier, that each individual is unique. Thus, not everyone is effective in a group. But you cannot afford always to be on your own as in life you cannot avoid dealing with other people. For instance, as a lawyer one day you will probably find yourself being part of a group, like in a partnership with other attorneys, or in a prestigious legal firm. If you join the Bar of Advocates you will have to work with an attorney as advocacy is a referral profession. Legal advisors in big companies are usually part of the management teams. Even we, law lecturers, are part of a Department!

Therefore, there are professional reasons for establishing regular contact with fellow learners. There are, however, academic reasons too. If you have ‘to teach’ you find out soon if you are not really in command of the material. 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.

As students you are also encouraged to form study groups. The value of study groups can be related to this quotation:

“Come learn with me and we shall be exemplars of proficiency. But if you yearn to be alone, then you must learn it on your own”.

(Lawyering Skills, p. 85)

1.8.2 What makes groups work?

The key feature of functional groups is the element of respect or integrity. Members of a group must respect one another. Some of the important characteristics of a group are the following:

- The group members must have and understand their *common objective*.
- Group members must observe the *basic house rules*. For example, one person can speak at a time, observe time (punctuality) for meetings, and must prepare for group meetings.
- Group members must have their *roles defined*. For instance, who will be the chairperson of the sessions, the scribe, time-keeper, organiser of venues, and so on.
- Members must have confidence and *trust* in one another.
- The group must be *manageable*. There should not be too many members. An effective group normally has between three and five members.
- Each member must *contribute* to the discussions.
- Members must work *co-operatively* and with preparedness.
- *Constructive criticism* is essential. Thus, members should feel free to criticise for the benefit of the whole group. That is, the intention and motive to criticise a fellow member or an issue must be meant well, and to help the group in some way.

1.8.3 Benefits of a study group

We cannot list all the advantages of a study group here; you are therefore urged to think of other benefits you believe studying in a group context has. Here follow **some** of the benefits:

- A group can serve as a pool of motivation. The idea of knowing that you are “not alone in this” can inspire you.
- 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 group members or even embarrassing yourself.
- You will benefit from, at least, hearing other people talk about issues or concepts which you have only read on your own.
- Other members of the group may bring other or different dimensions and perspectives to how you understood certain things in your study material. Fresh or alternative ideas are thus introduced, and you can therefore meaningfully compare notes.
- As you compare notes and exchange views in a group setting, you will have the opportunity to clarify issues and get a better understanding of the subject matter.
- Should you prepare and present on a topic, you will realise later that you become almost an expert in that topic.
- Groups add a social and/or interactive element to the study process. Be careful, however, not to fall in the trap of making your study group a social club or a mere talk show.

1.8.4 Disadvantages of study groups

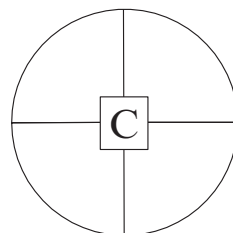
Try to think of the disadvantages of study groups. Here are some of them:

- Some students may not work hard enough and thus parasite on the contribution and participation of others.
- Some members may be arrogant, bully others or even use the groups to “show” off.
- There are problems with students who dominate others.
- Other members may simply become silent, passive and not participate at all.
- Some students may not prepare for the group discussions.
- You have to contend with logistics such as availability of venues, and so on.

A look at the benefits and disadvantages of study groups already suggests that there are many challenges and precautions that you should consider before forming a study group, and even when you already have a study group up and running.

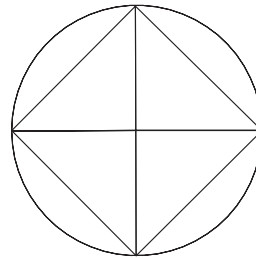
1.8.5 Some ways in which a group can function

(a) The central figure



- The person in the middle is responsible for the flow of communication.
- This model is suitable for simple tasks.
- A disadvantage is that the central figure can be overloaded with information or he/she can block the flow of information.
- This pattern of communication is used in most meetings where all members address their comments through the chairperson. The success of this method therefore depends a lot on the leadership abilities of the person in charge.

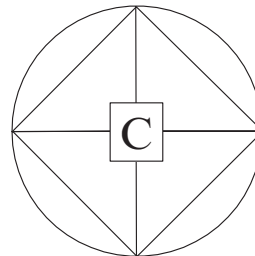
(b) Decentralised groups



- According to this model communication flows freely between the group members.
- This model is suitable for small groups.

Because this model is fairly unstructured it can lead to “talk shows” while nothing really gets done. It is thus advisable to have a free flow of communication while still having a leader (chairperson) who can see to it that the decisions taken are implemented. This can be seen in the following model:

(c) Free flow of communication + chairperson



Because group members can freely talk to each other and the leader/chairperson is also available, this model is used with the biggest success.

1.9 Note-making

The principle of taking, and **making**, notes springs from the fact that you should know what is important and what is not. Note-making suggests that you write down the important points and leave out the less important or irrelevant points. This should explain why it is very important for you to have sound reading skills in order to be able to make notes. The point that we make here is that you cannot make notes if you do not *understand* the material that you study or have read. Ensure that you know (and can use) the following reading techniques: *speed-reading*, *skimming*, *scanning* and *study reading*. This aspect is comprehensively dealt with in another LLB module (see

ENN106J course material). We are aware of, and fully understand, the fact that as a Unisa student you would, most of the time, find your studies dependant on the reading that you do, rather than the face-to-face lectures in class.

One of the reasons 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 example, at the time when we would want to prepare for our examination. You need to realise that the examination can take many formats; from where you may be tested on the more general aspects, to giving the specific detail. Thus, for your notes to be useful in future they have to be *adequate* and *effective*. In this regard you will ensure that they have: *main ideas, details and illustrations or examples*.

Before we can talk about the specific procedures and ways of making notes, we would like to mention a few points about notes or the note-making process:

- Good notes develop from effective reading and listening strategies.
- Note making is an active process, and it promotes learning.
- Note making helps you sustain your concentration when you study.
- As far as possible, write notes in your own words, and in phrase-like format.
- Try to leave enough space in the margins, between the words, sentences and paragraphs. This makes your notes neat, easy to read and uncluttered. It will also be possible to fill in more information later on when you revise them.
- Notes or taking notes serves as a way of reinforcing whatever we are reading or have read.
- Notes serve as a record for future use when we would need them.
- There are various formats that can be used. These include indenting, headings that label ideas, and markers (for example, bullets, numbers, asterisks) to identify points under the headings. It is advisable to use the format that you are comfortable with.
- You must write notes as quickly as possible in order to save your reading time. For example, you may consistently use abbreviations and/or shorthand, as shown here: Intro — introduction, adv — advantage, mng — management, org — organisation, scl — skills course for law, = for equals, & for and, and so on.
- Upon completion of your reading session, you have to go over the notes, edit them and ensure that they are synthesised. You will be able to use the empty spaces to edit or correct some of the incorrect things you have done.
- Use a standard (A4) size paper or notebook.
- Separate notebooks or sections of the notebook should be used for different modules or courses.
- Write legibly/neatly so that you do not have to rewrite the same notes later.

1.9.1 Note-making styles

You will realise that the various ways in which we make notes can be categorised into two main types:

Visual notes: These are more schematic or diagrammatic (for example, mind maps, spider-grams, branching notes, tables, flow charts).

Narrative notes: These are more textual, and engage a lot of written work (for example, linear notes, lists, time-line notes, keyword and paragraph method, the question method and, segmenting & labelling).

The choice of a particular note-making style will depend on your (i) *individual learning style*, (ii) *the kind of subject matter you are reading* (for instance, a maths text would be different from a history text), (iii) *whether you are far from examinations* or (iv) *whether it is the first time you study that particular topic*, and so forth. You will discover, however, that a combination of the various styles will help you succeed. The more you get used to making notes as you study the more you will find it easy (if not spontaneous) to choose a suitable style for the various tasks or texts you are confronted with.

There are many sources where these various styles of note-making are discussed. We have not discussed them in detail in this study guide. However, **we expect you** to intensively read more on them in the various sources where they are discussed.

You may be aware, also, that this topic is fully dealt with in your ENN106J course. We urge you to refer to the material in that module. You will also find *Effective Study* (pp. 75–88) very useful in that regard.

1.10 Study methods

At the beginning of this study unit we talked about learning as an active process which entails you getting involved, participating and taking responsibility for your own learning.

This aspect is very significant and has implications for how we should study. Thus, our study process should help us to really learn. As a result of this, the study methods that we choose influence the study process.

1.10.1 Mnemonics/memory strategies

Although memory is not unimportant, as we have already said, your sole purpose in reading or studying should not be to merely *store* facts or details in your mind. The key point is for you to be able to ‘think’ through the ideas or arguments that you are reading. For you to be able to deal with a certain topic, idea or arguments you would thus be expected to recall/remember certain words, figures, keywords, and so on. It is this aspect that makes memorisation both useful and relevant to you as a student.

There are various memory strategies that you can use. We encourage you to find more information on these strategies in the various information sources (for example, in the library):

- Acronyms
- Acrostics
- Keyword method
- Linking/chain method
- Association
- Imagery

Most of these are discussed in *Effective Study* pp. 97–112. Here we will briefly discuss *acronyms and classification*.

- (a) **Acronyms:** When you want to remember certain facts easily and quickly you may want to have some formula or way that will help you in that regard. At first you must know the *keywords* or basic facts that need to be remembered. Normally you would take the first letter of each keyword and use them to form a new word. When you use acronyms you basically invent a combination of letters into something easy to lead into the important facts to be remembered. Each letter serves as a *cue* (or hint) to an item, idea or word that you need to remember. In other words an acronym is a combination of letters that is used to memorise a list of words, phrases and so forth.

For example:

- BODMAS: This is a common acronym used in arithmetic to remember the *order* in which arithmetic problems have to be solved. The order is: **B**rackets, **O**f, **D**ivision, **M**ultiplication, **A**ddition and **S**ubtraction.
- PEDMAS: This is a common one used to show the order or sequence in solving or evaluating maths equations. The order is: **P**arenthesis, **E**xponents, **M**ultiplication, **D**ivision, **A**ddition, and **S**ubtraction.
- IPMAT: This acronym is used to recall the stages of cell division. The stages are: **I**nterphase, **P**rophase, **M**etaphase, **A**naphase, **T**elephase.
- ROY G. BIV: This one is used to recall the colours of a rainbow or visual spectrum. The colours are: **R**ed, **O**range, **Y**ellow, **G**reen, **B**lue, **I**ndigo, **V**iolet.
- Unisa: University of South Africa.
- AIDS: **A**cquired **I**mmune **D**eficiency **S**yndrome.

- (b) **Classification:** This happens when we rearrange the information in our material in the order that will make it easier to remember. Thus information relating to the same theme or topic is *brought together* and *given a name or heading* that best describes or summarises it. (You may refer to the sections on note-making and summaries in this study unit.)

The information in the material can further be grouped according to finer characteristics and further be given *sub-names/sub-headings*. The basic element of classification is the reader's ability to group relevant or associated pieces of information together (according to their common characteristics).

For example, if you have to read an article on “Transport” you might find yourself doing something like this:

- Step 1. After reading the text you might find that the text (in summary) deals with **modes of transport**.
- Step 2. After this heading (name) you may find yourself grouping certain modes according to their shared, finer characteristics: For example: **Road transport** (cars, trucks, motorcycles, tractors), **Sea transport** (ships, boat, other vessels) and **Air transport** (helicopters, aeroplanes, airbuses, and so on).

This process can continue as long as the reader sees the point or characteristic that he/she feels some aspect can be brought together under its name/heading.

1.11 Summaries

A summary is a *short or brief way of representing the contents* of the original text. Thus only the *main important ideas of the original* text will find space in the summary. We do summaries so that, in future, we can be able to get what the original text is about without wasting time, and going back to the original document.

The ideas of the original writer are reflected. Normally quotations from the original text, repetitions, examples and illustrations are avoided. Summaries are usually about one tenth the size of the original text. Note, however, that you may include examples if the material you are dealing with is so complex that the examples will make it easier to understand.

When writing a summary you should start by *reading the original text thoroughly* to ensure that you understand it. You should thus be able to tell in about a sentence or so *what the text is all about*. You may have to go back to the text to look at specific points, keywords, or key ideas. Highlight these as you read! You should, as indicated, ensure that your summary does not deviate from the original text.

You will realise, when you actually start doing summaries that they encourage you to look at various ideas/facts in the text and write what they, as a whole, signify. In other words summaries *give an outline* of what the author's main ideas or statement in a text is generally. It is clear that you will unavoidably deal with questions such as: 'what is the main idea or point of the text?', 'How does the point come through?'

As an LLB student you can already imagine the amount of work that you will be expected to know in order to complete the degree. In the study of law your work will definitely involve reading textbooks (prescribed, recommended and additional), cases, journal articles, statutes, and so on. You can pause to think of how many pages you would be expected to have read and re-read by the time you write examinations in each of the courses, or simply to know and apply certain legal principles or solve certain problems. We are sure you notice, by now, the benefit of making summaries as it is obvious that you would *save a great deal of time* if you were to read your own summaries rather than the original text. Remember that normally summaries have been found to be about one tenth of the size of the original text! You cannot really afford to read original texts from textbooks, cases or journal articles when you need time to prepare for your examinations.

1.11.1 Hints on making good summaries

- Do not try to change the content and ideas of the original text.
- Read the whole text (that is, section, case or chapter) to ensure that you grasp the main idea/s of the text. You may write a statement that briefly outlines this.
- Find the key points or details that the writer uses to illustrate or support his/her idea or argument (your summaries must include these).
- Then identify keywords.

- Include definitions of key principles, theories or procedures (if any).
- Write in simple language. There is no point in making your summary complex; you need to understand your summary.
- Be objective and factual. Your purpose is not to change the content or to challenge the attitude of the writer.
- Make sure the points in your summary are coherent. The various sources that you use (to summarise the topic) should develop the main idea. Thus there should be integration and synthesis of the ideas. This becomes clear when the summary has various themes (ideas) following from the main idea/topic; hence the need for headings and sub-headings (see the section on note-making).
- You should not look at a summary as a total replacement for the original source. You will in most cases be expected to refer to the original text.



ACTIVITY 8

Page to the unit on reading skills, Study unit 2, ‘‘Activity (1)’’ **Being a major at 18, what happened to 21?**

Summarise the article in 3 paragraphs.

1.12 Dealing with assessment/testing

We have already dealt with various aspects of the exploration and fixation phases. Now we will address a number of aspects relating to the *testing phase*. What is entailed here is how we assess or test ourselves as to whether we have mastered the learning content in the preceding phases of study. In formal settings, of course, we do this by making ourselves available for assessment by others. For example, as a university student you would indeed make yourself available to be assessed by your professors, lecturers or tutors.

Some of the ways in which we assess the extent to which we have learnt our subject matter is through *tests, assignments and examinations*. In this section we will talk about some important points that may help you in dealing with this area of the study process. These points include the *writing of assignments*, how to *prepare for examinations* and *writing the examinations*.

Being at university suggests that it will not be your first experience of dealing with these aspects. Before university registration you had obviously ‘studied’ in your own way, hopefully written assignments and indeed prepared and wrote examinations at various stages of your school career! Our experience is that most of these were done rather in a casual manner; with learners not really directly and in a focused way taking time to think about and systematically deal with the various aspects of the assessment process.

1.12.1 Writing assignments

NOTE: Read your *Unisa: Services and Procedures*, the chapter on assignments and mark-reading sheets before you study this section.

You have to prepare thoroughly before writing your assignments so that you give your best contribution to the assignment. The following points are but some of the issues that you have to consider when approaching your assignments:

- Read the assignment question(s) thoroughly to ensure that you know what to do. Analyse the action words to determine what type of answer you need to give. You should therefore follow the instructions fully.

ACTION WORDS:

Analyse	Divide into sections or elements and discuss in full.
Compare	Identify the similarities or differences between facts or examine the differences between ideas, facts, viewpoints, etc.
Contrast	Point out the differences between certain objects or characteristics.
Criticise	Point out the good and bad characteristics and give your own opinion after taking all the facts into account.
Define	Give a short and concise definition (ie a summary of essential properties) of a subject or topic.
Describe	Name the characteristics of an object or topic. You should do this in a logical, well-structured way.
Discuss	Discuss a topic by examining its various aspects. Use a critical approach.
Evaluate	Give your own opinion, using certain standards as a basis, about a topic.
Explain	Explain and clarify to ensure that the reader clearly understands you. Use illustrations, descriptions or simple but logical explanations.

(Taken from *Effective Study* pp. 7–8)

- Start your preparations in time so that you have the opportunity to do the necessary research, participate in study group discussions, revise notes, and so on. Refer to the earlier sections of this study unit, especially the one on time management.
- Do not copy your friend's or group member's work. Lecturers can easily notice when a piece of work is duplicated; and this can be very irritating.
- Remember that the purpose of the assignment is to make sure that you go through the work on your own and thus are "forced" to work through the various sections.
- Assignments may play a critical role in determining whether you proceed to the next

level or not. This is especially the case as they build up your semester/year mark. Usually, your semester/year mark constitutes a percentage of your final mark. Check what the situation is with regard to the various courses you have enrolled for! (**Read** your Tutorial Letter 101 again!)

- Complete, and send the assignment before the due date. If you are to send the assignment by post, give allowance of about three weeks between the dates you post it and the due date. Consult the relevant Section or Department of the university regarding the sending of assignments and related projects. **Read** your *Unisa: Services and Procedures* the chapter on assignments and mark-reading sheets.
- Assignments usually take various forms: mark reading sheets (where normally multiple-choice questions are asked), discussion/problem-type questions, short and one-word questions. (See *Effective Study* pp. 113–121.)
- In case of problem/discussion-type questions, make sure you stick to the required length of the essay.

Your assignment should consist of three sections:

- an introduction
- a body
- a conclusion

The **introduction** should be:

- short
- outlining the main argument
- focusing on the question

The **body** is the main part of your assignment and will be the longest part of your essay. Develop your argument, supply details and examples, and support your claims by stating relevant facts. Write in paragraphs — one idea per paragraph!

The **conclusion** must:

- summarise the main argument and content of your assignment
- focus on the question
- be brief

Go through Study Unit 3 (Research Skills) — how to present your research — as you will have to add a bibliography at the end of your assignment. Make sure you understand plagiarism as well!

(See *Effective Study* pp. 60–66.)

1.12.2 Preparing for examinations

Before you study this part, please **read** your *Unisa: Services and Procedures*, the chapter on examinations!

- Physical and mental preparation:
 - get enough sleep, eat well and exercise to help you with stress.
- Understand why you have to be tested:
 - if you know it is necessary to be tested your attitude will be more positive and you will approach the examination with confidence.
- Start in advance with your studies:
 - Summarise your work early in the semester so that you can save time when it is necessary to memorise the facts.
 - Understand the work before you start memorising it, otherwise you will find it difficult to remember what you have studied.
 - Test yourself constantly to see whether you know a certain part of the work before you carry on.
- If possible go through previous exam papers. (This is not possible in SCL as the exam paper is a fill-in paper.)
- Remember your assignments and Tutorial letters are part of the study material for the exams.
- Be on time:
- make your travel arrangements in time so that you do not stress when you arrive at the venue late.

1.12.3 Writing exams

- On the day of the examination, dress neatly. One feels more confident when one looks neat.
- Believe in yourself!
- Do NOT take any notes into the exam hall.
- Once you receive the question paper, read through it to get an idea what is asked.
- Plan your answers. Note the time limit! NB: SCL1014 is a 2 hour paper. You will have to write VERY fast in order to finish! DO NOT WASTE ANY TIME!
- Do those answers you know best first and then go back to those which require more time.
- Write neatly! As examination markers are human beings, they may feel irritated if they cannot read what you have written.

1.13 Conclusion

This is the end of study unit 1. We hope you have learnt something! Do all the activities in your Workbook to make sure you understand the work. Remember that no study unit should be seen in isolation because you need good reading skills in order to make summaries or study successfully. Read the next study unit on reading skills in order to complete this unit.

1.14 Sources used in this study unit

- (1) Burns T and Sinfield S *Essential study skills: The complete guide to success at university* (Sage London 2003).
- (2) Hugo AJ “Enhancing the study reading skills of distance education students — strategies for designing course material” Unpublished Doctoral Thesis, University of South Africa, 1999.
- (3) Kagan CE *Coping with college: The efficient learner* (McGraw-Hill New York 1982).
- (4) Marshall L and Rowland F *A guide to learning independently* 2nd Ed (Open University Press Buckingham 1993).
- (5) McWhorten KT *College reading and study skills* 4th Ed (Scott Foresman and Company Glenview 1989).
- (6) Palmer R, Crocker A and Kidd M *Becoming a lawyer: Fundamental skills for law students* (Butterworths Durban 2003).
- (7) Van der Walt C and Nienaber AG *English for law students* (Juta Kenwyn 1997).
- (8) Van Schoor A, Mill E and Potgieter D *Effective study* (Unisa Press Pretoria 2005).



Study unit 2:

Reading Skills

STUDY UNIT



READING SKILLS

“It has been said that the skilful reader reads the lines (comprehends), reads between the lines (interprets) and reads beyond the lines (reacts and applies ideas)”

— *LE Hafner (1974:12)*

2.1 Outcomes

After you have studied this unit you should be able to

- read different texts such as legislation, court cases and journal articles with understanding
- understand unknown words in context
- realise the importance of good reading skills to a lawyer

2.2 Introduction: When are you an effective reader?

An effective reader is someone who can read fast, but also effectively.

This means that he or she can:

- apply different reading techniques (depending on the purpose of the reading and the kind of text being read);
- understand the purpose of reading a specific text and act accordingly (purposeful reading);
- while reading, see both the bigger picture as well as detail;
- identify the structure of different kinds of texts;
- see the interrelations in the text as well as with reality outside the text and link it to known facts;
- make the correct assumptions regarding what is not directly said (or implied) in the text;
- evaluate the text for its purpose, content, usefulness, objectivity and scientific correctness;
- interpret and understand the text; in order to do this, the reader must:
 - (a) have the physical and psychological skills to read eg to see, to recognise words in their context and give meaning to these words;
 - (b) have a broad general knowledge and understand the meaning of words and

expressions. If a word is unknown he/she will look it up in a dictionary and use the meaning fitting the context;

- (c) understand literal and figurative speech;
- (d) not read word for word, but must read for meaning;
- (e) be able to recognise the most important facts;
- (f) be able to understand the nature and ‘message’ of a specific article.

Just as a doctor or a mechanic needs certain instruments to do his/her job, a lawyer needs certain “instruments” as well. These instruments are words as read in legislation and court cases.

For anyone reading an Act or a court case for the first time, it would be clear that it is different from other texts. Do not feel despondent; we will help you step by step to master the skill of reading such texts. Although we will be focusing on reading legal material, remember that a lawyer does not exist as an island. A lawyer needs to read wider than just the law, general knowledge and insight into human behaviour are of the utmost importance.



ACTIVITY 1

(The content of this article is NOT relevant for the examination!)

Read the following translated and adapted article by Andreas van Wyk as published in *Beeld* of 10 July 2007, and then **answer the questions in your Workbook**. The purpose of this activity is firstly to force you to read and also to introduce you to the intricate world of the law. You will read about the common law, legislation, as well as society’s perception concerning the age of majority.

BEING A MAJOR AT 18, WHAT HAPPENED TO 21?

The media uproar and the general public’s reaction to the lowering of the age of majority to 18 in the new Child Act 38 of 2005 brought two misconceptions to light.

The first is that there used to be a certain holiness attached to the age of 21. The second is that all aspects of growing up are determined by one single age limit. None of the two is correct.

Through the ages the private law border between being a child and being a grown-up alternated between as high as 25 years and as low as 14 years (for men). For females it was between 20 and 12 years. Since the nineteenth century we have accepted the age of 21 being the age of maturity. Legends have it that it originated from the Middle Ages when men were physically strong enough at the age of 21 to wear heavy armour in battles.

During the last few decades most Western countries have lowered the age of majority to 18. On 1 July 2007 South Africa did the same. The main argument was that young people nowadays are more educated, knowledgeable and sophisticated than their ancestors. The argument against the lowering of the age was that

youngsters live at home much longer because of being students. They therefore are dependant on their parents while at the same time being tempted by the media who advertise easy credit and the enjoyment of owning a lot of material things.

Our legal system, as in countries elsewhere, recognised for more than two millennia different milestones in a person's life. The first is achieving the age of seven. An infant under the age of seven is known as an "*infans*" (Latin for someone who cannot talk). The law does not recognise the acts or decisions of an infant, not even should he become a multimillionaire through an inheritance. All his decisions must be taken by his parents or guardian. Between seven and 21 (now 18) a child can make certain decisions with his parent's consent.

Reaching the age of puberty (14 for boys and 12 for girls) has certain legal implications although the majority have diminished through the ages. These ages are the absolute minimum for getting married and it creates the presumption of guilt for damages through a crime whether it is committed intentionally or negligently.

The age of 18 became legally important through the last century. In the field of private law a decision was taken 70 years ago that boys under 18 (and girls under 16) can marry only if apart from having the permission of their parents they also have the permission of the Minister of Home Affairs. Child protection legislation also stipulated that a child ceases to have protection after reaching the age of 18. Since the 1960s 18-year-old persons were also awarded public law powers such as the right to vote during an election, and white males had to do military training.

To have full private law rights at 21 (now 18) means a person can from the moment he/she is 18 decide independently whether to conclude a contract or not, or whether to be part of legal actions or not. There are, however, exceptions to both sides of the 18 milestone. Anyone who is mentally ill and not capable of making decisions will never be seen as a major.

On the other hand any married person is automatically a major. A married 17-year-old is therefore legally independent. Whether one could still approach the court to be emancipated before 21 (now 18) is not clear in the new Act.

The public debate concerning the lowering of the age of majority is entwined with other prescriptions in the new Act regarding things like access to condoms or the request for an abortion. Although the ages have also been lowered in this regard, it is not something new.

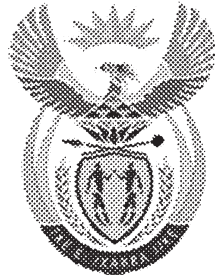
Concerning the day to day activities of the youths and the relationship between parents and their children the law was always very clear but not rigid to stick to the age of 21. A typical example is the love affair between youngsters which was unacceptable to the parents. If the parents went to court to get an interdict preventing a girl and a boy from seeing each other, the judges didn't look only at their age, but they also considered each case's particular circumstances. Was the child still living under the parent's roof? How mature was the youngster? How appalling was the other party?

The duty to pay maintenance is not affected by the new legislation. This duty depends only on a need on the one hand and the means to help on the other. If a person of 27 is not capable to look after himself (for example because he is a cripple) and the parents have the means to support him, they have to. On the other hand if a 13 year old inherits lots of money and his parents are poor and unable to support themselves, the child has a duty to help them. Divorce decrees are also not affected by the new Act. Such decrees usually stipulate that the father has to pay for the education of the children, but there is a cut-off date, for example, until the child reaches 23.

Whether social practices will comply with the new law is an interesting question. Will society move the big party to 18 or will they still keep it for 21? Or will there be two parties in future

2.3 To read and understand an Act of Parliament

In the next study unit (Study unit 3) you will be taught where and how to find legislation. This study unit is closely related to it and you should therefore see them as a whole. Once you find a source you should also be able to read and interpret it.



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 490 Cape Town 18 April 2006 No. 28743

THE PRESIDENCY

No. 364

18 April 2006

It is hereby notified that the President has assented to the following Act, which is hereby published for general information –

No. 36 of 2005: Electronic Communications Act, 2005.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

← b(1)

↑ (a)

(b) → (English text signed by the President)
(Assented to 11 April 2006.) ← (b)

ACT

To promote convergence in the broadcasting, broadcasting signal distribution and telecommunications sectors and to provide the legal framework for convergence of these sectors; to make new provision for the regulation of electronic communications services, electronic communications network services and broadcasting services; to provide for the granting of new licences and new social obligations; to provide for the control of the radio frequency spectrum; to provide for the continued existence of the Universal Service Agency and the Universal Service Fund; and to provide for matters incidental thereto.

(c)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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SCHEDULE

CHAPTER 1

25

INTRODUCTORY PROVISIONS

Definitions

(d)

1. In this Act, unless the context indicates otherwise—
- “**affiliate**” means with respect to any person, any other person that, directly or indirectly—
- (a) controls the first mentioned person;
- (b) is controlled by the first mentioned person, or
- (c) is under common control, with the first mentioned person,
- “**Agency**” means the Universal Service and Access Agency of South Africa established by section 80;
- “**Authority**” means the Independent Communications Authority of South Africa established by section 3 of the Independent Communications Authority of South Africa Act, 2000 (Act No 13 of 2000);
- “**broadcasting**” means any form of unidirectional electronic communications intended for reception by—
- (a) the public;
- (b) sections of the public; or
- (c) subscribers to any broadcasting service,
- whether conveyed by means of radio frequency spectrum or any electronic communications network or any combination thereof, and “broadcast” is construed accordingly;
- “**Broadcasting Act**” means the Broadcasting Act, 1999 (Act No 4 of 1999);
- “**broadcasting service**” means any service which consists of broadcasting and which service is conveyed by means of an electronic communications network, but does not include—

- (ii) inviting interested persons to submit written submissions in relation to the policy direction in the manner specified in such notice in not less than 30 days from the date of the notice,
- (c) must publish a final version of the policy direction in the *Gazette*
- (6) The provisions of subsection (5) do not apply in respect of any amendment by the Minister of a policy direction contemplated in subsection (2) as a result of representations received and reviewed by him or her after consultation or publication in terms of subsection (5) 5
- (7) Subject to subsection (8), a policy direction issued under subsection (2) may be amended, withdrawn or substituted by the Minister 10
- (8) Except in the case of an amendment contemplated in subsection (6), the provisions of subsection (3) and (5) apply, with the necessary changes, in relation to any such amendment or substitution of a policy direction under subsection (7)
- (9) The Authority may make recommendations to the Minister on policy matters in accordance with the objects of this Act 15

Regulations by Authority

- (f)
- (e) → 4. (1) The Authority may make regulations with regard to any matter which in terms of this Act or the related legislation must or may be prescribed, governed or determined by regulation. Without derogating from the generality of this subsection, the Authority may make regulations with regard to— 20
- (g) → (a) any technical matter necessary or expedient for the regulation of the services identified in Chapter 3,
- (h) (b) any matter of procedure or form which may be necessary or expedient to prescribe for the purposes of this Act or the related legislation,
- (c) the payment to the Authority of charges and fees in respect of— 25
- (i) (i) the supply by the Authority of facilities for the inspection, examination or copying of material under the control of the Authority,
- (h) (ii) the transcription of material from one medium to another;
- (iii) the supply of copies, transcripts and reproductions in whatsoever form and the certification of copies; 30
- (iv) the granting of licences in terms of this Act or the related legislation;
- (v) applications for and the grant, amendment, renewal, transfer or disposal of licences or any interest in a licence in terms of this Act or the related legislation, and
- (d) generally, the control of the radio frequency spectrum, radio activities and the use of radio apparatus 35
- (2) Different regulations may be made in respect of different—
- (a) licences granted in terms of this Act; and
- (b) uses of radio frequency spectrum
- (3) Any regulation made by the Authority in terms of subsection (1) may declare a contravention of that regulation to be an offence, provided that any such regulation must specify the penalty that may be imposed in respect of such contravention taking into account section 17H of the ICASA Act 40
- (4) The Authority must, not less than thirty (30) days before any regulation is made, publish such regulation in the *Gazette*, together with a notice— 45
- (a) declaring the Authority's intention to make that regulation; and
- (b) inviting interested parties to make written representations on the regulation
- (5) The Authority must, not less than 30 days prior to making regulations, inform the Minister in writing of its intention and the subject matter of the regulations
- (6) The Authority may conduct public hearings in respect of a draft regulation 50
- (7) The provisions of subsection (4) do not apply with regard to—

(b) for the use of the radio frequency spectrum granted by the Authority in terms of this Act	
(11) Despite section 8, existing licences remain subject to all terms and conditions associated with such licences that are not inconsistent with this Act until such licences are converted and re-issued in terms of this Chapter.	5
Conflicts	
94. In the event of any conflict between the provisions of this Act, the related legislation or any other law relating to the regulation of broadcasting or electronic communications, the provisions of this Act prevail	10
Existing regulations	
95. (1) Within twenty-four months of the coming into force of this Act, the Authority may, if the Authority considers it necessary, repeal or amend the regulations made under—	
(a) section 119A of the Post Office Act, 1958 (Act No. 44 of 1958);	
(b) the Telecommunications Act;	15
(c) the Broadcasting Act;	
(d) the IBA Act;	
(e) the Radio Act, 1952 (Act No. 3 of 1952); and	
(f) the Sentech Act,	
which were in force immediately prior to the commencement of this Act.	20
(2) The regulations referred to in subsection (1) remain in force until they are amended or repealed in terms of this Act	
Application of Act	
96. This Act binds the State.	
Repeal and amendment of laws	
97. The laws referred to in the first column of the Schedule are repealed or amended to the extent indicated in the third column	25
Short title and commencement	
(a) 98. This Act is called the Electronic Communications Act, 2005, and comes into operation on a date determined by the President by proclamation in the <i>Gazette</i> .	30

When you read an Act reference will be made to the (a) text in the first place. Secondly you might look at the (b) context and lastly certain (c) presumptions may also play a role. Look at the following example of an Act. (Only certain articles of the Act are reproduced here because the Act is too long. The content of the Act is not relevant.)

PLEASE NOTE: We can give you ANY Act in the examination. You will then be expected to indicate to us the long title, the short title, the purpose of the Act, the date on which it was promulgated, and so on. The content of any Act is irrelevant for this module.

(a) Text

You approach an Act by reading the **signed text**. In our example, the English text was signed by the President (see (b)(1)); and the Act was approved on 11 April 2006 (see (b)). The Act was published in the *Government Gazette* on 18 April 2006 (see (b)). Sometimes an Act becomes effective on the same date as it is published in the Government Gazette, but at other times it is indicated in the Act when it will be effective (see sec. 98 of the Act). Always make sure that an Act is effective before referring to it. If you are not sure you should rather consult the Butterworth's publication "*Is it in force?*". Use the number of the Act as well as the year in which it was promulgated to find the relevant information.

Signed text: Before an Act can be published, it has to be signed by the State President after Parliament has approved it. In our example, the president signed the English copy of the Act. This means that whenever there is a dispute concerning any part of the Act, the English version will be the official version.

The **short title** of the Act is: the Electronic Communications Act, 2005. (see (a) and sec 98 of the Act).

The **long title** of the Act is the piece printed in bold under the word ACT (see (c)). The long title of an Act explains **the purpose of the act**.

After the long title of the Act you will find the "**contents**" of the Act in which it is indicated per chapter which topics will receive attention.

Chapter 1, the **Definitions** (see (d)), is extremely important. Not ALL the words in the Act are explained, but technical and difficult terms or comprehensive phrases are explained. It is important that the reader of the Act consults these descriptions before he or she reads the Act. (Of course you have to refer back to this section if you come across a word or phrase you do not understand.)

Acts are divided into Sections (see (e)), subsections (see (f)), paragraphs (see (g)) and sub paragraphs (see (h)). This is to help you understand the Act better and to help you with referencing.

When you reference it might read like this:

Sec 4(1)(a)(i) of Act 36 of 2005

How does one refer to an Act? (because legal sources contain references to Acts, you have to read it correctly and understand it; but you should also be able to write it correctly).

Any Act in South Africa has a name (the short title, as explained above) plus a number and the year of publication. For example: the Road Safety Act 29 of 1989.

This comprehensive reference is usually used only the first time reference is made to the Act. When you refer to the same Act later you can simply refer to "the Act". For

example: the Road Safety Act 29 of 1989 (herein after referred to as “the Act”) it is determined that

Note there is no comma between the name and number of the act. You can also refer to the number and year, for example: the Prevention of Corruption Act 6 of 1959 or just Act 6 of 1959.

An even shorter way is to abbreviate the number and the year like this: Act 29/1989.

(b) Context

Apart from the text of an Act, you will have to consider the context which gave rise to the Act as well. Section 39(2) of the Bill of Rights in the Constitution says that a court, in interpreting any Act, has to take cognisance of the spirit, purport and objects of the Bill of Rights.

The courts therefore sometimes recognise external circumstances in explaining the reason the Act came into being. They will investigate the reasons why the Act was necessary. They might therefore also consider the socio-economic and political or historical scenario in which the Act was formulated.

(c) Presumptions

Apart from the rules concerning the interpretation of Acts as contained in the Interpretation Act 33 of 1957, certain presumptions must also be taken into account. For example:

- Legislation does not contain meaningless sections, every word and phrase therefore has meaning.
- Legislation doesn't want to change existing laws unnecessarily.
- Unreasonable or unfair consequences are not envisaged.
- Legislation only applies in future and not retrospectively.



ACTIVITY 2

Ask for the Sea Transport Documents Act 65 of 2000 from the library. Read your *Unisa: Services and Procedures* on how to do it or get it on the Internet (www.gov.za). Read the Act and then answer the questions:

- 1 What is the short title of the Act?
- 2 What is the long title of the Act?
- 3 On which date did the president approve the Act?
- 4 On which date did the Act become effective?

2.4 Latin terms

The following terms can be tested as short questions in the examination.

Before we discuss how to read a court case, it is necessary to note certain Latin phrases which may appear in a court case (see below).

668 HACKETT v. G. & G. RADIO AND REFRIGERATOR CORPORATION.

[A.D.]

jurists, the *actio ex empto* in Roman Law gave rise to rescission on substantially the same principles as stated (*supra*); see *Bodenstein's* article in 31 S.A.L.J. (pp. 275-85); Windscheid, *Pand.* (para. 393, n. 9); Vangerow, *Pand.* (para. 609, n. 2 (iii), cited by *Bodenstein* at pp. 283-4, *supra*); *Macintosh* (*supra*, p. 92, footnote, pp. 158-9, n. 5, p. 281, para. 1); *Moyle* (*supra*, pp. 189-90); *Cujacius & Faber* (cited by *Bodenstein*, *supra*; see also at p. 282); *De Groot* (cited by *Bodenstein*, *supra*, at p. 282); *Voet* (18.5.4 and 21.1.3); *Pothier* (*supra*, para. 476, last two sub-paras.). Our Courts have accepted this proposition without difficulty; see *The Louvre v. Jaspan & Muller* (1922, T.P.D. 342); *Cedarmont Store v. Webster & Co.* (1922, T.P.D. 106 at p. 112); *Mackay Bros. v. Scott* (1938, T.P.D. 56 at p. 58). Where proper grounds exist for instituting the *actio ex empto*, i.e. where it lies *sua natura*, the action is not governed by the prescriptive periods applying to the Aedilician actions, even though mere Aedilician relief is claimed; see *Bodenstein's* article in 32 S.A.L.J. (pp. 50-2); *Voet* (18.5.4); *Windscheid* (*supra*); the contrary opinion of *Glück* is effectively dealt with by *Bodenstein*. The proposition has been accepted in our practice; see *The Louvre* case (*supra*); *Kock v. du Plessis* (1923, O.P.D. 113); contrast the position where the *actio ex empto* does not lie *sua natura* but is procedurally employed to obtain Aedilician relief; cf. *Bodenstein's* article in 31 S.A.L.J. (pp. 274-5); *Windscheid* (*supra*); *Cluley v. Muller* (*supra*, at pp. 722-3). *Molinaeus*, *Pothier*, *Voet* and *Domat*, in holding manufacturers and dealers liable for consequential damages arising from goods sold by them, based this liability on a warranty, implied by law, that the goods are fit for the purpose for which they are intended; the *artifex* must in law be deemed to have warranted the fitness of the article; the warranty is clearly expressed by *Molinaeus* (sec. 49) and *Pothier* (*supra*, sec. 214); the Judge *a quo* erred in holding that the action for damages originates *ex delicto*; the author's reference to *culpa* has a two-fold purpose, namely, (1) to serve as a moral or equitable justification for holding the *artifex* absolutely liable *ex contractu*; cf. the similar line of reasoning in *Dig.* (19.1.13.3), as justification for holding a *bona fide* seller who has given a warranty, liable *ex empto*; and (2) to show that damages *extrinsecus* should have been foreseen by the *artifex*; see further *Dig.* (19.2.9.5), *Dig.* (19.2.13), *Dig.* (19.2.19.1.), *Domat* (1.2.11.7) (*Strahan's tr.*, pp. 84-5, 108-9), *Voet* (21.1.10), *Bodenstein's* article in 31 S.A.L.J. (pp. 30-1), *Evans' & Plows' case*

The following is a list of the most frequently used Latin terms with their meanings:

a fortiori

- the more so

a quo

- whence; from which (e.g. court *a quo*)

ab initio

- from the beginning/start

ad hoc

- for a specific occasion; for the present purpose

ad hominem

- relating to the person

ad idem

- of one mind; unanimous

ad infinitum

- for ever, without end

amicus curiae

- friend of the court (an advocate requested by the court to appear in a certain case).

animus

- intention

animus iniuriandi

- intention to injure

animus testandi

- intention of making a will

audi alteram partem

- to give a person the chance to state his/her side of the matter; both sides of the story are heard

bona fide

- in good faith (and honest intention)

boni mores

- good morals

causa

- cause; consideration; inducement; motive; reason for doing something

contra bonos mores

- against good morals

culpa

- fault; neglect; negligence

cur adv vult (curia advisari vult)

- the court wishes to consider its verdict; reserves judgement

curator ad litem

- person appointed by the court to assist another in litigation

curator bonis

- curator of property

de facto

- in fact; in deed; as a matter of fact

de iure

- of right; in law; judged by the law

de minimis non curat lex

- the law does not concern itself with trifles

de novo

- afresh; anew

diligens paterfamilias

- reasonable person

ex contractu

- from a contract

ex delicto

- from a delict

ex lege

- by force (operation) of law; as a matter of law; according to the law

id est

- it is; namely

in absentia

- in his/her absence

in camera

- behind closed doors; in chambers; in private; eg a court that is not open to the general public

in casu

- in the present matter

infra

- below

in re

- in the case of

inter alia

- amongst others

interim

- meanwhile

inter partes

- between the parties

ipso facto

- within the powers/competence of ...

ipso iure

- by the law as such

ius

- a right; the law

locus standi

- right to be heard

mala fide

- in bad faith

mutatis mutandis

- with the necessary amendments, changes

nomine officio (NO)

- in official capacity

obiter dictum

- a remark in passing

pendente lite

- pending the case

per se

- by himself; on its own

postea

- afterwards

prima facie

- at first sight; on the face of it

pro Deo

- literally “for God’s sake”; defence at state expense of an accused lacking the means of briefing counsel

pro non scripto

- as if it has not been written

pro rata

- proportionally

quantum

- amount (eg of damages)

ratio decidendi

- reason for the court’s ruling

spes

- hope; expectation

stare decisis

- abide by decided decisions

sub iudice

- a trial that is still pending

sui generis

- peculiar to itself ; distinctive

subpoena

- summons; eg in a criminal case a witness is subpoenaed to give evidence in the court

supra

- above

ultra vires

- exceeding authorisation

verbatim

- word for word; literally

versus

- against

vice versa

- the other way round

viva voce

- verbally eg oral evidence

volenti non fit iniuria

- to one consenting no wrong is done

vide

- view

2.5 How to read a court case

(Before you read this theoretical approach, listen to your DVD Part III!)

When reading a court case one needs to take certain aspects into consideration. In this section we will use, as examples, three court cases to explain the structure of a reported court case. We believe that this will help you a great deal in understanding most of the aspects of a court case. Please take note that these court cases are merely examples, and that other court cases slightly differ from them. You should also remember that there are three types of reported court decisions; namely: civil cases, criminal cases and constitutional cases.

PLEASE NOTE: The content of the cases used as examples is not relevant for the examination. You can be given any court case; and you should be able to answer short (not content) questions on it.

The following cases are going to be used as examples:

- (1) *S v Makua* 1993 (1) SACR 160 (T): This is a criminal case.
- (2) *Molefe v Mahaeng* 1999 (1) SA 562 (SCA): This is a civil case.
- (3) *Ex Parte Addleson* 1948 (2) SA 16 (E): This is a motion application where only one person/party is involved.

These judgements are reproduced at the end of this study unit for your perusal.

2.5.1 Case name

Any reference to a particular case will always start with the name of that case; that is the names of the parties (or persons) involved in the case. Look at our first example before reading further. Can you identify the name in this case?

(1) *S v Makua* (The parties are: State v Accused)

This is an example of a criminal case. In this type of a case (criminal case) the first party is always the “S”; that is, the state. The other party is the “accused”. In our example the accused is thus “Makua”. He was accused of driving a motor vehicle while the alcohol concentration in his blood exceeded the permissible limit as prescribed by law. The “v” stands for “versus” (or against). Therefore, in this criminal case it was the

issue or case between the state and the accused party/person (that is, Makua). You will notice that in earlier criminal cases (that is, cases that were heard by our courts before 1961) the letter ‘R’ was used instead of ‘S’. Loosely, the ‘R’ stands for the (royal) crown. In other words the prosecutions during that period (before South Africa became a Republic in 1961) were instituted on behalf of the King or Queen of England. This is because the King or Queen of England had sovereignty over South Africa. Note, further, that ‘R’ refers to Latin ‘Rex’ (which means King) or ‘Regina’ (which means Queen).

Look at our second example. Can you analyse it as in the above case?

(2) *Molefe v Mahaeng* (The parties are: Plaintiff v Defendant or Appellant v Respondent)

This case is an example of a civil case (ie a case between citizens). In this particular case an action proceeding was used. In action proceedings the name of the plaintiff is given first, and followed by the defendant’s. Should the matter be on appeal, the name of the appellant will appear first, and followed by the respondent’s. In this example, the matter is heard on appeal. We can say this because the case is heard before the SCA. The ‘SCA’ in our case name stands for the Supreme Court of Appeal. Thus, the parties are the appellant (Molefe) and the respondent (Mahaeng).

In action proceedings the procedure is started by way of a summons. This procedure (that is, action proceedings) is used when there is a fundamental difference between the parties as far as the facts of the case are concerned. In our example, there is a fundamental difference in the sense that the parties differed on who caused the accident. Molefe said the accident was the result of Mahaeng’s negligence, and Mahaeng said that he was not negligent.

Now look at our third example’s heading. What does it tell you?

(3) *Ex parte Addleson* (The parties are: Applicant and/or Respondent if any)

This case is another example of a civil case. However, here the application proceeding has been used. In application proceedings the Latin words ‘*Ex parte*’ (in the application) appear before the applicant’s name. In other words, the name of the person who is bringing the application (the applicant’s name) immediately follows these Latin words.

With reference to our example, Mr. Addleson brought an application to be admitted as an advocate.

In application proceedings, the procedure is started by way of notice of motion. Unlike in action proceedings, this procedure (that is, application proceeding) is used when there is no fundamental difference between the parties as far as the facts of the case are concerned. The parties, in other words, more or less agree on the facts of the case. Usually one party, namely the applicant, is involved, and it is that party who brings the application. If there is another person who wants to object to the application, then that person would be indicated as the respondent.

In our example, Mr. Addleson applied to be admitted as an advocate. If someone wanted to, such a person could have objected to his (Mr. Addleson's) application, and he/she would thus be the respondent.

2.5.2 Year and volume

This aspect relates to the books or bundles in which publishers report cases every year. These books are normally called 'reports'. Thus, every year there are different volumes wherein reported cases or court decisions appear. You will realise that in a case name a year appears immediately after the names of the parties (in every case). It shows the year in which the case was reported. Since in a particular year many cases may be reported, it becomes necessary for these cases to be reported in many books. This is why many books (usually called volumes) of reports are published every year. The number in brackets shows which volume of the report contains the case that one may be looking for.

Let us look at our examples again:

- (1) *S v Makua* **1993 (1)** SACR 160 (T): This case can be found in the first volume of 1993.
- (2) *Molefe v Mahaeng* **1999 (1)** SA 562 (SCA): This case can be found in the first volume of 1999.
- (3) *Ex parte Addleson* **1948 (2)** SA 16 (E): This case can be found in the second volume of 1948.

2.5.3 Series of law reports

There are numerous law reports that are commercially published; and these are given different names. These law reports are identified by the abbreviations of the different names given to them. In a case reference the abbreviations appear after the date and volume of the report. Thus, the letters that appear after the date (or year) and volume of the report are an abbreviation of the name of the report. It is interesting to note that there seems to be a reason or reasons why the reports are published under different names. It would also appear that different reports would contain different types of cases.

This will become clear if we look at our examples again:

- (1) *S v Makua* 1993 (1) **SACR** 160 (T)
SACR — *South African Criminal Law Reports*. Only criminal law cases would be reported here. This is the reason why *S v Makua* was reported in the SACR.
- (2) *Molefe v Mahaeng* 1999 (1) **SA** 562 (SCA)
SA — *South African Law Reports*. This is comprehensive set of law reports and covers a variety of South African criminal, civil and constitutional cases.
- (3) *Ex parte Addleson* 1948 (2) **SA** 16 (E)
SA — *South African Law Reports*.

There are many other specialist law reports. Here follow some of them:

CLR — *Commercial Law Reports*
 SALLR — *South African Labour Law Reports*
 BCLR — *Butterworth's Constitutional Law Reports*

It is important to note that:

- not all civil and criminal cases are reported. **Only the ones (cases) that are regarded as important are.**
- no magistrate's court cases are reported.
- only certain decisions of the higher courts are reported.
- all constitutional cases are reported.

2.5.4 The page where the report starts

We should, again, return to our examples to deal with this aspect of case reference:

- (1) *S v Makua* 1993 (1) SACR **160** (T): This case starts on page 160.
- (2) *Molefe v Mahaeng* 1999 (1) SA **562** (SCA): This case starts on page 562.
- (3) *Ex Parte Addleson* 1948 (2) SA **16** (E): This case starts on page 16.

2.5.5 The court where the case was decided

Since there are many courts throughout South Africa, it becomes essential that the case reference indicates the name of the court where the decision was given. This is indicated by way of abbreviation. Thus the letter(s) appearing immediately after the page number where the case starts is the abbreviation of the name of the court.

You should also understand what is meant by “the court of first instance” and “the court *a quo*”. The phrase, the court of first instance, is used to refer to the court in which the case was heard for the first time. The court *a quo* (*a quo* means “from where”) is used to refer to the court where the case was heard before it came to the present court on appeal.

We may also look at our examples to clarify this:

- (1) *S v Makua* 1993 (1) SACR 160 (T): This case was heard in the Transvaal Provincial Division (T) of the High Court. The Transvaal Provincial Division is in Pretoria (“Transvaal” comes from the pre-1994 situation when the RSA was divided into only 4 provinces; Transvaal, Cape Province, Natal and the Orange Free State. Transvaal was roughly the region now known as Gauteng, Mphumalanga, Limpopo and the North West Province). The court of first instance was the magistrate's court in Middelburg (Mphumalanga). In other words, this is the court where the case was first heard. In this case the court *a quo* is also the magistrate's court, since this is the court from where there was an appeal to the Transvaal Provincial Division (see page 161J of the case).
- (2) *Molefe v Mahaeng* 1999 (1) SA 562 (SCA): This case was heard in the Supreme Court of Appeal. The Supreme Court of Appeal is in Bloemfontein. The court of first instance (where the case was first heard) was the magistrate's court in Welkom (see page 564F). The court *a quo* (from where the case came to the Supreme Court of Appeal) was the Provincial Division of the High Court of the Free State, because

there was an appeal from the magistrate's court to the High Court (see page 564I; p. 566J).

This process may be illustrated as follows:

Magistrate's court in Welkom: hears case as court of first instance.



Appeal from magistrate to High Court: Magistrate's court is the court *a quo* in relation to the High Court.



Appeal from High Court to Supreme Court of Appeal: High Court is the court *a quo* in relation to the Supreme Court of appeal.

- (3) *Ex Parte Addleson* 1948 (2) SA 16 (E): The Eastern Cape Provincial Division of the High Court is where this case was heard. This Division is in Grahamstown. The case concerns an application to be admitted as an advocate. Such an application may only be brought in the High Court. Therefore, the court of first instance in this case is the Eastern Cape Provincial Division of the High Court, because this is where the case was first heard. There is no court *a quo* because this case did not come from another court. Thus, you can see that the High Court can also sometimes be a court of first instance.

The following is a list of some of the most common abbreviations used to indicate specific courts (the English abbreviation is followed by the Afrikaans abbreviation):

CC/KH	:	Constitutional Court (Johannesburg)
SCA/HHA	:	Supreme Court of Appeal (Bloemfontein). Replaces the Appellate Division which was abbreviated by "A"
C/K	:	Cape Provincial Division (Cape Town)
E/OK	:	Eastern Cape Provincial Division (Grahamstown)
SE/SOK	:	South East Cape Provincial Division (Port Elizabeth)
N	:	Natal Provincial Division (Pietermaritzburg)
D/D+C/D+K	:	Durban and Coast Local Division (Durban)
NC/NK	:	North Cape Division (Kimberley)
O	:	Orange Free State Provincial Division (Bloemfontein)
T/TPD/TPA	:	Transvaal Provincial Division (Pretoria)
W/WLD/WPA	:	Witwatersrand Local Division (Johannesburg)

Note: The Renaming of High Courts Bill was published in Government Gazette No 30799 of 21 February 2008. The names of the courts might change in future.

2.5.6 The structure of a reported decision

Here we are going to deal with the way in which a case is set out or outlined. In other words we are going to focus on the structure of a decision (or case).

(i) Judges' Names

The name(s) of the judge(s) appears (appear) under the name of the court where the matter was heard. The letters that appear after the names of the judges are not the initials of the judges (or abbreviations of the judges' first names). They indicate the title of the judge. Thus, "J" stands for "Judge".

Up to November 2001, the titles of the judges in the different courts were indicated as follows (the English is followed by the Afrikaans version).

Constitutional court

P	— President (<i>President</i>)
DP/AP	— Deputy President (<i>Adjunkpresident</i>)
J/R	— Judge/Justice (<i>Regter</i>)

Supreme Court of Appeal

CJ/HR	— Chief Justice (<i>Hoofregter</i>)
DCJ/AHR	— Deputy Chief Justice (<i>Adjunkhoofregter</i>)
JA/AR	— Judge of Appeal (<i>Appèlregter</i>)
AJA/WnAR	— Acting Judge of Appeal (<i>Waarnemende Appèlregter</i>)

High Courts

JP/RP	— Judge President (<i>Regter-president</i>)
DJP/AdjRP/ARP	— Deputy Judge President (<i>Adjunkregter-President</i>)
J/R	— Judge (<i>Regter</i>)
AJ/WnR	— Acting Judge (<i>Waarnemende Regter</i>)

In November 2001, an amendment to the Constitution changed the titles of the judges of the Constitutional Court and the Supreme Court of Appeal. The titles of the judges of these courts are now indicated as follows:

Constitutional Court

CJ/HR	— Chief Justice (<i>Hoofregter</i>)
DCJ/AHR	— Deputy Chief Justice (<i>Adjunkhoofregter</i>)
J/R	— Judge/Justice (<i>Regter</i>)

Supreme Court of Appeal

P	— President (<i>President</i>)
DP/AP	— Deputy President (<i>Adjunkpresident</i>)
JA/AR	— Judge of Appeal (<i>Appèlregter</i>)
AJA/WnAR	— Acting Judge of Appeal (<i>Waarnemende Appèlregter</i>)

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

Let us look at our examples in this regard:

(1) *S v Makua* 1993 (1) SACR 160 (T)

Goldstein J and Mahomed J — both Goldstein and Mahomed held the office of judge (that is, they were both judges). See page 160 of the case.

- (2) *Molefe v Mahaeng* 1999 (1) SA 562 (SCA)

Hefer JA, Zulman JA, and Melunsky AJA — Hefer and Zulman were both judges of appeal, and Melunsky was an acting judge of appeal (see page 562 of the case).

- (3) *Ex Parte Addleson* 1948 (2) SA 16 (E)

Pittman JP and Gardner J — Pittman was a judge president and Gardner was a judge (see page 16 of the case).

(ii) Date on which the case was heard

The date on which the matter was heard is normally written, or rather it appears, under the name or names of the judge or judges who presided over that case. In this respect, you may look at our examples:

- (1) *S v Makua* 1993 (1) SACR 160 (1): 3 November 1992 (see p. 160).
(2) *Molefe v Mahaeng* 1999 (1) SA 562 (SCA): 15, 25 September 1998. This case was heard on two days: on 15 and 25 September 1998 (see p. 562 of the case).
(3) *Ex Parte Addleson* 1948 (2) SA 16 (E): 5 February 1948 (see page 16 of the case).

(iii) Catch Phrases (Flynote)

The catch phrases, also called a “flynote”, are the most important points with which the judgement is concerned. The catch phrases are put in point form and are separated by dashes. You use the catch phrases of a case to get a rough idea of what the case is about. Other than this aspect, the catch phrases have very little value. The publishers compile the catch phrases in such a way that they do not form part of the judgment itself.

Look at our three example cases and identify the catch phrases from each one.

(iv) Headnotes

The headnotes are also written by the editor of the law reports, who is employed by the publishers. The headnote is a summary of the case. It includes all the aspects of the case that the editor considers to be important. It usually includes the area of law that the case is concerned with as well as the *ratio* (see below) of the case. Some sentences in the headnote start with the word “*Held*”. This word indicates a finding of the court. It usually takes the following structure or format: “The court *held* that ...”. The headnote is useful because it gives you an idea of what the case is all about. You should not always rely totally on the headnote because the editor’s summary may be incomplete or inaccurate.

Look at the headnotes extracted from each of our example cases.

(v) Legal representatives

The names of the legal representatives; in other words, the persons who represented the parties in court, appear after the headnote. The term, “legal representatives” refers either to advocates or attorneys.

If you look at our three examples you will notice that in the first case (*S v Makua*) there is someone who appears for the state and someone else for the appellant. This is on page 161 of the case. In the second case (*Molefe v Mahaeng*) there are also two legal representatives who appear for the appellant and the respondent respectively. This can be seen on page 563 of the case. However, there is only one legal representative in the third case (*Ex parte Addleson*), who appears for the applicant. You may see this on page 16 of the application.

(vi) Summary of heads of argument

The summary of heads of argument is a summary of the arguments and authorities which the lawyers presented to the court. However, this does not always appear in all cases. Let us look at our examples:

- (1) *S v Makua* 1993 (1) SACR 160 (T)

This case does not have a summary of heads of argument.

- (2) *Molefe v Mahaeng* 1999 (1) SA 562

In this case only a short list of cases cited (or quoted by) the lawyers are given:

Banderker v Marine & Trade Insurance 1981 (2) PH J54 (A)

Buckman v SA Railways & Harbours 1941 EDL 239 at 241

Elgin Fireclays Ltd v Webb 1947 (4) SA 744 (A) at 749–50

Galante v Dickenson 1950 (2) SA 460 (A) at 465

Jones NO v Santam Bpk 1965 (2) SA 542 (A).

(See pages 563 and 564 of the case.)

- (3) *Ex Parte Addleson* 1948 (2) SA 16 (E)

Here, the summary of the argument put by Mr. Addleson's advocate is given:

The language on which the decision in *Ex parte Ormonde* (1940, C.P.D. 287) was based is that of Act 16 of 1873 sec. 20; the language of the present Act, 39 of 1946, sec. 1, is different and would justify a distinction. In the Orange Free State the language of the relevant legislation is different with the result that Ormonde's case ... and Act 39 of 1946, sec. 1

(See p. 16 of the case.)

(vii) Date on which judgment is given

A case may sometimes be heard on one day and the judge is able to give his/her decision on the same day. However, it often happens that the judge is not able to give his/her judgment on the same day on which the case is heard. In such a situation the case would, therefore, be heard on one day (as discussed above) and then judgment given on another day.

When judgment is given on a different day to the day on which the case was heard, the words "*Cur adv vult*" will appear. This is short for the Latin *curia advisari vult*, which means "the court wishes to consider the verdict". These words are followed by the word *postea* which is the Latin for "afterwards". After *postea* you will see a date. That

is the date on which the judgment was given. Let us consider this in the light of our examples:

- (1) *S v Makua* 1993 (1) SACR 160 (T)

The words *Cur adv vult* and *postea* do not appear in this case. This is because judgment was given on the same day on which the case was heard.

- (2) *Molefe v Mahaeng* 1999 (1) SA 562 (SCA)

Cur adv vult, as already explained, means that the court wishes to consider its verdict. *Postea* (September 25) means that it gave its judgment afterwards on 25 September (see p. 564 of the case).

- (3) *Ex Parte Addleson* 1948 (2) SA 16 (E)

The words *Cur adv vult* and *postea* do not appear. This is because judgment was given on the same day on which the case was heard.

(viii) Judgment

If in a particular case the word *postea* appears, the name of the judge will then appear again below it. Where you see this name it is the point at which the judgment starts. The name of the judge is given to indicate which judge gave the judgment, if there is more than one judge hearing the case.

Look at our examples again:

- (1) *S v Makua* 1993 (1) SACR 160 (T)

Mahomed J: The appellant was found guilty in the magistrate's court at Middelburg on a charge of contravening ...

(See p. 161 of the case.)

- (2) *Molefe v Mahaeng* 1999 (1) SA 562 (SCA)

Melunsky AJA: At about 11:00 on 11 August 1991 the appellant and the respondent were driving their respective motor vehicles in opposite directions ...

(See p. 564 of the case.)

- (3) *Ex Parte Addleson* 1948 (2) SA 16 (E)

Pittman JP: This is an application for admission as an advocate and the provision of the law, on which it is based, is sec. 1 of the Admission of Advocates Amendment Act, 39 of 1946 ...

(See p. 16 of the case.)

Most often the judgment will take the following form:

- (a) First, the facts are given.
- (b) Second, there is a discussion of the relevant legal principles.
- (c) Third, the existing law is applied to the facts of the case.
- (d) Fourth, a decision is given in the light of the relevant legal principles.
- (e) Fifth, an order is given.
- (f) Finally, an order regarding costs is made.

Different kinds of judgments: Majority judgments, minority judgments, separate judgments and concurring judgments

A case may sometimes be heard by more than one judge. If the judges are in agreement, one judge hands down the judgment. This judgment represents the opinion of all the judges on the bench. Judges may also disagree with one another, and when this happens more than one judgment can be handed down. We would, in such situations, get different kinds of judgments. We are now going to explain each of these judgments briefly:

Majority judgment

A majority judgment means that the majority of judges who have heard a particular case give the same judgment based on the same reasons. One judge gives the judgment and the others concur (agree) with it. The *ratio decidendi* of the majority judgment creates the precedent to be used in future cases, and is binding.

Minority judgment

The minute we speak of majority judgments a suggestion is immediately made (that is, we imply) that there must also be cases in which there are minority judgments. In a 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 **reasons for the judgment** are concerned. Such a judgment does not establish a precedent. It can, however, have persuasive force in the future. It is also possible for a judge to concur (or agree) 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. Any reasons added by the judge for his/her judgment, do not establish a **precedent**. The *ratio decidendi* is only to be found in the majority judgment (These concepts will be explained thoroughly in the course *Introduction to Law*.) It is also possible for a judge to concur (agree) with the separate judgement of another judge.

Did you notice that all our examples (the given cases) cover majority judgments? In other words, one judge passed a particular judgment and the others concurred (agreed) with it. The name(s) of the judge(s) that concurred appears/appear at the end of the judgment. Look at our examples (cases):

(1) *S v Makua* 1993 (1) SACR 160 (T)

In this case there were two judges who heard the matter, Mahomed J handed down judgment and Goldstein J concurred. (See p. 164 of the case.)

(2) *Molefe v Mahaeng* 1999 (1) SA 562 (SCA)

In this case there were three judges who heard the matter. Melunsky AJA handed down judgment and Hefer JA and Zulman JA concurred. (See p. 570 of the case.)

(3) *Ex parte Addleson* 1948 (2) SA 16 (E)

In this case there were two judges who heard the matter. Pittman JP handed down judgment and Gardner J concurred (see p. 18 of the case).

Since there were no minority or separate judgments in our examples, but only majority (concurring) judgments, we advise that you look at the following criminal case to illustrate minority and separate judgments:

S v Laurence, Nepal and Solberg 1997 (4) SA 1176 (CC)

(This is only an example — it is not relevant for examination purposes!)

This case is a decision of the Constitutional Court. The case was heard by nine judges. They were Chaskalson P, Langa DP, Ackerman J, Goldstone J, Kriegler J, Madala J, Mokgoro J, O'Regan J and Sachs J.

The case was about many issues. One of the main issues was the selling of alcohol on a Sunday. Parliament had forbidden the selling of alcohol on Sundays and other Christian holidays. Laurence, Nepal and Solberg had broken this law by selling alcohol at a time when this was not allowed. The State prosecuted them and they argued, in the Constitutional Court, that parliament was favouring the Christian religion because it did not allow the selling of alcohol in the Christian holy day — Sunday.

Chaskalson P wrote the judgment. He held that the connection between the Christian religion and the restriction against selling alcohol on Sundays was too weak to call it an infringement of religious freedom. Three other judges concurred (agreed) with him and so the four judges gave the majority judgment. The three concurring judges were Langa DP, Ackerman J and Kriegler J.

Sachs J wrote a separate judgment. He also felt that the law forbidding the sale of liquor did not breach the Constitution, but he had different reasons for thinking thus. That is why he gave a separate judgment. Mokgoro J concurred with Sachs J. This means that Mokgoro J agreed with the reasons that Sachs J gave. Mokgoro J did not agree with the reasons that the majority gave, but did agree with the decision of the majority.

O'Regan J wrote a minority judgment. She felt that the law which did not allow the sale of alcohol on Sundays was an infringement of the Constitution. She argued that this legislation was showing some sort of support for Christianity which it did not show for other religions and that this was against the Constitution. Goldstone J and Madala J concurred with her judgment. This means that they agreed with O'Regan J's decision and that they disagreed with the decision of the majority of the judges and with the decision of Sachs J and Mokgoro J.

It therefore seems that there were a majority judgment, a separate judgment and a minority judgment in this case. In each of these three judgments some of the judges agreed with the judge who handed down the decision. We will now provide you with an extract from the headnote of the case in order to illustrate the different kinds of judgments:

Majority judgment

Whatever connection there may be between the Christian religion and the restriction against grocers selling wine on Sundays at a time when their shops are open for other business, it is too tenuous for the restriction to be characterised as an infringement of religious freedom. Accordingly s 90 of the Liquor Act 27 of 1989 is not inconsistent with s 14 of the interim Constitution (which provides that '(e)very person shall have the right to freedom of conscience, religion, ...'). (Per Chaskalson P, Langa DP, Ackerman J and Kriegler J concurring.) (Paragraph [105 at 1212AB.)

Separate judgment

Per Sachs J, Mokgoro J concurring: The inescapable message sent out by the particular choice of Sundays, Good Friday and Christmas Day as 'closed days' (see definition of 'closed day' in s 2 of the Liquor Act 1989) is that, despite the enactment of s 14 of the interim Constitution, the State still shows special solicitude to Christian opinion or, to put it more accurately, to the views of certain Christians, and thereby infringes s 14. However, on the one hand, the scope and intensity of the invasion of s 14 rights is relatively slight, and, on the other hand, the dangers of excessive drinking, particularly on weekends, at the beginning of the Easter weekend and at Christmas time, are grave. Paypackets are reduced, domestic violence is intensified and exceptionally high slaughter on the roads resulting from drunken driving becomes a matter of national concern. There are accordingly strong reasons for adopting suitably focused measures which are designed to and hopefully do restrict the consumption of alcohol on these particular days and not on others. The legislative restrictions in question are accordingly both reasonable and necessary. Thus the provisions of the Liquor Act, 1989, relating to closed days does involve a breach of s 14 of the interim Constitution, but such infringement is sanctioned by s 33 of the Constitution and are therefore not unconstitutional. (Paragraphs [163] and [177]–[178] at 1236/A/B–B/C and 1241D/E–G/H.)

Minority judgment

In a dissenting judgment, O'Regan J (Goldstone J and Madala J concurring) held that, in identifying as 'closed days' days of Christian significance, the Legislature displayed an endorsement of Christianity in conflict with the interim Constitution and that, whilst the scope of the infringement of s 14 was not severe or egregious, the purpose and the effect of the legislation was not sufficient to meet the test of justification required by s 33 of the Constitution (Paragraph [132] at 1219H–I).

(vix) Order of the court

(1) *S v Makua* 1993 (1) SACR 160 (1)

“In the result I would make the following order:

1. The conviction of the appellant is confirmed.
2. The sentence imposed by the magistrate is set aside and substituted by the following:
 - (a) The accused is sentenced to pay a fine of R1 000.
 - (b) In addition to the fine the accused is sentenced to six months’ imprisonment, the whole of which is suspended for five years on the condition that the accused is not convicted of contravening s 122 of the Road Traffic Act 29 of 1989, or any statutory substitution thereof, committed during the period of suspension.
 - (c) In terms of s 55(b) of Act 29 of 1989 the accused’s driving licence is cancelled.”

(See p. 164 of the case.)

(2) *Molefe v Mahaeng* 1999 (1) SA 562 (SCA)

“The result is that the appeal fails and is dismissed ...”

(See p. 569 of the case.)

(3) *Ex Parte Addleson* 1948 (2) SA 16 (E)

“The application, consequently, must be refused ...”

(See p. 18 of the case.)

(x) Order as to costs

After a case has been completed, the costs must be paid. The costs are the expenses involved in the case; in other words, the expenses relating to the case, for example the account of the attorney and/or advocate. The presiding officer (that is, the judge or magistrate) makes an order. This order will stipulate which party has to pay which costs. Sometimes the one party is ordered to pay both his own legal representative’s account, as well as the other party’s expenses. Sometimes each party must pay his/her own costs, or one party may have to pay a certain portion of his/her own costs and the other party pays the rest. These orders are called “orders as to costs” and are given at the end of a case. Sometimes, no order as to costs is made.

Now let us see how this part of the judgement (that is, ‘order as to costs’) is manifested in each of our examples:

(1) *S v Makua* 1993 SACR 160 (T)

No order as to costs was made in this case.

(2) *Molefe v Mahaeng* 1999 (1) SA 562 (SCA)

The result was that the appeal failed and was **dismissed with costs**. In other words the appellant had to pay all costs. (See p. 569 of the case.)

- (3) *Ex parte Addleson* 1948 (2) SA 16 (E)

No order as to costs was made in this case.

(xi) Attorneys

The names of the attorneys of the parties involved in the case appear after the judgment.

- (1) *S v Makua* 1993 (1) SACR 160 (T)

Appellant's Attorney: *Mike Mphela*, Groblersdal.

- (2) *Molefe v Mahaeng* 1999 (1) SA 562 (SCA)

Appellant's Attorneys: *Du Randt & Louw*, Kroonstad; *Schoeman, Maree Inc*, Bloemfontein. Respondent's Attorneys: *Jac S Kloppers & De La Rey*, Welkom; *EG Cooper & Sons Inc*, Bloemfontein.

- (3) *Ex Parte Addleson* 1948 (2) SA 16 (E)

Applicant's Attorneys: *Nailand & Green*.

(xii) 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 lawyers, magistrates and judges to refer to specific parts of a judgment.

Below, we are going to show you how to use these letters of the alphabet to refer to certain parts of the judgment. With the help of our three examples (the cases), we will give an extract from that particular part of the case:

- (1) *S v Makua* 1993 (1) SACR 160 (T) at 162G

The Magistrate also concluded that before the applicant began drinking he knew very well that he was going to drive the vehicle and the consequences were foreseeable ...

- (2) *Molefe v Mahaeng* 1999 (1) SA 562 (SCA) at 565I

After the collision Khatiti approached the respondent's vehicle. According to his evidence, there ...

- (3) *Ex Parte Addleson* 1948 (2) SA 16 (E) at 17

Herein there are no alphabetical letters along the side of the reported case. The reason for this is that the case was reported a long time ago (1948). Try and find the following extract (from the case):

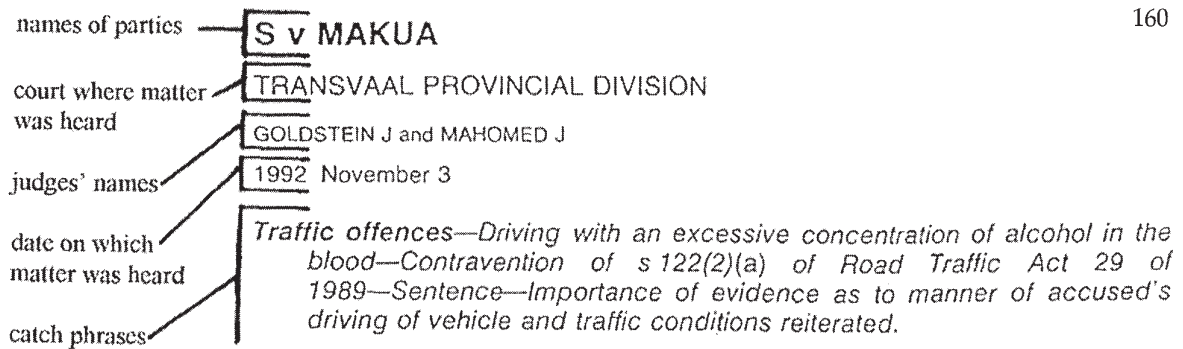
The copy of the telegram received from applicant's college, which is attached to this petition, is inaccurate ...

We hope that you can now see that the presence of letters of the alphabet along the side of the case helps us to find certain passages in a judgment easily.

Example Case 1

PLEASE NOTE: You need not study the example cases in detail for the examination. You only need to master the structure and the reading of a court case since in the examination, you may be asked to read and answer questions on a court case, similar to those on *Pinchin and another, NO vs Santam Insurance Co Ltd* 1963 (2) 254 (WLD).

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catch phrases

Traffic offences—Driving with an excessive concentration of alcohol in the blood—Contravention of s 122(2)(a) of Road Traffic Act 29 of 1989—Sentence—Magistrate correctly holding that appellant to be discouraged from driving whilst under the influence of liquor or while concentration of alcohol in blood exceeding prescribed limit—Magistrate doing so by imposing fine and imprisonment suspended for five years on condition that appellant did not drive a motor vehicle on a public road—Court on appeal finding it preferable to achieve same end by suspending imprisonment on condition that appellant not convicted of contravening s 122 of Act and by cancelling his driver's licence—Such sentence providing incentives for appellant to make sure he did not again drive in circumstances which might endanger others without punishing him where he is able to drive soberly and lawfully, and also compelling him to re-apply for new driver's licence should he wish to drive again.

headnote

The Court, in an appeal against a sentence imposed by a magistrate on the appellant's conviction of driving a motor vehicle while the concentration of alcohol in his blood was not less than 0,08 grams per 100 millilitres in contravention of s 122(2)(a) of the Road Traffic Act 29 of 1989, reiterated the importance, for purposes of assessing an appropriate sentence, of evidence as to the accused's actual driving of the motor vehicle and of the location of the road upon which he had been driving and the traffic conditions thereon.

The *dictum* in *S v Sinclair* 1963 (1) SA 558 (C) at 560A–D applied.

Where the court holds that the accused needs to be discouraged from driving a motor vehicle while he is under the influence of liquor or whilst the concentration of alcohol in his blood is not less than 0,08 grams per 100 millilitres (the court *a quo* having correctly so held in the case of the appellant *in casu*), it is not necessary to impose a sentence of imprisonment (in addition to a fine) suspended for five years on condition that the accused does not drive a motor vehicle again on any public road during the five year period, thereby preventing the accused from driving at all. The objective of the court can rationally and sensibly be furthered by other mechanisms. Firstly, it can be done by suspending the operation of the prison sentence on the condition that the accused does not during the period of suspension drive a motor vehicle whilst under the influence of liquor or whilst the concentration of alcohol in his blood exceeds the statutory minimum. Secondly, it can be achieved by the mechanism of cancelling his driver's licence and compelling him to re-apply for a new licence and to satisfy the licence authorities that he should be issued with such a licence. Both of these mechanisms would provide formidable incentives for the appellant to make sure that he does not again drive a motor vehicle in circumstances which might endanger others without punishing in the circumstances where he is able to drive a motor vehicle perfectly soberly and lawfully.

legal representatives

Appeal from a sentence imposed in a magistrate's court. The facts appear from the reasons for judgment.

A J J van Zyl for the appellant.
S le Roux for the State.

judgment

Mahomed J: The appellant was found guilty in the magistrate's court at Middelburg on a charge of contravening s 122(2)(a) of the Road Traffic Act 29 of 1989 by driving a vehicle on a public road while the concentration of alcohol in his

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judgment

a blood was not less than 0,08 grams per 100 millilitres. The evidence before the court *a quo* clearly established the guilt of the appellant. The alcohol concentration in his blood was found to be 0,33 grams per 100 millilitres and the appellant admitted that he had been driving the vehicle on a public road at the relevant time. He appeals only against his sentence.

b The sentence imposed by the magistrate was a fine of R1 000 plus imprisonment for two years. The imprisonment was suspended for five years on the condition that the appellant did not drive a motor vehicle again on any public road in the country during the five year period. In terms of s 55(1)(b) of Act 29 of 1989 his licence was also cancelled.

c The facts of mitigation advanced on behalf of the appellant and accepted by the magistrate disclosed that the appellant was a 74-year old pensioner. He had no previous convictions. He was married with five minor children. His pension was R325 per month. His wife did not work. He had R800 in his possession to pay a fine immediately. Any additional fine would be paid from his pension at the end of the month. He had drunk twelve 750 millilitre cans of beer on the relevant day.

d *alia*, that the conditions attached to the sentence of imprisonment were 'too harsh for a first offender of the appellant's calibre who needs the licence to augment his income as a fruit and vegetable vendor to maintain his children'. There was, however, no evidence before the magistrate that the appellant operated as a fruit and vegetable vendor or that he needed to drive a motor vehicle for this purpose. We especially called for a transcript of the submissions on behalf of the appellant by his attorney in the court *a quo* and we are satisfied that no submission to this effect was made to the magistrate. In the result the magistrate cannot be blamed in any way whatever for failing to take into account the alleged need of the appellant to drive a motor vehicle in order to operate effectively as a vendor of fruit and vegetables.

e The issue which nevertheless needs to be addressed is whether his sentence of

f two years' imprisonment suspended for five years on the condition that the appellant does not drive a motor vehicle at all during the five year period of suspension is justified by the evidence. In ordering this condition the magistrate concluded that one third of the appellant's blood consisted of alcohol. This is not a conclusion justified by the evidence. The evidence was simply that the alcohol concentration in his blood was 0,33 grams per 100 millilitres. To say that this

g constitutes a third of his total blood content is in my view a major misdirection.

The magistrate also concluded that before the appellant began drinking he knew very well that he was going to drive the vehicle and the consequences were foreseeable. Again there is no evidence to support this. Moreover, there is no evidence that the appellant's judgment or driving skills were in fact so severely impaired that he could not drive the motor vehicle properly or that he did so in a

h manner which constituted a visible danger to others. The appellant was apparently confronted by the police not because they observed anything unsatisfactory in the manner of his driving but because the police suspected that he might be driving a stolen motor vehicle. The similarity of the appearance of the appellant's motor vehicle with ordinary police vehicles had caused the police to suspect that perhaps the appellant had been driving a stolen motor vehicle and this was the reason why

i he was stopped.

In a prosecution such as the present the remarks of the Court in the case of *S v Sinclair* 1963 (1) SA 558 (C) at 560A-D are to be borne in mind. In that case it was said by the Court as follows:

i 'When one looks at the record before us we find that the investigation as to the actual driving of the car and the place where it was driven, apart from the fact that it was a public road, leaves much to be desired. The magistrate was simply

told that the car zig-zagged over the road, that it was then stopped and the appellant got out. Whether this was in a busy thoroughfare at the time is not stated; whether it was a lane carrying traffic in only one direction was not stated; whether the zig-zagging was a danger to other users of the road is not stated; nor is it stated for what distance this car was seen to travel on the public road or the extent to which it deviated from a straight course. Unless those aspects are properly investigated and unless from an investigation of those aspects it should appear that the appellant was in fact a danger to other users of the road or, as stated by the magistrate, it indicates a wilful disregard of other users of a public road, I feel that the magistrate should not regard it as a reason for imposing a severe sentence.'

(See also the case of *S v Lambrecht*; *S v Van Rensburg*; *S v Van der Hoven*; *S v Geyser* 1970 (3) SA 141 (T) at 146H-147A.)

The magistrate correctly held that the appellant needed to be discouraged from driving a motor vehicle while he is under the influence of liquor or whilst the concentration of alcohol in his blood is not less than 0,08 grams per 100 millilitres. But why was it necessary to prevent the appellant from driving the vehicle at all in order to achieve this objective? Such an objective can rationally and sensibly be furthered by other mechanisms. Firstly, it can be done by suspending the operation of the prison sentence on the condition that the appellant does not during the period of suspension drive a motor vehicle whilst under the influence of liquor or whilst the alcohol concentration in his blood exceeds the statutory minimum referred to in Act 29 of 1989.

Secondly, it can be achieved by the mechanism of cancelling the appellant's driving licence and compelling him to re-apply for a new licence and to satisfy the licence authorities that he should be issued with such a licence.

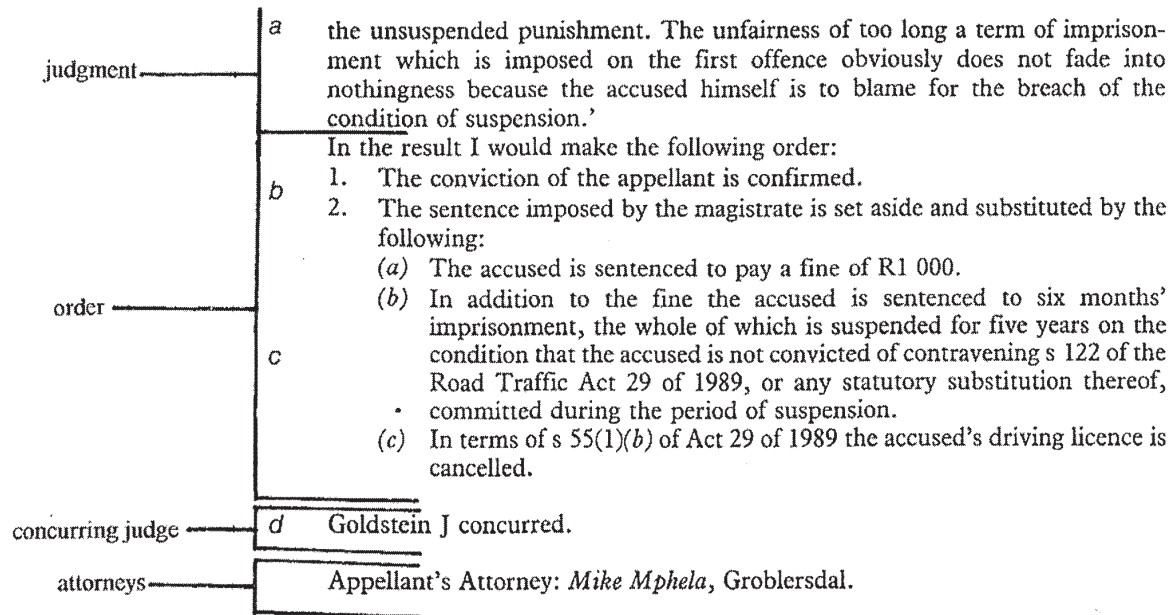
Both of these mechanisms would provide formidable incentives for the appellant to make sure that he does not again drive a motor vehicle in circumstances which might endanger others without punishing him in the circumstances where he is able to drive a motor vehicle perfectly soberly and lawfully.

I am therefore satisfied that both a suspended term of imprisonment and a cancellation of the appellant's driving licence is perfectly justified. I am for the reasons discussed not satisfied with the conditions of suspension imposed by the magistrate. Nor am I satisfied with the period of two years' imprisonment imposed by the magistrate. It is a sentence which is strikingly disparate from the sentence I would have imposed as a trial Judge on a first offender on the facts accepted as common cause in the present case.

It is true that the whole of the imprisonment was and is to be suspended but that does not relieve the court of the duty to ensure that the substantive term of imprisonment is justified by the circumstances of the case. I refer in this regard to the case of *S v Setnoboko* 1981 (3) SA 553 (O) at 554 where the headnote reads as follows:

'In a determination of what is an appropriate sentence in a particular case and whether a portion of the sentence should be suspended, it would be wrong to look at part of the sentence only as though the suspended portion does not have to be served. Of the suspended portion it can only be said that it does not necessarily have to be served. It remains, however, part of the sentence of the court and, indeed, a part which will possibly have to be served. The need for careful consideration of the sentence which, as a whole, is appropriate cannot be relaxed merely because there is a possibility that the suspended portion of the sentence will eventually not have any real effect in the sense that it will not have to be served. It remains important to bear in mind throughout that the full sentence imposed might have to be served in the end and accordingly the period of the suspended punishment should be carefully considered in the context of

judgment



Example Case 2

names of parties	A MOLEFE v MAHAENG	
court where matter was heard	SUPREME COURT OF APPEAL	
judges' names	HEFER JA, ZULMAN JA and MELUNSKY AJA	
dates on which matter was heard	1998 September 15, 25	Case No 431/96
catch phrases	<p><i>Negligence—Liability for—Motor vehicle collision—Whether collision due to negligence of respondent—Respondent pleading sudden, unforeseen and uncontrollable black-out resulting in his inability to control vehicle—Whether respondent bearing onus to establish defence of automatism—Respondant's involuntary act not giving rise to delictual liability—Need for scrutiny of defences based on automatism having no bearing on onus—Appellant to establish that respondent's negligence consisting of voluntary act—Prima facie inference of negligence not serving to shift burden of proof—Appellant not discharging onus of proving that respondent's conduct due to voluntary act and that he had not had black-out—Circumstances not showing that respondent appreciating possibility of black-out and driving in spite thereof—Not shown that reasonable person should have been aware of possibility of black-out—Appeal dismissed.</i></p>	
headnote	<p>E The appellant had instituted action against the respondent in a magistrate's court for damages sustained in a motor vehicle collision involving the parties. The appellant had alleged that the collision had been caused solely by the respondent's negligence. The respondent had denied negligence on his part and had pleaded that he had been overcome by a sudden, unforeseen and uncontrollable black-out which had resulted in his being unable to control the vehicle. At the trial the magistrate had been of the view that, as the respondent had raised the defence of automatism, he bore the <i>onus</i> of establishing such defence. He rejected the respondent's version and made a finding in favour of the appellant. A Provincial Division had reversed this decision on appeal, holding that, as a matter of probability, the respondent had suffered a black-out and that the collision had not occurred due to his negligence. In a further appeal the Court considered, on the question of <i>onus</i>, the fact that the magistrate had held that the <i>onus</i> had been on the respondent to establish his defence and that counsel for the appellant had submitted that the burden of proof rested on the respondent to establish on a balance of probabilities that he had suffered a black-out which had prevented him from being able to control his vehicle.</p> <p>F</p> <p>G <i>Held</i>, that a defendant's involuntary act did not give rise to delictual liability and that, while defences based on automatism had to be scrutinised with great care, this requirement had no bearing on the question of <i>onus</i>. (At 567I/J-J.)</p> <p>H <i>Held</i>, further, the appellant had to establish that the respondent had been negligent and this included proof that the negligence relied upon had consisted of a voluntary act. (At 568H/I.)</p> <p>I <i>Held</i>, further, that a <i>prima facie</i> inference of negligence would have arisen because the evidence had established that the respondent had driven on the incorrect side of the road, but this did not serve to shift the burden of proof. It still had to be decided whether, on all of the evidence and the probabilities, the appellant had discharged the <i>onus</i> on a preponderance of probability. (At 568J-569A/B.)</p> <p>J</p>	

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headnote	<p><i>Held</i>, further, that, having regard to the evidence as a whole, the appellant had not discharged the <i>onus</i> of proving, as a matter of probability, that the respondent's conduct was due to his voluntary act and that he had not had a black-out. (At 569F–G.)</p> <p><i>Held</i>, further, that it had not been shown that the respondent had appreciated the possibility of the black-out prior to its occurring and had driven the vehicle in spite of this possibility or that a reasonable person in his position should have been aware of such a possibility. (At 569I–J.) Appeal dismissed.</p> <p>The decision in the Orange Free State Provincial Division in <i>Mahaeng v Molefe</i> confirmed.</p> <p>Annotations: <u>Reported cases</u></p> <p><i>Arthur v Bezuidenhout and Miemy</i> 1962 (2) SA 566 (A): referred to <i>Gabellone v Protea Assurance Co Ltd</i> 1981 (4) SA 171 (O): referred to <i>The Government v Marine and Trade Insurance Co Ltd</i> 1973 (3) SA 797 (D): considered <i>Heneke v Royal Insurance Co Ltd</i> 1954 (4) SA 606 (A): dictum at 611A–B applied <i>S v Cunningham</i> 1996 (1) SACR 631 (A): reasoning at 635g–i applied <i>S v Van Zyl</i> 1964 (2) SA 113 (A): referred to <i>Sardi and Others v Standard and General Insurance Co Ltd</i> 1977 (3) SA 776 (A): referred to <i>Stacey v Kent</i> 1992 (4) SA 495 (E): compared <i>Stacey v Kent</i> 1995 (3) SA 344 (E): compared.</p>	A B C D E
legal representatives	<p>Appeal from a decision in the Orange Free State Provincial Division (Hancke J and Cillie J). The facts appear from the judgment of Melunsky AJA.</p> <p><i>F W A Dangzuss</i> for the appellant. <i>D G Grobler</i> for the respondent.</p>	F
summary of heads of argument	<p>In addition to the authorities cited in the judgment of the Court, counsel for the parties referred to the following authorities:</p> <p><i>Banderker v Marine & Trade Insurance</i> 1981 (2) PH J54 (A) <i>Buckman v SA Railways & Harbours</i> 1941 EDL 239 at 241 <i>Elgin Fireclays Ltd v Webb</i> 1947 (4) SA 744 (A) at 749–50 <i>Galante v Dickenson</i> 1950 (2) SA 460 (A) at 465 <i>Jones NO v Santam Bpk</i> 1965 (2) SA 542 (A) <i>Kaluse and Six Others v The Marine and Trade Insurance Company Ltd</i> 1969 (2) PH J21 (D) <i>Kruger v Coetzee</i> 1966 (2) SA 428 (A) at 430G <i>Macleod v Rens</i> 1997 (3) SA 1039 (E) ([1997] 1 B All SA 143 at 150) <i>Madyosi and Another v SA Eagle Insurance Co Ltd</i> 1990 (3) SA 442 (A) at 444 <i>Nisala and Others v Mutual & Federal Insurance Co Ltd</i> 1996 (2) SA 184 (T) at 191D <i>Ntsomi v Minister of Law and Order</i> 1990 (1) SA 512 (C) at 525F–G <i>R v Du Plessis</i> 1950 (1) SA 297 (O) <i>R v Johnson</i> 1970 (2) SA 405 (R) <i>R v Schoonwinkel</i> 1953 (3) SA 136 (C) <i>R v Victor</i> 1943 TPD 77 at 83–4</p>	G H I J

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summary of heads of argument	<p>A <i>Rankisson & Son v Springfield Omnibus Services (Pty) Ltd</i> 1964 (1) SA 609 (D) at 616D–E <i>S v Chretien</i> 1981 (1) SA 1097 (A) at 1108C–D <i>S v Evans</i> 1985 (2) SA 865 (ZS) at 869D <i>et seq</i> <i>S v Killian</i> 1964 (1) SA 188 (T) <i>S v Piccione</i> 1967 (2) SA 334 (N) at 335C</p>
	<p>B <i>Sampson v Pim</i> 1918 AD 657 at 662 <i>Weber v Santam Versekeringsmaatskappy Bpk</i> 1983 (1) SA 381 (A) <i>Wessels v Hall & Pickles (Coastal) (Pty) Ltd</i> 1985 (4) SA 153 (C) at 158B–G.</p>
	<p>C <i>Cooper Delictual Liability in Motor Law</i> at 10 <i>Cooper Motor Law</i> vol 2 at 10, 196 <i>Hoffmann and Zeffertt The South African Law of Evidence</i> 3rd ed at 320 <i>Schmidt Bewysreg</i> 3rd ed.</p>
	<p>D <i>Cur adv vult.</i></p>
date on which judgment was given	<p><u>Postea</u> (September 25).</p>
judgment	<p>E Melunsky AJA: At about 11:00 on 11 August 1991 the appellant and the respondent were driving their respective motor vehicles in opposite directions in Mothusi Road, Thabong, Welkom. As they were about to pass each other the respondent’s car suddenly moved on to its incorrect side of the road where it collided with the appellant’s vehicle and immediately thereafter with a motor car driven by Mr Jacob Khatiti, a traffic officer, who was travelling behind the appellant. It then came to rest on the right-hand side of the road after hitting the fence of a private house.</p> <p>F</p> <p>G The appellant sued the respondent for damages in the Welkom magistrate’s court as a result of the damage to his vehicle. He alleged that the collision was due to the sole negligence of the respondent. Apart from denying that he was negligent, the respondent pleaded that the collision was unavoidable as immediately before and at the time of the collision he was overcome by a sudden, unforeseen and uncontrollable black-out (‘breinfloute’) which resulted in his being unable to control his vehicle. Although it was also alleged in the plea that the collision was due to the sole negligence of the appellant, this contention was, quite</p> <p>H correctly, not persisted in.</p> <p>I The matter went to trial on the question of negligence only. The magistrate was of the view that as the respondent had raised the defence of automatism he bore the <i>onus</i> to establish that defence. He rejected the respondent’s version and found in the appellant’s favour. Subsequently the parties reached agreement on the appellant’s damages and the magistrate entered judgment in the appellant’s favour for the agreed amounts and costs.</p> <p>J The magistrate’s decision was reversed by the Orange Free State Provincial Division (Hancke J and Cillie J) on appeal. That Court held that, as a matter of probability, the respondent had suffered a ‘breinfloute’ and that the collision was not due to his negligence. The appeal</p>

was therefore allowed and the appellant's claim was dismissed with costs. A
This is an appeal against that order with the special leave of this Court.

It is necessary to have regard to the events which, according to the
respondent's evidence before the magistrate, resulted in the alleged
black-out. On the morning of the collision the respondent made certain
purchases at the Welkom Minimarket. On the way to the pay point he B
slipped on a banana peel and fell. According to his evidence the back of
his head struck the floor. He also injured his right leg but felt well enough
to drive back to his home. Before driving off he agreed to give a lift to a
woman who had asked him to take her to church. The respondent drove
normally at first and it was only when he reached Mothusi Road that he C
realised that something was wrong with him. According to the inter-
preted evidence, his version of what happened immediately before the
collision was the following:

'Ek het warm geword, ek het begin vomeer en dit het sommer donker geraak
voor my. Ek kan nou nie vir u sê wat gebeur het daardie spesifieke dag nie.' D

He said that he thought of swerving to his left but had no specific
recollection of doing so. Nor did he remember colliding with the two
vehicles. After the collision his first recollection was being woken up by
Khatiti who asked him for his particulars. Later that same day he went
to the St Helena Mine Hospital where he sought treatment for his E
injured leg and, he said, for his head injury. On the following day he
returned to the hospital for further treatment and was discharged. He
was admitted to the same hospital for observation for his head injury on
2 September and was transferred to the Rand Mutual Hospital in
Johannesburg a few days later. F

Leaving aside the question of *onus* for the time being, I turn to
consider to what extent the other evidence and the surrounding circum-
stances tend to support or contradict the respondent's version. That the
respondent slipped and fell in the Welkom Minimarket is reasonably
clear from the evidence of Mr Teixeira, the co-owner of that establish- G
ment. Teixeira did not see the fall but he was told about the incident and
he spoke to the respondent shortly thereafter. The respondent told him
that he had injured his leg in the fall and complained of pain in his leg but
mentioned no other injury.

Khatiti told the magistrate that the respondent's manner of driving led
him to assume at first that the respondent was under the influence of H
alcohol. This assumption was purely an inference which Khatiti drew
from the fact that the respondent was travelling on the incorrect side of
the road. Khatiti in fact saw the respondent's vehicle for the first time
when it was already on the wrong side of the road and only a few metres
away from the appellant's car. After the collision Khatiti approached the I
respondent's vehicle. According to his evidence, there appeared to be
something wrong with the respondent for he remained in his car with his
eyes open but did not react at first.

Lance-Sergeant Tshikeli of the South African Police, who arrived at
the scene shortly after the accident, testified that the respondent told him J

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- (A) that he had suffered from a 'verdonkering of floute' and was therefore unable to say how the collision had occurred. He recorded the following in his accident report:
'... (D)ie bestuurder van OKE 40012 (the respondent) het bewusteloos geraak en na regs gery. ...'
- (B) The only other evidence placed before the trial court was given by Dr De Coito, a senior medical officer at the St Helena Hospital. His evidence was based to a considerable extent on the hospital records. Although the records were not handed in they were referred to by both parties without objection and apparently contain a fair and accurate reflection of the respondent's complaints and treatment. The respondent first presented himself at the hospital on 11 August 1991. He was seen by a nurse to whom he complained of a leg injury as a result of a fall. This was diagnosed as a muscular injury. The respondent was not admitted to hospital but was told to return on the following day, which he did. He was then seen by a Dr Angelo who treated him only for the muscular injury. Dr Angelo issued a medical certificate on that day. This reads:
- (C) 'Re: Freddy Mahaeng
Apparently abovementioned patient slipped and fell at Minimarket, injuring his (R) thigh.
On examination the hamstring of the (R) thigh is tender to touch and straining. No other abnormalities.
Diagnosis: Sprain (R) hamstring.'
- (D) The certificate was addressed to 'Minimarket' probably because Texeira had advised the respondent that he (Texeira) had a public liability insurance policy and that a claim would be met under the policy if the respondent had injured himself. Although the appellant's attorney initially objected to the certificate being handed in, he later agreed thereto and the certificate was accepted as evidence. Dr Angelo was not called as a witness.
- (E) The respondent again reported to the hospital on 2 September. On this occasion, according to De Coito, he gave 'a history of having a black-out on 11 August'. He was then admitted for investigation and was transferred to the Rand Mutual Hospital on 5 September 'to investigate a black-out which he had apparently suffered in a motor vehicle'. On his return from Johannesburg he was seen by De Coito who finally discharged him from further treatment on 10 September.
- (F) The hospital personnel at both institutions were unable to establish any cause for the respondent's alleged black-out. De Coito conceded that there was a possibility that the respondent could have lost consciousness on 11 August if he had fallen on to the back of his head earlier that day. It was also possible, according to De Coito, that the respondent, who was on medication for diabetes, could have suffered from a black-out if he had taken excessive quantities of his medicine or if he had combined his medication with alcohol.
- (G) I now turn to the reasons given by the magistrate and the Provincial Division for their respective decisions. The court of first instance considered that Khatiti was a biased and untruthful witness. It therefore
- (H) disregarded his evidence. The Court *a quo*, however, held that the
- (I)
- (J)

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magistrate's view of Khatiti's credibility was partially based on the existence of alleged contradictions in his evidence and that on a closer analysis these contradictions were more apparent than real. There is some force in the Provincial Division's criticism of the magistrate's judgment in this respect. It must not be overlooked, however, that the magistrate's finding that Khatiti was biased was also based on the undisputed evidence that the respondent and Khatiti had become firm friends after the accident and that the respondent had paid for the costs of repair to Khatiti's vehicle arising out of the collision. Therefore the magistrate's factual findings should not lightly be disregarded. Moreover it is interesting to note that, according to Khatiti, the respondent told him that he had slipped on a banana peel and had momentarily lost consciousness at the Minimarket. He added, almost gratuitously, that the respondent said this immediately after the accident when no one else was present—'die skare was heeltemal eenkant gewees by die voertuig en op die botsingtoneel'. The respondent, however, denied that he had lost consciousness in the Minimarket.

judgment

The Court *a quo* also criticised the magistrate's approach to Tshikeli's evidence on the grounds that, while Tshikeli testified that the respondent's behaviour after the accident was similar to that of a drunk person, the magistrate held that, according to Tshikeli's evidence, the appellant appeared to be normal. There is justification for this criticism. It should, however, be noted that at a later stage in his evidence Tshikeli said that because he smelt no alcohol on the respondent's breath he realised that the respondent was not drunk but that 'dit is 'n siekte wat hom in daardie toestand laat verkeer'.

He later conceded that he was unable to say why the respondent appeared to him to be in a 'sieklige toestand'. Tshikeli's evidence to the effect that the respondent behaved abnormally after the accident is, therefore, not entirely satisfactory. What is perhaps of more significance is the fact that the respondent must have told Tshikeli that he had suffered from a loss of consciousness as Tshikeli recorded this on his form. The magistrate made no adverse finding on Tshikeli's demeanour or credibility, apart from pointing out that there appeared to be a conflict between the witness and the respondent on whether there were indications that the latter had vomited.

The *onus* of proof now has to be considered. I have mentioned that the magistrate held that the *onus* was on the respondent to establish his defence and counsel for the appellant, too, submitted that the burden of proof rested on the respondent to establish on a balance of probabilities that he had suffered from a black-out which precluded him from being able to control his vehicle. The Provincial Division did not consider it necessary to deal with this question because it was satisfied that the evidence showed, as a matter of probability, that the respondent had suffered a black-out.

Subject to certain qualifications which are not relevant for the purposes of this appeal, a defendant's involuntary act does not give rise to delictual liability (see Neethling *et al Deliktereg* 3rd ed at 24–6). Defences based on automatism have to be scrutinised with great care but this requirement has no bearing on the question of *onus*. However, in *The*

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A *Government v Marine and Trade Insurance Co Ltd* 1973 (3) SA 797 (D), James JP expressed the view (at 799A–B) that the *onus* was on defendant insurance company to establish that the driver of the insured vehicle had suffered a black-out which resulted in his being unable to manage and control the car that he was driving. This condition, the learned Judge went on to say,

B ‘amounts to a defence of automatism and in my opinion it is for the defence to establish the existence of this state of affairs on a balance of probabilities’.

In support of this proposition James JP referred to the decision in *S v Van Zyl* 1964 (2) SA 113 (A). It should be appreciated that in criminal cases the *onus* of proof, where the defence of automatism is raised, depends upon whether the accused’s alleged state of automatism is due to a mental disease. If it is the *onus* is on the accused, but if the automatism is not due to a mental illness the State is required to prove the voluntariness of the act. In *S v Cunningham* 1996 (1) SACR 631 (A) Scott JA said the following at 635g–i:

D ‘Criminal responsibility presupposes a voluntary act (or omission) on the part of the wrongdoer. Automatism therefore necessarily precludes criminal responsibility. As far as the *onus* of proof is concerned, a distinction is drawn between automatism attributable to a morbid or pathological disturbance of the mental faculties, whether temporary or permanent, and so-called “sane automatism” which is attributable to some non-pathological cause and which is of a temporary nature. In accordance with the presumption of sanity the *onus* in the case of the former is upon the accused and is to be discharged on a balance of probabilities. Where it is sought to place reliance on the latter, the *onus* remains on the State to establish the voluntariness of the act beyond a reasonable doubt. See *S v Mahlinza* 1967 (1) SA 408 (A) at 419A–C; *S v Campher* 1987 (1) SA 940 (A) at 966F–I; *S v Trickett* 1973 (3) SA 526 (T) at 530A–D.’

F *S v Van Zyl*, which was relied upon by James JP, was a case in which it was alleged that the appellant suffered from a ‘disease of the mind or mental defect’ and it was apparently for this reason that the Court placed the *onus* on the defence. The remarks of James JP have not escaped criticism (cf *Gabellone v Protea Assurance Co Ltd* 1981 (4) SA 171 (O) at 174C–D; *Stacey v Kent* 1992 (4) SA 495 (E) at 499J–500D and 1995 (3) SA 344 (E) at 358I–J).

G It is not necessary to decide whether, for the purposes of delictual liability, the *onus* is on the defendant to establish the defence of automatism which arises out of ‘a morbid or pathological disturbance of the mental faculties’. There is no suggestion that this is such a case or that the respondent’s mental capacity was in any way impaired. In this matter the appellant has to establish that the respondent was negligent and this obviously includes proof that the negligence relied upon consisted of a voluntary act. As Van den Heever JA put it in *Heneke v Royal Insurance Co Ltd* 1954 (4) SA 606 (A) at 611A–B:

I ‘I think it is so clear as to require no authority that in a case of this kind (a motor collision) the burden of proving the defendant’s negligence and the causal connection between that negligence and the damages suffered falls upon the plaintiff.’

J In the present matter a *prima facie* inference of negligence would have arisen because the evidence established that the respondent had driven

judgment

on to the incorrect side of the road. However, the burden of proof does not shift. What still has to be decided is whether, on all of the evidence and the probabilities, the appellant discharged the *onus* on a preponderance of probability (see *Arthur v Bezuidenhout and Miemy* 1962 (2) SA 566 (A) at 574–6 and *Sardi and Others v Standard and General Insurance Co Ltd* 1977 (3) SA 776 (A) at 780C–H).

The fact that the respondent's vehicle suddenly moved on to its incorrect side of a straight stretch of tarred road in broad daylight is not, in itself, a matter of great importance but in conjunction with the other facts of the case it assumes more significance. One of the facts is that the respondent did fall a short while before the collision and the fall was of sufficient severity to warrant his seeking medical attention. According to the medical evidence, if his head had struck the floor in the fall it could have resulted in a black-out later that morning. It is, moreover, quite plain that the respondent complained of a loss of consciousness to Tshikeli shortly after the accident. Tshikeli could not have been mistaken on this matter and, as I have mentioned, the magistrate did not find him to be a biased or unsatisfactory witness. It is true that the respondent, despite his evidence to the contrary, did not mention the black-out to the nurse or Dr Angelo on 11 and 12 August. Indeed he first complained of this to the medical personnel only three weeks later and after he had received a letter of demand from the appellant's attorney. These facts do not mean that he was deliberately untruthful in his evidence or that the complaint of a black-out was a fabrication but they are of sufficient importance to negative a finding that his version was the more probable one.

judgment

Having regard to the evidence as a whole, and despite shortcomings in the respondent's own testimony, I am not satisfied that the appellant has discharged the *onus* of proving that the respondent's conduct in driving on to the incorrect side of the road was due to his voluntary act. In short the appellant failed to prove, as a matter of probability, that the respondent did not have a black-out. I have detailed the facts which tend to support the respondent's version and which, I believe, result in the appellant's inability to establish a substantive probability in his favour and nothing further needs to be said in this regard.

An argument by the appellant's counsel that an adverse inference should be drawn against the respondent because of his failure to call his passenger as a witness cannot be upheld in the absence of evidence to show that the passenger was available to give evidence.

Finally it was submitted that the respondent was negligent in driving his vehicle when he knew or should have known that he was not in a fit state to do so. It is not necessary to analyse all of the evidence in this regard. According to the respondent the black-out came upon him suddenly after he had entered Mothusi Road. At that stage it was not possible for him to exercise control over his vehicle. Until then he did not appreciate the possibility of a black-out. There was no evidence to show that a reasonable person in his position should have been aware of such a possibility.

order for costs

order

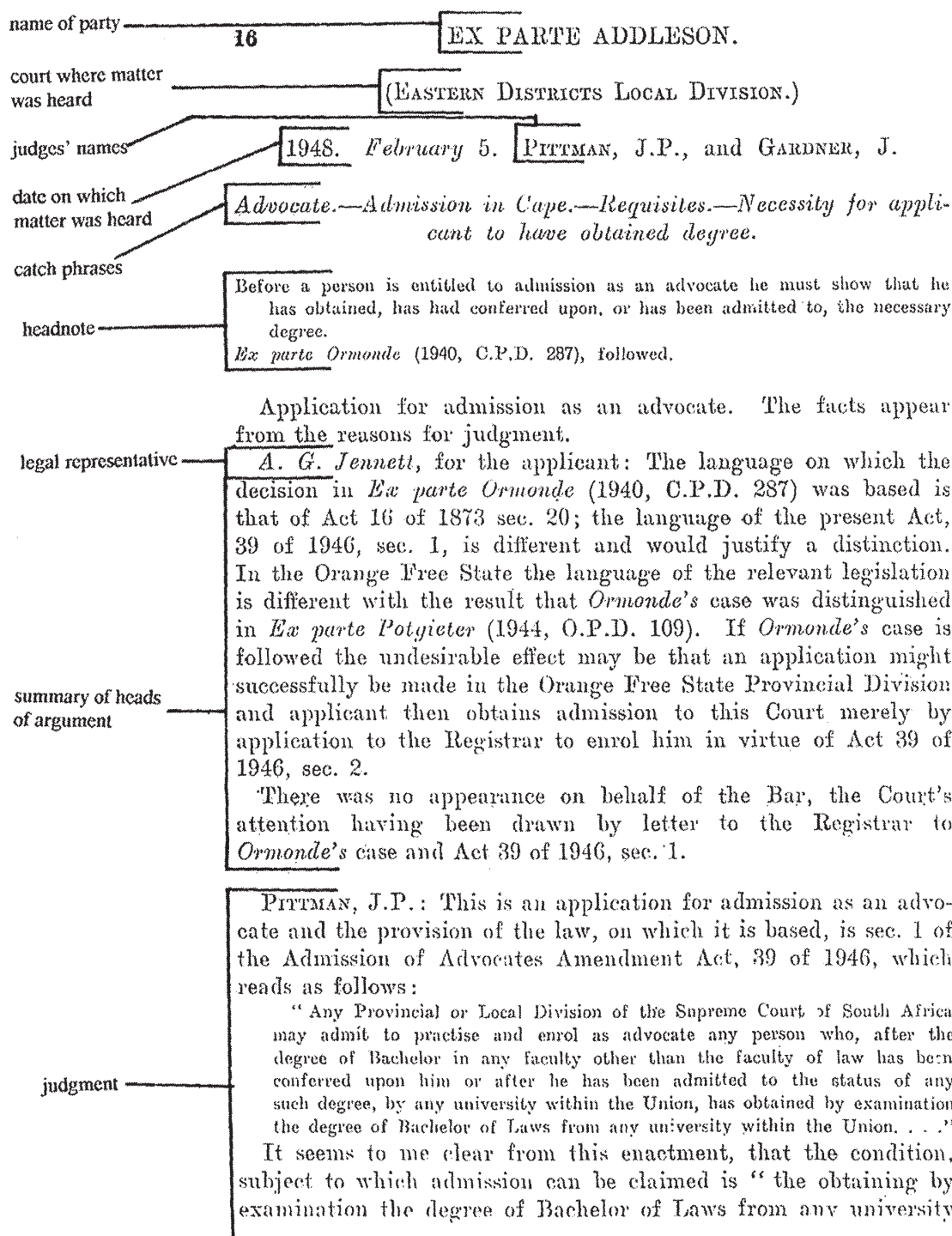
The result is that the appeal fails and is dismissed with costs.

570

concurring judges — A Hefer JA and Zulman JA concurred.
attorneys — Appellant's Attorneys: *Du Randt & Louw*, Kroonstad; *Schoeman, Maree Inc*, Bloemfontein. Respondent's Attorneys: *Jac S Kloppers & De La Rey*, Welkom; *E G Cooper & Sons Inc*, Bloemfontein.

B

Example Case 3



EX PARTE ADDLESON.

17

[PITTMAN, J.P.]

[E.D.L.D.]

within the Union". It is to be noted that the condition in question is not merely the passing of the examination, but the obtaining of the degree. It is quite true that the statute speaks of "obtaining by examination the degree", but this, I am confident, cannot be construed as meaning that by the passing of the examination and by that alone the degree must be regarded as being obtained. Yet that is what has been contended in support of the application. When the Legislature speaks of obtaining by examination the degree, it seems to me that it may be differentiating between degrees the results, *inter alia*, of examination and degrees *honoris causa*, but I cannot hold that it is seeking to effect the, to my mind, very startling result, which is claimed for the language.

judgment

Applicant has shown that he has passed the necessary examination, but he has not shown that he has in virtue of such examination obtained the necessary degree, the degree, namely, of Bachelor of Laws from any university within the Union, here in this case, the University of South Africa.

The importance of the distinction strikes me as obvious enough. The passing of the examination is doubtless the main qualification for the obtaining of the degree, but it seems clear that it is not the sole qualification. It is easily conceivable that, despite the passing of the examination, the degree for some reason may not be obtained, or to employ language perhaps more academical, "conferred"; applicant may yet not be "admitted to" the degree. The copy of the telegram received from applicant's college, which is attached to his petition, is inaccurate. It says: "You obtained Bachelor of Law degree", which is a misrepresentation of the position. Further, the university certificate, also attached, to the effect that applicant "completed all the requirements for the degree of Bachelor of Laws during 1947 and the degree will be conferred on him at a graduation ceremony to be held in 1948" makes an assumption, which may not be justified.

The distinction, on which we insist, between the passing of the examination for a degree and the conferment or obtaining of or admission to the degree itself was recognised in the Provincial Division by VAN ZYL, J.P., in the case of *Ex parte Ormonde* (1940, C.P.D. 287). That was an application under sec. 20 of Act 16 of 1873, which read:

"Persons who shall have obtained or been admitted to the degree of Bachelor of Laws in the said university shall . . . be eligible to be enrolled as barristers or advocates of the Supreme Court, in like manner, precisely as if such persons had obtained the certain certificates in the said section mentioned."

Apl. 2

[PITTMAN, J.P.] [E.D.L.D.]

judgment ———— And the Court held that the obtaining of the degree and not the passing of the examination was the *sine qua non* of admission as an advocate.

order ———— The application, consequently, must be refused, but applicant may apply subsequently on the same petition after he has obtained, had conferred upon him, or has been admitted to, the necessary degree.

concurring judge ———— GARDNER, J., concurred.

attorney ———— Applicant's Attorneys: *Nailand & Green.*

2.6 Reading and understanding a journal article

If you have the name of an article as well as the author you can find the article in the library (see Part III of the DVD) but **before you start reading it, there are a few aspects to consider:**

- When was the article published? (In other words how old is the article, is it relevant? 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 written other articles in the same field as well?

The structure of an article

A good article consists of the following:

- 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 for detail.
- Read the article again including the footnotes as the footnotes sometimes contain valuable information.

Think about the article and answer the following questions in your head:

- 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?

Remember, you do not have to agree with an author, even if the author is an authority on the specific topic. Try to get different views on the same topic — footnotes can assist you with this. Try to find articles written by overseas writers on the same topic. If you differ from what you have read you will have to substantiate your arguments.



ACTIVITY 3

Read the article by Prof Blackbeard on organ donations that you have to request in Study unit 3: Research Skills. See whether you agree with the author or not. (Please note: the content of the article is not relevant for the exams.)

2.7 Conclusion

This is the end of study unit 2. Once again, do not study this unit in isolation. You cannot read an Act, a court case, or an article without knowing where to find it. Go through the next study unit on research skills to complete the picture.

2.8 Sources used in this study unit

- (1) Ehlers D *Afrikaans vir regstudente* AFK103S (Unisa 2004).
- (2) *Introduction to the theory of law* ILW1014 (Unisa 2000).
- (3) Kleyner D and Viljoen F *Beginners guide for law students* (Landsdowne Juta 2003).
- (4) Kok A, Nienaber A and Viljoen F *Skills workbook for law students* (Landsdowne Juta 2002).



Study unit 3:

Research Skills

STUDY UNIT



RESEARCH SKILLS

The information in this study unit is extremely important for your further studies in law, and also for your practice one day. This unit will teach you where to find the answers to legal questions and to present them correctly.

3.1 Outcomes

After studying this unit you will be able to:

- find sources of the law in a library
- present research results correctly
- present footnotes and a bibliography correctly

3.2 Introduction

Legal studies and legal questions require research. Sometimes you will have to read a court case or an Act and at times you will have to do a more in-depth study. You will also have to consult a number of sources in order to finalise an argument. This study unit and the previous one form a unit. The one should not be read without the other.

Sources of the law are divided in two main categories namely primary and secondary sources.

Primary sources: Common law, legislation, court cases and custom
Secondary sources: Textbooks, journal articles and the Internet

Apart from finding sources legal research also entails that your research results should be presented correctly. You should not be guilty of **plagiarism**.

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. Many universities use an online program *Turnitin* to detect plagiarism. This programme compares the work of a student to a database of more than 4,5 milliard pages from the internet, newspapers, journals, textbooks and other students' work. This programme "marks" parts of a student's work similar to that in other sources.

Examples of plagiarism include the following:

- the direct repeating or copying 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 arguments 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 your original work;
- to pretend that you have done the work alone whereas you did it with someone else;
- to submit a part on the whole piece of work of another student;
- if you submit an original piece of work with the correct references for two different subjects;
- to be dishonest in an exam by either using crib notes or to copy from a fellow student.

(Translated from an article in *Beeld* 3 July 2007 ‘‘Dit word net al hoe makliker om plagiaat te pleeg’’)

3.3 DVD

Look at the DVD you received with your study material at the beginning of the semester. Look at the second part, that is, Part II a few times before you study the theory in this study unit.

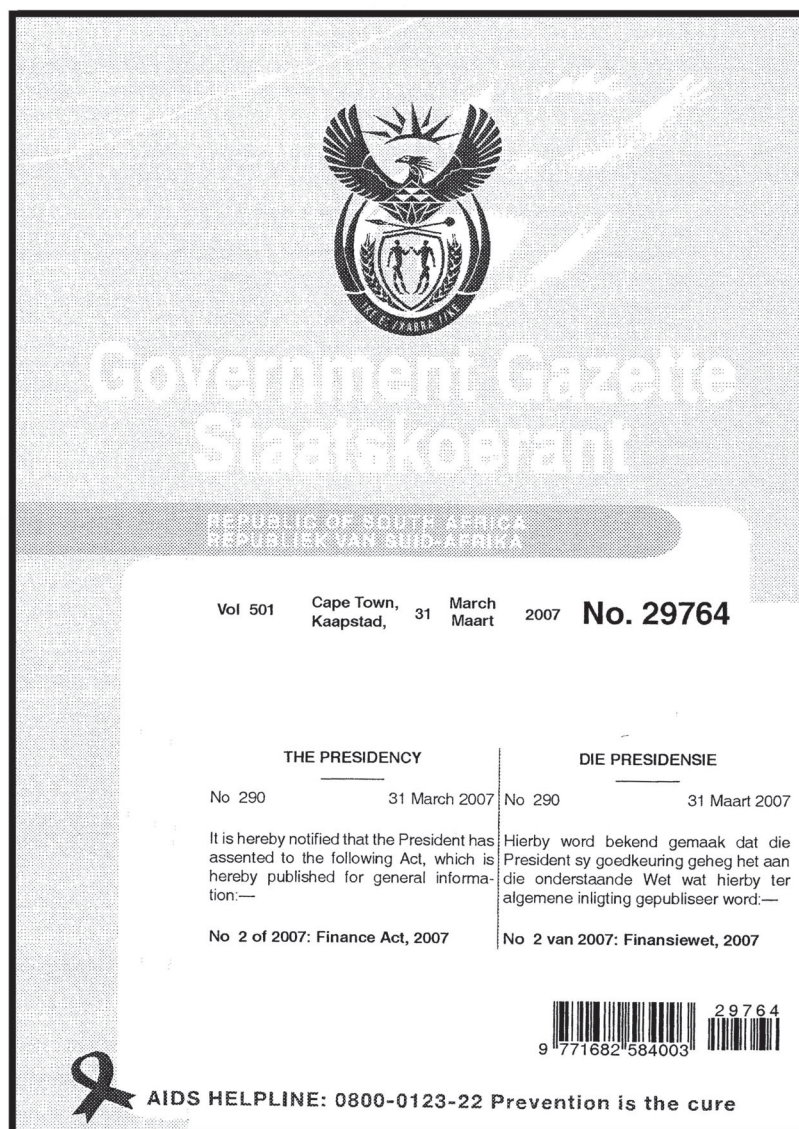
3.4 Finding primary sources

Primary sources are important because they are the law at any given moment. They have authoritative value which is more than pure persuasive value. Primary sources are common law, legislation, court cases and custom.

PLEASE NOTE: In this module we only teach you where to find the sources of the law and basically how to read them. In ILW1036 (Introduction to Law) you will get more information on the different sources of our legal system.

3.4.1 Finding legislation

REMEMBER: Legislation includes the following: national legislation (Parliament), provincial legislation (Provincial legislatures) and local legislation (City Councils).



Legislation (an Act/a Statute) is published in the *Government Gazette* (see the example on the previous page).

Certain publishers like Juta and Butterworths also publish legislation. The Butterworths publication is a loose-leaf publication which is updated frequently. The Juta publication, *Juta's Statutes of South Africa*, is published annually. Volume 1 is the index to the legislation published for a particular year. As an example we will use the Butterworth index to help you with your search.

The index is divided into three sections:

- An alphabetical list of titles;
- the subject list;
- the chronological list of acts

If you know the **short title** of an Act you may look for it in the title section (See the example).

STATUTES OF THE REPUBLIC OF SOUTH AFRICA
Alphabetical Table of Statutes from 1910

SHORT TITLE OF VAN ACT	No	YEAR	TITLE IN WORK
National Credit Act	34	2005	DEBTOR AND CEDITOR
*National Credit Promotion Act	27	1969	—
*National Culture Promotion Amendment Act	17	1977	—
National Development Agency Act	108	1998	WELFARE ORGANIZATIONS
National Development Agency Amendment Act	6	2003	WELFARE ORGANIZATIONS
National Economic, Development and Labour Council Act	35	1994	TRADE AND INDUSTRY
National Education Policy Act	27	1996	EDUCATION
*National Education Policy Amendment Act	73	1969	—
*National Education Policy Amendment Act	92	1974	—
*National Education Policy Amendment Act	17	1975	—
*National education Policy Amendment Act	25	1978	—
National Education Policy Amendment Act	25	1982	EDUCATION
National Education Policy Amendment Act (House of Assembly)	103	1986	EDUCATION
National Education Polciy Amendment Act (House of Assembly)	90	1991	EDUCATION
*National Emergency Telephone Service Act	143	1993	—
National Empowerment Fund Act	105	1998	CONSTITUTIONAL LAW
National Energy Regulator Act	40	2004	ELECTRICITY
National Environmental Management Act	107	1998	LAND

If you do not know what legislation is relevant to your research you may look in the **subject section**. For example:

STATUTES OF THE REPUBLIC OF SOUTH AFRICA
Alphabetical Index to Titles

ADULT BASIC EDUCATION AND TRAINING. See **EDUCATION**.
 ADULTERATED LEATHER LAWS REPEALED. See **TRADE AND INDUSTRY**.
 ADVANCED TECHNICAL EDUCATION. See **EDUCATION**.
 ADVERTISING ON ROADS. See **ROADS**.
 ADVISORY BOARD ON SOCIAL DEVELOPMENT. See **WELFARE ORGANIZATIONS**.
 ADVOCATES ADMISSION. See **LEGAL PRACTITIONERS**.
 AERONAUTICAL SEARCH AND RESCUE, SOUTH AFRICAN MARITIME AND. See **AVIATION**.
 AFRICA INSTITUTE OF SOUTH AFRICA. See **CULTURAL INSTITUTIONS**.
 AFRICAN RENESSANCE AND INTERNATIONAL CO-OPERATION FUND . See **FINANCE**.
 AGE OF MAJORITY. See **CHILDREN**.
 AGED PERSONS. See **SALARIES AND PENSIONS**.
 AGRICULTURAL DEBT MANAGEMENT. See **AGRICULTURE**.
 AGRICULTURAL HOLDINGS. See **LAND**.
 AGRICULTURAL LABOUR. See **LABOUR**.
 AGRICULTURAAL LAW RATIONALISATION. See **AGRICULTURE**.

If you know the **number and year of publication** of the act you could use the **chronological list** for the relevant legislation. In this chronological section acts are arranged according to their number per year (see the following example).

STATUTES OF THE REPUBLIC OF SOUTH AFRICA					
<i>Chronological Table of Statutes</i> ←					
ACT YEAR NO. WET JAAR NO.	SHORT TITLE OF ACT KORT TITEL VAN WET	TITLE IN WORK TITEL IN UITGAWE	REPEALED BY ACT		
			SECTION ARTIKEL	NO. NO.	YEAR JAAR
1989					
5*	Additional Appropriation Act Addisionele Begrotingswet				
6	Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act Wet op Wederkerige Afdwinging van Onderhoudsbevele (Lande in Afrika)	Husband and Wife Man en Vrou			
7	Divorce Amendment Act Wysigingswet op Egskeiding	Husband and Wife Man en Vrou			
8	Criminal Procedure Amendment Act Strafproseswysigingswet	Criminal Law and Procedure Straf- en Prosesreg			
9	Legal Succession to the South African Transport Services Act Wet op die Regsopvolging van die Suid-Afrikaanse Vervoerdienste	Railways and Harbours Spoorweë en Hawens			
10*	Part Appropriation Act (House of Assembly) Gedeeltelike Begrotingswet (Volksraad)	—			
11*	Part Appropriation Act (House of Representatives) Gedeeltelike Begrotingswet (Raad van Verteenwoordigers)	—			
12*	Part Appropriation Act (House of Delegates) Gedeeltelike Begrotingswet (Raad van Afgevaardigdes)	—			
13*	Banking Institutions, Mutual Building Societies and Building Societies Amendment Act Wysigingswet op Bankinstellings, Onderlinge Bouverenigings en Bouverenigings	—	95	124	1993
14	Transfer of the South African Railways Police Force to the South African Police Amendment Act Wysigingswet op die Oorplasing van die Suid-Afrikaanse Spoorwegpolisiemag na die Suid-Afrikaanse Polisie	Police Polisie			

As described on the DVD (Part II) you can also find legislation electronically. If you have access to JUTASTAT (JUTASTAT is an electronic database available from the publisher, Juta) you can type in key words and the relevant legislation will appear on the screen.

Always remember to make sure that the legislation you refer to has not been repealed or that the position did not change by way of an amendment. Usually Acts become effective with publication in the *Government Gazette* but sometimes there might be an article in the Act indicating when the Act will be enforced. Page through the Act as the last article might say when the Act will become effective by proclamation through the state president in a *Government Gazette*. The Butterworth's publication, *Is it in force?*, may also be used to check whether legislation is in force.



ACTIVITY 1

Your brother left home. Weeks later you hear that he has died. He was involved in a hit and run accident. An unknown motorist found his body hours later. He was declared brain dead when he arrived at the hospital. You, an attorney, visit the hospital to find out what has happened to his body. They tell you that nearly all his vital organs (heart, liver, kidneys, pancreas, skin and bone) were used for transplantations. You are extremely angry and want to know whether there is an Act regulating such practices.

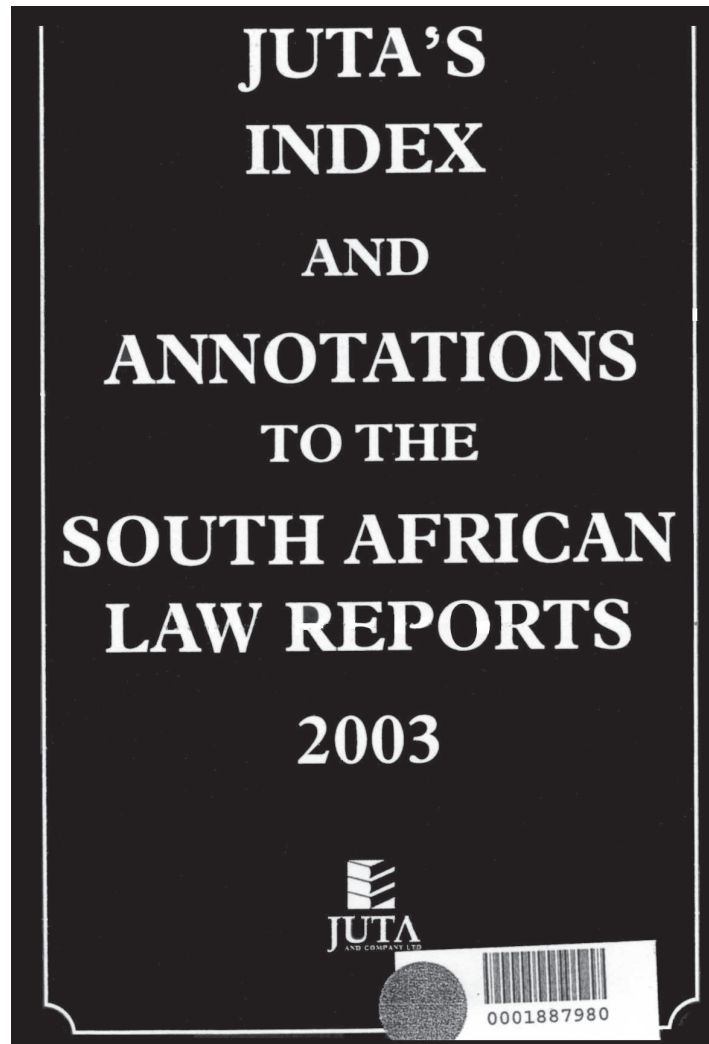
1. Where will you begin to look for relevant legislation?
2. Which Act is relevant?
3. Is there another Act you have to look at?
4. What does the Act say about what happened with your brother?

3.4.2 Finding court cases

When you do research as above it is not sufficient reading only the Act. You will have to find out whether there are court cases in which the courts interpreted the Act. It is therefore very important to know where to look for relevant court cases. You may follow the following process:

- If you have the reference to the case: *Kriel v Hochstetter House (Edms) Bpk* 1988 (1) SA 220, you will find the case in volume (1) of 1988, of the South African Law Reports on page 220.
- If you have the name of one of the parties or both you can find the case reference by consulting the indexes to the court cases, for example: the *Index to the Southern African Law Reports 1828–1946, and Noter-up*; Butterworth’s *Consolidated Index and Noter-up to the South African Law Reports* and Juta’s *Index and Annotations to the South African Law Reports*. In the “Cases Reported” (Butterworth) or the “Table of Cases” (Juta) which form part of these indexes you will find a list of reported 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.

For example:



Juta also has an electronic index JUTASTAT. If you punch in a key word the computer will show a list of the cases which have the key word in it.



ACTIVITY 2

Read the scenario in the Activity (1) again. Try to find a court case on the illegal transplantation of human organs.

3.4.3 Finding common law

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

To determine whether a crime has been committed you cannot only look at legislation

or court cases. You will have to consult common law as well. You will find the common law in the writings of the old authors from Roman and Roman-Dutch times.

For example: Title page

TABLE OF CASES 2003
600 SA Holdings (Pty) Ltd, JMYK Investments CC v 2003 (3) SA 470 (W)
ABSA Bank Bpk, Great Karoo Eco Investments (Edms) Bpk h/a Grobbelaarskraal Boerdery v 2003 (1) SA 222 (W)
ABSA Bank Ltd v Fouche 2003 (1) SA 176 (SCA)
ABSA Bank Ltd v Greyvenstein 2003 (4) SA 537 (SCA)
ABSA Bank Ltd v Mutual & Federal Insurance Co Ltd 2003 (1) SA 635 (W)
ABSA Bank Ltd and Another, Commissioner, South African Revenue Service, and Another v 2003 (2) SA 96 (W)
ABSA Bank Ltd and Others, De Klerk v 2003 (4) SA 315 (SCA)
ABSA Bank Ltd t/a Bankfin v Jordashe Auto CC 2003 (1) SA 401 (SCA)
Advtech Ltd and Others, Welihockyj and Others v 2003 (6) SA 737 (W)
African National Congress v United Democratic Movement and Others (Krog and Others Intervening) 2003 (1) SA 533 (CC)
African National Congress and Others, Mketsu and Others v 2003 (2) SA 1 (SCA)
African Products Retirement Benefit Provident Fund and Another, Mashazi v 2003 (1) SA 629 (W)
Aktiebolaget Hässle and Another v Triomed (Pty) Ltd 2003 (1) SA 155 (SCA)
Albertonse Stadsraad v Briti BK 2003 (5) SA 157 (SCA)
Alexkor Ltd and Another, Richtersveld Community and Others v 2003 (6) SA 104 (SCA)
Alpha (Pty) Ltd v Carltonville Ready Mix Concrete CC and Others 2003 (6) SA 289 (W)
American Natural Soda Corporation and Another v Competition Commission and Others 2003 (5) SA 633 (CAC)
American Natural Soda Corporation and Another v Competition Commission and Others 2003 (5) SA 655 (SCA)
Arendse NO, Road Accident Fund v 2003 (2) SA 490 (SCA)
Argun, MT 2003 (3) SA 149 (C)
Argun, MT, Master and Crew of the MT <i>Argun</i> v 2003 (3) SA 149 (C)
Arisukwu and Others v Minister of Home Affairs and Another 2003 (6) SA 599 (T)
Aruba Construction (Pty) Ltd and Others v Aruba Holdings (Pty) Ltd and Others 2003 (2) SA 155 (C)
Aruba Holdings (Pty) Ltd and Others, Aruba Construction (Pty) Ltd and Others v 2003 (2) SA 155 (C)
Arun Property Development (Edms) Bpk v Stad Kaapstad 2003 (6) SA 82 (C)
Association of Arbitrators of South Africa and Others, Chen v 2003 (4) SA 96 (D)

Date of publication

INDEX OF CASES REPORTED IN THE SOUTH AFRICAN LAW REPORTS 2003
(For quick and easy reference, decisions of the Supreme Court of Appeal are marked with an * and decisions of the Constitutional Court with a †.)
Administration of estates —Administration of in terms of regulations promulgated in terms of Black Administration Act 38 of 1927—Representative of estate—Appointment of—Not proper where person has conflict of interest. <i>Nkosi v Khanyile NO and Another</i> 2003 (2) SA 63 (N)
Administration of in terms of regulations promulgated in terms of Black Administration Act 38 of 1927—Succession—Heir of estate—Appointment of—Withdrawal of appointment and appointing another as heir—Review—Once magistrate has made decision he is <i>functus officio</i> —His subsequent decision to appoint second respondent as heir to estate of deceased invalid and set aside. <i>Nkosi v Khanyile NO and Another</i> 2003 (2) SA 63 (N)
Administrative law —Access to information—Request for access to documents in terms of s 18 of Promotion of Access to Information Act 2 of 2000—Objection to production of—Draft reports of commission of enquiry—Section 44 of Act not dealing with historical situations—Given that commission's joint report already finalised and accepted by Parliament, draft reports of historical importance only and accordingly no longer protected from disclosure by provisions of s 44. <i>CGII Systems (Pty) Ltd v Fakie and Others NNO (Open Democracy Advice Centre, as Amicus Curiae)</i> 2003 (2) SA 325 (T)
Access to information—Request for access to documents in terms of s 18 of Promotion of Access to Information Act 2 of 2000—Objection to production of—Objections in terms of s 37 and s 42(1)(b) of Act—Respondent failing to identify which of documents in its possession were protected—Because of <i>onus</i> created by s 81, respondent required to identify which documents it wishes to withhold, and also to offer a description of basis upon which it claims protection—Respondent's approach making it impossible to evaluate whether its entitlement to privilege justified. <i>CGII Systems (Pty) Ltd v Fakie and Others NNO (Open Democracy Advice Centre, as Amicus Curiae)</i> 2003 (2) SA 325 (T)

Example

Let us look at the example of your brother's organs being used without permission again. We have seen that the Act is clear concerning who should give permission for organs to be removed from a body in order to transplant it. But, to whom do the organs belong when they are removed from a body is not clear. Because the Act does not specifically address this issue, we have to fall back on the common law sources to try and find an answer. We therefore have to read what the Roman and Roman-Dutch authors said about the ownership of body parts. You may consult translated texts of these writers unless you can read Latin or Dutch. You can find these early writings in the archives of a library.

According to the common law a *res* is a thing outside a person which can exist independently and it can belong to someone and be controlled by that person. A human body or body parts are not outside a person but part of the person. The Roman-Dutch writers were, therefore, of the opinion that a person is not a master of his own body (*dominus membrorum suorum*) and can therefore not own his body. Because you cannot own your body you cannot give permission to have parts removed from your body. The body and its parts are classified as *res extra commercium*. In other words body parts are things outside commerce. Body parts were viewed as *res nullius*. In other words, they belonged to no one.

This problem is addressed nowadays by asking a patient to sign a consent form on admission in a hospital that the hospital may dispose of any body parts being removed during an operation.

(We conclude with this: All we wanted to do was to indicate the working of the common law — there are other relevant arguments on this same topic but they fall outside the scope of this module.)

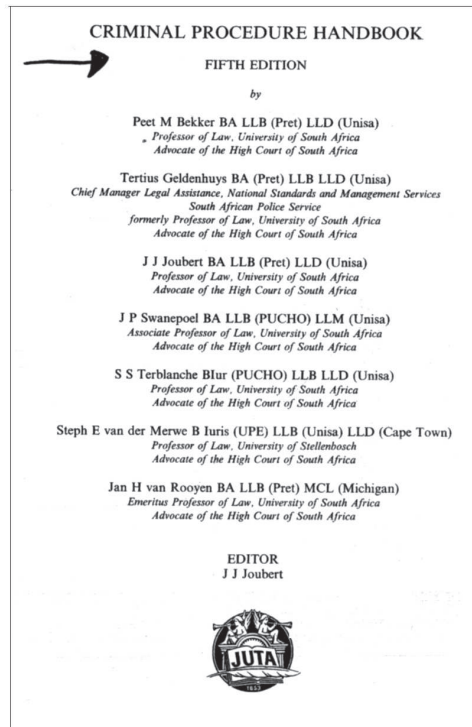
3.5 Finding secondary sources

REMEMBER: Secondary sources have persuasive authority only. Law is not created through secondary sources. Secondary sources are influenced by personal arguments and views which are not necessarily correct.

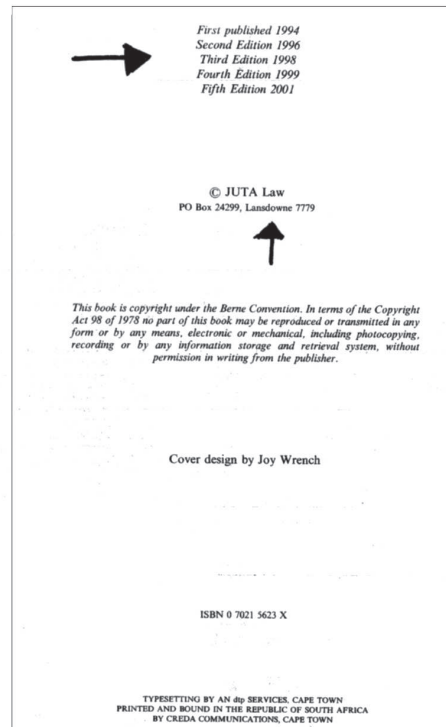
3.5.1 Books

The content of law books can easily become outdated. It is therefore very important to note the date of publication. The date of publication appears on the **title page** or on the **back of the title page**.

For example: Title page



Date of publication



It is also important to look at the **place of publication** so that you can be sure which legal system is applicable.

Nowadays nearly all libraries have electronic resources. If you have a title or the name

of the author it is easy to find the reference number of a book. If you do not have that information you will have to look under the subject index.

If you handle a book, there are basically two aids inside the book that will help you find the information you are looking for without paging through the whole book. It is the **contents page** and the **register/index**.

Example of a book's **contents page**:

<h2>Contents</h2>	
PREFACE	v
TABLE OF CASES	ix
PART I SELECTED GENERAL PRINCIPLES OF THE LAW OF CRIMINAL PROCEDURE	
CHAPTER 1: Basic principles, values and constitutionalism	1
CHAPTER 2: The criminal courts of the Republic	30
CHAPTER 3: The prosecution of crime	43
CHAPTER 4: The right to legal assistance	72
CHAPTER 5: The accused: his presence as a party	78
PART II THE CRIMINAL PROCESS	
PHASE ONE: PRE-TRIAL CRIMINAL PROCEDURE	
CHAPTER 6: The exercise of powers and the vindication of individual rights	85
CHAPTER 7: Securing the attendance of the accused at the trial	90
CHAPTER 8: Interrogation, interception and establishing the bodily features of a person	115

This is usually in front of the book and it gives an indication per chapter what information you can find on which page in the book.

Example of a book's **index/register**:

<h2>Subject index</h2>	
access to court	24
accusatorial model	16
accused	
arraignment	200
attendance at trial	91
bodily features	121
discharge at close of state's case	242
fairness to	192
formal admission	248
misbehaviour	80
presence of	78
review at instance of	308
rights of	9, 10
explained	245
trial in absence of	80
trial in presence of	79

This is usually at the back of a book. It is an alphabetical list of topics plus the page number on which they appear in the book.

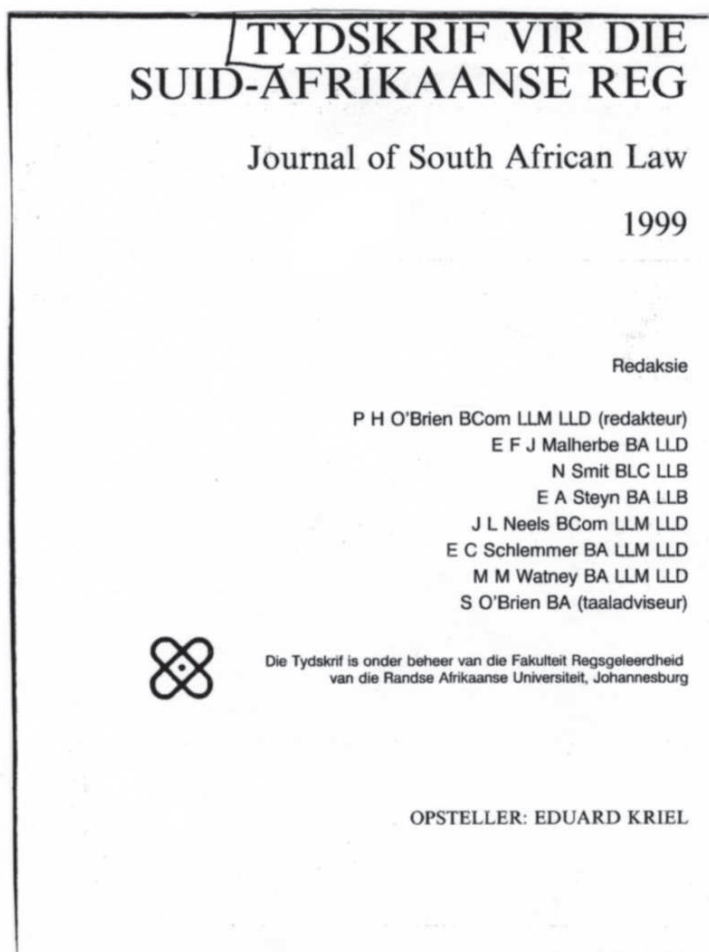
3.5.2 Journal articles

When you do research you will have to consult journal articles as well. In the previous study unit we explained to you how to read an article. Reread that section. In this unit we want to help you find the article. (Watch your DVD Part II again!) Note that we are not talking about weekly general magazines; we are referring to academic publications. Academics who have done research on certain topics publish their results from time to time.

Where do you start looking for an article on your topic of research?

The majority of journals have an annual index. These indexes contain an alphabetical list of the names of the authors of articles as well as articles per subject.

Example:



Example of a chronological list of authors:

A ARTIKELS	
Boraine A en Van der Linde K: The draft Insolvency Bill — an exploration (part 2)	38
Boshoff A: Towards a theory of parents and children	276
Cornelius S: Die aanwending van vermoedens by die uitleg van kontrakte	397
Darby J J: The influence of the German Civil Code on law in the United States	84
De Ville J R: Legislative history and constitutional interpretation	211
Ebke W F: Market share liability	665
Ferreira G M: Grondwetlike waardes en sosio-ekonomiese regte met verwysing na die reg op 'n skoon en gesonde omgewing	285
Ferreira G M: Omgewingsbeleid en die fundamentele reg op 'n skoon en gesonde omgewing	90
Ferreira G M: Volhoubare ontwikkeling, regverdige ontwikkeling en die fundamentele reg op 'n skoon en gesonde omgewing	434
Gretton G: Sexually transmitted debt	419
Havenga P: The requirement of an insurable interest in life insurance contracts	630
Jamneck J: Die geskiedenis van strafbedinge	224, 508

Another way of finding a journal article is by using ISAP (*Index to South African Periodicals*). This is an online database which is made available through SABINET. Please note that law journals as well as journals from all other subjects are included in this database.



ACTIVITY 3

Read your *Unisa: Services and Procedures* on how to request an article from the library. Request the following article; read it *and answer the questions in your Workbook* on it. (The article is only available in English.)

Article: **Blackbeard M “Consent to organ transplantation”** *THRHR* (66) 2003 45–66.

(M Blackbeard is the author. “Consent to organ transplantation” is the title of the article. *THRHR* is the name of the journal — *Tydskrif vir Hedendaagse Romeins Hollandse Reg*. The volume is 66, and it was published in 2003. The article starts on page 45 and ends on page 66.)

3.6 Finding sources electronically

(This part is for information only and will not be tested in the examination!)

Legal research has changed over the last few years because of the increasing use of the Internet. Previously a researcher had only hard copies to read. Nowadays you can search for almost anything on the Internet. Through the Internet you also have access to nearly all the libraries worldwide.

Computers are therefore a huge asset, but should be approached with caution. Constantly evaluate the information you find on the Internet, because articles and so on are not bound by any strict editorial regulations. Look out for the following:

- Author
 - who is the author?
 - to whom does the website belong?
 - is the website part of a known publisher's information?
 - is there an address of the writer of the article?
- Accuracy and quality
 - are there spelling or language errors in the article?
 - is the article updated?
- Purpose of the website
 - is it selling something?
 - is it propagating a specific point of view?

3.6.1 Useful search engines and websites for legal research

For the use of electronic research in law, see Bekker L “Electronic legal research in South Africa” 1997 *Consultus* (Vol 10 No 1 May 1997) 69–71.

Note: Many full-text websites store their documents in pdf format or in Javascript, so make sure that the Adobe Acrobat and Javascript readers are enabled on your Internet Browser, so that you can access such documents.

Each of these search engines has a search tip link. It is worthwhile to read these before you begin.

Ananzi: <http://www.ananzi.co.za> [A South African search engine. May browse by subject or search by keywords.]

CEOExpress: <http://www.ceoexpress.com/default.asp> [A website that contains many links to other websites for reference and other purposes.]

Clusty: <http://clusty.com> [Clusty operates a system of “clustering” by which it “returns results from multiple sources with one query, and then organises them into hierarchical clusters” (see The Clusty Tour at <http://clusty.com/search?v:project=clusty-pagesandpage=tour>).]

Copernic Agent Basic: <http://www.copernic.com/en/products/agent/download.html> [A useful free program including various other search engines.]

Copernic Desktop Search 1.7: <http://www.copernic.com/en/products/desktop-search/index.html> [Helpful for finding files on your computer.]

Google: <http://www.google.com> [May browse by subject or search by keywords.]

Refdesk: <http://www.refdesk.com/welcome.html> [A free and family-friendly website that indexes and reviews quality, credible, and current web-based resources.]

Yahoo!: <http://www.yahoo.com> [May browse by subject or search by keywords.]

South Africa

Southern African Legal Information Institute: <http://www.saflii.org> [Free access to legal information in Southern Africa.]

SAGNU Index [South African Government of National Unity]: <http://www.polity.org.za>

University of the Witwatersrand: <http://www.law.wits.ac.za> [Many useful South African law links from the Wits Law Faculty Home Page.]

3.7 Presenting research results

After you have done research you will have to present your findings in written format. It is not part of this module to teach you writing skills, however, we would like to make a few comments concerning the presenting of legal research.

Do not memorise the following! You should be able to apply the knowledge only!

3.7.1 Style

There are basically two rules to remember: the first is to write as clearly as possible, and the second is to be consistent in your presentation.

(a) The general layout of your work

- All your work to be submitted must be typed.
- All headings (except the main heading which may be in the middle of the first page) must be to the left hand side of a page.
- Leave open one space between headings following each other; between a heading and the following paragraph; between two paragraphs and before and after a quotation.
- Justify your text. Type in 1½ spacing and use 12 pt letter type.
- Footnotes must be justified as well. Footnotes should be typed in 10 pt letters.
- If a part of the sentence is between brackets, put the full stop at the end of the sentence outside the brackets. If it is a sentence on its own within the brackets, put the full stop in the brackets.

(b) Headings

- The main title must be printed in capital letters and in bold.
- Only the first word of a heading starts with a capital letter except where it is normal practice to use a capital letter eg names.
- Main heading with one number must be printed in bold; secondary headings (with more than one number eg 2.1) must be printed in bold and italics; tertiary headings (1.2.3) must be printed in italics and all the other headings plain letter typing.
- There is no full stop after a heading.

(c) Numbering

- Single numbers (eg 3) do not get a full stop. Secondary numbering will look like this: 3.1, 3.1.1 and so on.
- Footnotes are indicated in the text with chronological Arabic numbers in superscript of 10pts.

(d) Quotes

- Quotes up to one line are indicated in the text with quotation marks.
- Longer quotes must be indented on both sides, there should be no quotation marks and it should be typed in letters of 10 pts in single spacing.
- Punctuation which is part of the quote should be added within the quotation marks.
- Quotes within quotes — use single quotation marks.

(e) Spelling

- Do not use any abbreviations in the text — but use as many (recognised) as possible in the footnotes.
- “Constitution” is always written with a capital letter but the words, “court”, “judge”, “state”, “act” and so on are written with small letters unless it is the name of the court for example the Supreme Court of Appeal.

3.7.2 Footnotes and bibliography

(Look at the article by prof Blackbeard — see what a footnote looks like)

Example of a bibliography:

- Alfred, M. V. 2003. Sociocultural contexts and learning: Anglophone Caribbean women in the US. postsecondary education. *Adult Education Quarterly* 53:242–260.
- Bempechat, J. and S. Abrahams. 1999. ‘You can’t oppress yourself’: Negotiating the meaning of opportunity in post-apartheid South Africa. *Teachers College Record* 100 (4): 841–859.
- Bempechat, J., N. V. Jumenez and B. A. Delamater. 2000. Cultural-cognitive issues in academic achievement: New directions for cross-national research. Paper prepared for Methodological Advances in Large-scale (cross-national Education Surveys symposium in Washington DC, National Academy of Sciences/National Research Council. November 1.
- Bennett, C. 1997. Teaching students as they would be taught: The importance of cultural perspectives. In *Culture, style and the educative process*, ed. B. J. Shade. 2nd ed. Springfield, Illinois: Charles C. Thomas.
- Biggs, R. B. and J. Tagg. 1995. From teaching to learning: A new paradigm for undergraduate education. *Change* (November/December): 13–25.
- Blackmore, J. 1996. Pedagogy: Learning styles preferences. www.granite.cyg.net.html.
- Bourdieu, P. 1977. *Outline of a theory of practice*. Trans. R. Nice. Cambridge: Cambridge University Press. Originally published in 1972.

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 source — and is

therefore not the writer's own ideas, thoughts or arguments — it is absolutely necessary that **a reference to that source be provided**; otherwise the information may amount to plagiarism.

Your research must be supplied with a *bibliography* of the sources used. As a general rule the **essential bibliographical information**; that is, the information without which the source referred to cannot be found easily, should be provided in a consistent style and according to the same pattern in the bibliography. The latter is also applicable where useful additional information, such as the publisher and the place of publication of a book, is provided. In the footnotes a short version of the source should be used.

Apart from the bibliography, a table (register or list) of cases as well as a table of statutes must also be supplied.

Example of a list of cases:

Case Law
<i>Administrator Natal v Edouard</i> 1990 (3) SA 581(A)
<i>Castell v De Greef</i> 1994 (4) SA 408 (C)
<i>Castell v De Greef</i> 1994 (4) SA 408 (C) 425
<i>Clarke v Hurst</i> 1992(4) SA 630 (D)
<i>Correia v Berwind</i> 1986 (4) SA 60 (Z)
<i>Estate Rehne v Rehne</i> 1930 OPD 80

Example of a table of statutes:

Statutes/Legislation
Anatomical Donations and Post-Mortem Examinations Act 24 of 1970
Anatomy Act 20 of 1959
Births, Marriages and Deaths Registration Act 81 of 1963
Constitution of the Republic of South Africa Act 108 of 1996
Human Tissue Act
Inquests Act 58 of 1959
National Health Act 61 of 2003
Occupation Disease in Mines and Works Act 78 of 1973

■ Books

- (a) As a general rule always use the latest edition of a book unless there is a good reason to refer to an older edition. Where more than one edition of the book is used, the bibliography and footnotes should indicate which editions are used (see eg Neethling, Potgieter and Visser in the *Bibliography* below).
- (b) The basic form in the bibliography is: Delpont HJ and Olivier NJJ *Sakereg Vonnisbundel* 2nd ed (1985). Write the author's name and the title of the book exactly as it is given on the title page of the book. If the author uses his/her first name or names in full, follow the same format. The publisher and place of publication may also be mentioned with the date of publication in brackets after the title. Where more than one place of publication is stated, mention only the first place name.
- (c) In the footnotes a short form should be used, for example Delpont and Olivier *Vonnisbundel* 34.
- (d) In the case of sources with more than one author, a maximum of three authors is given fully, and where there are more authors, only the first author's name is given followed by *et al.* (see eg Delpont and Olivier; Neethling, Potgieter and Visser; Corbett *et al.* in the *Bibliography* below).
- (e) There is no comma between the author's surname and initials, but a comma is added after his/her initials in the case of more than one author, for example Hall CG, Thomas O and Hill A.
- (f) Where a later edition of a source was rewritten by (a) new author(s), the author of the new edition is given, with reference to the original author's name in the title, where applicable (see eg Scott and Scott in the *Bibliography* below).
- (g) The title of the book is italicized. The first letter of each keyword of the title is written with a capital letter, while, for example, conjunctions, prepositions and adverbs are written in lower case.
- (h) The edition is given directly after the title in the form 2nd ed, 4th ed, etc, and not between brackets, for example, Van Zyl FJ and Van der Vyver JD *Inleiding tot die Regswetenskap* 2nd ed (1982).
- (i) The place of publication and all information apart from the title itself are given in the language in which the contribution is being submitted. If it is in English, all details apart from the title will be in English.
- (j) Where a work has been compiled by an editor or editors, it is given next to the editor's name, with (ed or eds) without a full-stop, in round brackets, always in English if the text is English, etc (see eg Zweigert and Puttfarken (eds) in the *Bibliography* below).
- (k) Where reference is made to a contribution in a collected work or work compiled by an editor, there is reference to the relevant contribution, as well as collected work (see Pound in the *Bibliography* below). The same applies to published papers delivered at a conference (see eg Kahn in the *Bibliography*; but see as to unpublished papers also Kahn in the *Bibliography*).
- (l) Where the author who is being cited is the author or editor of a collected volume, the name is not repeated (see eg Zweigert and Puttfarken in the *Bibliography* below).
- (m) Where more than one source by the same author is cited, the author's name is given each time with the source (see eg Van der Walt in the *Bibliography* below).
- (n) Theses and dissertations are cited similarly to books but the fact that it is a mini-dissertation or dissertation must also be mentioned (see eg Du Plessis in the *Bibliography* below).

- (o) The items in a bibliography must be in alphabetical order taking the surnames of the authors/first authors as a point of reference.

■ Examples

The following are examples of books in a bibliography (the reason for using the example is stated between brackets in bold):

C

Corbett *et al. Succession*

Corbett MM *et al.* (1980) *The Law of Succession in South Africa* Juta: Cape Town
(**more than three authors**)

D

Delpont and Olivier *Vonnisbundel*

Delpont HJ and Olivier NJJ (1985) *Sakereg Vonnisbundel* 2nd ed Juta: Cape Town
(**two or three authors**)

Du Plessis *Christelike Geregtigheid*

Du Plessis LM *Die Juridiese Relevansie van Christelike Geregtigheid* (LLD-thesis
PU for CHE 1978) (**LLD-thesis**)¹

K

Kahn “Crime”

Kahn E “Crime” in *Criminal Law* (Paper delivered at the Third Annual Congress of the South African Association of Criminologists 21–26 July 1961 Juta: Cape Town) 221–228 (**published contribution at a conference**)

Kahn “Crime”

Kahn E “Crime” (Unpublished paper delivered at Third Annual Congress of the SA Association of Criminologists 21–26 July 1961 Pretoria) (**unpublished contribution at a conference**)

Kelsen *Norms*

Kelsen H (1991) *General Theory of Norms* (translated from the original German by M Hartney) Clarendon Press: Oxford (**translated work**)

N

Neethling, Potgieter and Visser *Delict*

Neethling J, Potgieter JM and Visser PJ (2006) *Law of Delict* Butterworths: Durban (**different editions of same book: see next book**)

Neethling, Potgieter and Visser *Delict* 5 ed

Neethling J, Potgieter JM and Visser PJ (2006) *Law of Delict* 5th ed LexisNexis Butterworths: Durban (**different editions of same book: see previous book**)

¹ Note that, once a thesis is published, it becomes a book and should be cited as such.

P

Pound *Mainstreetism*

Pound R “The Passing of Mainstreetism” in Sythoff A W (ed) (1961) *XXth Century Comparative and Conflicts Law* Leyden 3–14 (**reference to one contribution in collective work**)

S

Scott and Scott *Wille’s Mortgage and Pledge*

Scott TJ and Scott S (1987) *Wille’s Law of Mortgage and Pledge in South Africa* 3rd ed Juta: Cape Town (**later edition of book written by new authors**)

Smith *Insolvency*

Smith C (1988) *The Law of Insolvency* 3rd ed Butterworths: Durban (**one author**)

V

Van der Walt *Property Clause*

Van der Walt AJ (1997) *The Constitutional Property Clause* Juta: Kenwyn (**more than one book by same author: see next book**)

Van der Walt *Vonnisbundel*

Van der Walt AJ (1997) *Sakereg Vonnisbundel vir Studente* 3ed Juta: Kenwyn (**more than one book by same author: see previous book**)

Z

Zweigert and Puttfarcken (eds) *Rechtsvergleichung*

Zweigert K and Puttfarcken H (eds) (1978) *Rechtsvergleichung* Darmstadter Verlagsansalt: Darmstadt (**editors, when referring to whole book**)

Zweigert and Puttfarcken in *Rechtsvergleichung*

Zweigert K and Puttfarcken H (1978) “Rechtsvergleichung” in *Rechtsvergleichung* Darmstadter Verlagsansalt: Darmstadt 1978 1–9 (**authors also editors**)

■ **Journals**

- (a) The same general rules apply here as for books but the basic form changes to Stander AL “Die eienaar van die bates van die insolvente boedel” 1996 (59) *THRHR* 388–399.
- (b) The title of the article is not italicized but in inverted commas, in lower-case (except where capital letters must be used), and is followed by the date and the volume number (in brackets, if available) of the journal.
- (c) The titles of journals are, wherever possible, abbreviated. The abbreviation is italicized. Note that law journals mostly prescribe, on their editorial pages, how the journal title should be referred to in abbreviated form. Such prescriptions have to be complied with.
- (d) Newspaper reports are cited similarly to contributions in law journals (see eg Ngqiyaza in the example given below)

■ Examples

The following are examples for the bibliography:

Anon (stands for anonymous) 1977 *SALJ* 221
 Anon “Crime” 1977 (66) *SALJ* 221–228

Burchell 1999 *SALJ* 1

Burchell JM “Media freedom of expression scores as strict liability receives the red card: *National Media Ltd v Bogoshi*” 1999 (116) *SALJ* 1–11.

Ngqiyaza 1997-09-19 *Business Day* 4

Ngqiyaza B “Socio-economic rights must be enforced in South Africa — Pityana” 1997-09-19 *Business Day* 4

■ Old authorities (Common Law)

- (a) Give the Latin or Dutch title of the book you cite, not the title of a translation in English.
- (b) Many of the works in Dutch bear different titles in the various editions and reprints. Select a title and keep to it. A convenient guide to acceptable titles will be found in Hahlo HR *The South African Law of Husband and Wife* 5th ed (1985) xiiiiff and Corbett MM *et al The Law of Succession in South Africa* (1980) ixff.
- (c) The principal parts of the *Corpus Iuris Civilis* of Justinian of the mid-sixth century are the *Institutiones*, the *Digesta* (also known as the *Pandectae*) and the *Codex*. It is customary to refer to them by the English translations (not in italics): Institutes, Digest and Code. In citations the abbreviations I, D and C are used. Where the part is divided into books, titles and sections, unless specific reference has to be made to a particular one book, title or section, a short form of reference is used: so I 2.9.2 refers to book 2 title 9 section 2 of the Institutes.
- (d) Where a Roman-Dutch legal treatise is divided into books, titles (or chapters) and sections, the same approach is taken. Take Hugo de Groot *Inleiding tot de Hollandsche Rechtsgeleerdheid* (the Dutch title). The full details must appear in the bibliography. Cite the appropriate passage in the footnotes in this way: De Groot 3.8.5. This is a reference to book 3 chapter 8 section 5 of the book. Another example is Johannes Voet *Commentarius ad Pandectas* (the Latin title). The reference to Voet 18.1.13 in a footnote means book 18 title 1 section 13 of the book.

■ Internet

Information obtained on the Internet (“world wide web”) is acknowledged by reference to the particular website, followed by the date when the website was visited. The date is important because the contents of the page on the website may subsequently change, or the particular reference or even the whole website may disappear or be moved elsewhere.

Example: Mamoepa B “The Act on Higher Education” <http://www.star.hsrc.ac.za/nche.html> [Date of use: 16 November 1997]



ACTIVITY 4

You used the following sources for a research project. Compile a bibliography.

- Kleyn D and Viljoen F. *Beginnersgids vir regstudente*. 2001. Kenwyn: Juta.
- Davel JC and Jordaan RA. *Personereg Studentehandboek*. 2000. Kenwyn: Juta
- Du Toit P. *Essential thinking skills*. Kaapstad. Kagiso. 1995.
- Gentle R Short, *persuasive letter writing Johannesburg: Plain Business writing*. 1998.

3.8 Conclusion

This is the end of study unit 3. We believe you should be able to do legal research now. Remember that the DVD, Part II, is a very important part of this unit. To be able to do research and present research results will help you with your future studies as well as your practice one day. Make sure that you understand everything. Do all the activities in detail even if it takes some time. Read study unit 2 again as units 2 and 3 should be seen as one.

3.9 Sources used in this study unit

- (1) Kok A, Nienaber A and Viljoen F *Skills workbook for law students* (Landsdowne Juta 2000)
- (2) Research Methodology for law LLM RES G Tutorial Letter 101/2007 Unisa.



Study unit 4: **Communication Skills**

STUDY UNIT



COMMUNICATION SKILLS

In this study unit you will be exposed to a variety of aspects that relate to communication in law. Writing skills will not be discussed in this study unit as it forms part of the syllabus of English for Law Students (ENN106J).

4.1 Outcomes

After studying this unit you will be able to:

- Know and understand the importance of non-verbal communication
- Conduct interviews, especially with clients and witnesses
- Know and understand the various styles of listening
- Understand the importance of logic in making legal arguments
- Apply the principles of oral advocacy

4.2 Introduction

A career in law demands a lot from the practitioner in terms of his/her communicative competence, which includes verbal as well as non-verbal communication. It is therefore important that you learn the key elements of communication that are essential to the lawyer's daily life as a practitioner.

4.3 Non-verbal communication

Before you start reading this part, look at your DVD, Part I.

We hope this part of the study unit will make you excited about the legal world and that you are looking forward to becoming the best advocate or attorney in the country!

REMEMBER this module is a skills module that was written specifically for law students. We are not trying to provide a comprehensive discussion on non-verbal communication. Only a FEW aspects that we think are of value to lawyers are discussed.

4.3.1 What is non-verbal communication?

People communicate with each other through the spoken word (sounds) that have specific meanings. While you are talking with your mouth, your body; for example, your attitude, your face and your clothes also send out their own messages. This ‘language’ you speak without words is called non-verbal communication.

4.3.2 The importance of non-verbal communication for a lawyer

Non-verbal communication can make or break a lawyer. You should use non-verbal communication to give credibility to your appearance in court while arguing a matter. In other words, your body language, attitude, clothes, and so on can help you on your route to success, or it can be the reason for your failure as a lawyer.

Research has shown that 35% of your message is communicated verbally, while 65% of the message is transmitted through non-verbal communication. Verbal communication usually transfers information or facts, while non-verbal communication transfers feelings, emotions and attitude.

4.3.3 Examples of non-verbal communication

Clothes:

We live in Africa where it can be extremely hot. No one expects men to wear a suit or women to wear stockings every day. But remember the legal world is a professional world. You need to dress professionally. People expect their advocate or attorney to look like an advocate or attorney. Dress for success!

Attorneys, who have to wear a gown in court, should be dressed neatly under the gown. If you are an advocate you should wear only black and white under your gown and bib.

Body language:

Your body language must complement your professionalism. Act with confidence. Never lie on your backside during a consultation or interview neither in court. Sit up straight. Do not chew bubble gum! In court, stand up straight; pull your shoulders back so that you create a dynamic look.

If you stand with your hands behind your back, the message is that you think you are better than the rest. If your hands are on your hips, you are aggressive. If you fold your arms in front of you, it signals that you are on the defence and are closing in.

Eye contact:

Look the judge or magistrate in the eye when you make your submissions. Do not fidget with papers while speaking — be prepared! Look the accused or a witness in the eye when you ask them questions. 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:

As we already indicated, 65% of what you are saying is transmitted through non-verbal communication. Be careful what your face tells about your feelings. Do not make the right sounds but look bored. Use your face to your advantage. People can see whether you care or not. Show sympathy and interest — your client wants to see that you are involved in his/her case. Never look at your watch while interviewing a person!

Tone of voice:

Vary your tone of voice. Speak loud enough so that everyone can hear you, especially in court. Speak louder when you want to emphasise something and a little bit softer when you want to create atmosphere. Repeat a person's words if you want to stress a particular point.

Lastly, the above are a few examples of non-verbal communication techniques a lawyer may use. Remember, your clients have to believe in you, otherwise they will not pay your bills or use you again. In court you can use non-verbal communication very effectively. Keep in mind that you want to win the case! People support winners!

Just remember that non-verbal communication also includes other professional behaviour and service delivery such as answering phone calls and responding to messages. The quality and promptness of the letters and accounts you send out are a reflection on you. Be punctual with appointments and paper work. Ultimately your whole image must be professional.



ACTIVITY 1

Look at the DVD you received as part of your study material and answer the questions in your *Workbook*.

REMEMBER, the DVD is only an aid. The case under discussion is only an example. It is not supposed to be one hundred per cent correct. It is only an example of how a court case could develop. Because of practical difficulties we did not go to the Magistrate's Court. The case could have been dealt with many other ways and some facts have been left out. Focus on the non-verbal communication of the actors and enjoy it!



ACTIVITY 2

Look at the pictures of non-verbal communication in your *Workbook*. Answer the questions.

4.4 Interviewing

We indicated at the beginning of this study unit that a variety of aspects in communication will be covered. It is important to note that all the different sub-sections,

non-verbal communication, interviewing, listening and logic should not be seen in isolation. All aspects together will make you a good lawyer!

4.4.1 Why interviewing skills?

As a lawyer, you need interviewing skills because you act for someone else (your client). It thus makes sense that you *get your client's story* before taking any action to advance his/her interest. It is the nature of the profession that you will have to find more information from other people who may help in your preparation, appearance in court or even when you give legal advice. Thus you will need these skills when you, for example, consult with *witnesses, experts or other role players* in a specific matter or issue.

It is important to know what kind of questions to ask, how to ask these questions, and how to conduct yourself when interacting with these people in order to obtain the *information relevant* for your case.

Maughan and Webb (2005:110) state the following functions of an interview:

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

4.4.2 Preparing for interviews

We need to reiterate that it is important to prepare thoroughly for your interviews with clients and witnesses. In short, this will make you 'know what you want' from the interview. In other words you will be better placed to ask questions that will elicit relevant information from your interviewees. You need to keep in mind that it is on the basis of, especially initial interviews, that you will be able to do further research on the matter in order to advance the case for your client. Take note of the following:

- Know the kind of information you will need for the file: personal details, addresses, employment, contact numbers, marital status, identity documents, birth certificates etc.
- Research the applicable law. If, for instance, the matter is about your client's dismissal from work, you may have to refresh your knowledge of Labour Law. Read textbooks on the issue and get relevant cases on dismissals and related topics. Make sure the cases deal with facts similar to the ones regarding your case. (See study unit 3 on research skills.)
- 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. These will inform the type of questions that you have to ask.
- Write down the relevant questions for the information you want to obtain from the person you are going to interview.
- Think of the possible questions that your opponent may ask your client. You will



find this strategy useful when you ultimately frame your questions during the interview.

ACTIVITY 3

Think of possible or relevant questions that you may ask your client concerning a case where he/she has been dismissed from work. Your questions should relate to each issue (heading) in your *Workbook*. Write the questions in the spaces provided under each heading. You are free to add your own issues/headings that you think may be relevant in a case of dismissal.

4.4.3 The actual interview

When you meet the client or witness, try to make him/her feel at ease. It is at this stage that clients or witnesses feel apprehensive, anxious or nervous. Make them feel that they are *welcome*, and that you are willing to help them. In this regard you should note the following:

- One of the approaches you may take is to start off by showing interest 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 his/her name, and how he/she would prefer to be called. Establish whether he/she would like to be called, say, “Mr. Nkhwashu” or simply “Richard”.
- Talk about general things, eg what could be happening in the wider social sphere, like sport; ask about his/her hobbies, where he/she lives, general information about his/her background.
- If possible do offer him/her tea, coffee or a soft drink.
- If you are interviewing a witness, you need to tell him/her who you are acting for (ie your client).
- Reassure the witness about the confidentiality of the discussion or interview.

When the client or witness seems relaxed, you may get to the “real” questions relating to the matter. Remember that this is what the whole interview is for. You should make sure that you get what you want from the interview: For example, you may start off by saying:

“We are preparing a court case regarding the collision that happened on the Lydenburg Road on 03 January 2007, and would like to get more information from you. We got your details from our client, Mr. Peu, whose car was one of the cars involved; and he said you witnessed the collision and that you were willing to assist the court in the matter.”

Thereafter you may get into asking the questions that require the more specific details regarding the matter. In this respect you should consider the following points:

- 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 the opportunity to get the general sense of the “story”.

- Take notes as he/she speaks so that you have the necessary information.
- You may stop the witness if he/she speaks too fast or if you want something clarified.
- After this initial run, you may politely ask him/her to start the “story” from the beginning (that is, he/she should give an outline of the events again).
- 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 or 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 the guidelines and points we will discuss in the section “Listening Skills”. Try and observe these guidelines.
- Finally, 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.

4.5 Listening skills

4.5.1 Why listening skills?

The following statement by Maughan and Webb (2005:121) is most relevant in this respect:

Failure 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.

Corin Kagan (1982:56) makes the point that listening is a skill and that “skills are acquired, not natural, abilities”. She emphasises that students must thus learn techniques and practise them “till they are comfortable habits”. However, as Maughan and Webb (2005:121) would say, such skill is not “as easy to acquire as we tend to think”.

We spend most of the time hearing sounds around us; but in that time we also listen to certain sounds we are interested in. We often downplay the difference between *listening* and *hearing*. We will not get into the details relating to the difference between these two concepts. But, generally, we may say that 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 or sounds!

Think about a lawyer’s daily professional life. You will probably realise that communication, especially listening, forms a key part of his/her life. Think of the instances when you consult with a client, when you contact witnesses and other colleagues in the profession, your activity in the courtroom where you have to communicate with the magistrate/judge, prosecutor, your opponent and witnesses, and so forth. All these suggest that you should listen effectively in order to engage in

effective communication. It is thus essential that you work on improving the skills of being a very effective listener.

4.5.2 What is a good listener?

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. The following are some of the points that characterise a good, and effective, listener:

- Be empathetic.
- A good listener keeps eye-contact and responds to the speaker accordingly. You respect the speaker by, for example, not doing distracting things during the conversation.
- A good listener also listens with his/her eyes. This is especially so in face-to-face interactions where the listener is able to receive messages transmitted by non-verbal communication mode, such as facial expressions.
- A good listener also participates in the interaction, silently, by active body language. In other words, as you listen to the speaker, you also give that speaker feedback to make him/her feel that his/her message is received, and reassure him/her that he/she is being attended to. An example in this regard would, for instance, be *nodding*.
- 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 (eg ‘‘I see’’) and non-verbal cues (eg nodding or shaking head).
- He/she seeks clarification where there is any misunderstanding, or signs that there is coherence in what is being presented. He/she would thus ask questions if he/she is not really sure whether he/she understands what is being said.
- He/she cares about the speaker and other role players in the listening context, and value of the messages (not necessarily that he/she agrees).
- He/she pays full and genuine attention to what is said. He/she does not fake attention.
- A good listener shows interest in, and commitment to, the interaction. In a professional setting this will be evident when the listener takes notes.
- A good listener must be open-minded. Allow your mind to be open to new ideas and criticisms and thus be comfortable with ideas you may not agree with.

The qualities described above suggest that listening is not passive, and that the listener has certain things that he/she has to do during the interaction or communication process.

4.5.3 Ways of listening

We do not intend to take too much space discussing the various ways in which we can listen. We believe that from the points already discussed here, you can see that listening may be passive or active. You should be aware that our focus in this discussion has mainly been on listening as an active process.

You can listen in two ways: (i) listening for facts, and (ii) listening while also taking cognisance of feelings or emotions.

■ **Listening for facts:**

Here you listen for what is being said. This is shown by, for example, when the listener paraphrases or reflects on what is/was said. This way of listening is applied: for example, when you attend a lecture. You listen for facts, and analyse what you hear (on the basis of the facts that are presented). In order to benefit from lectures you should:

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

Emotions cannot be finally bundled and named. Life experience and reading help to understand people and to listen with empathy, understanding and objectivity; and to be able to judge expressions such as ‘I am sorry’, ‘I was angry’, ‘I have sympathy’, etc.

■ **Listening while taking cognisance of feelings:**

This way of listening is extremely important for a lawyer. This is an even more active process as you also listen for what is being felt. Thus, you reflect not only on what is said, but also on the feelings. Take note of the following guidelines on how to listen successfully in this way:

- Do not judge the speaker.
- Use non-verbal communication to help the speaker relax and to 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.
- Once the person is finished make a summary of what he/she said.
- Ask questions if you need clarification.



ACTIVITY 4

- 1 Make a summary of what you consider to be qualities of an effective listener during an interview with a witness.
- 2 Explain why it is very important for a lawyer to have the skill to listen ‘while also taking cognisance of feelings’.
- 3 How and why should a lawyer be on his/her guard against faked emotion?

Please listen to the last part, Part III, on your DVD.

When you listen to the DVD please note that the content (the facts of the case) of the court case *Ex Parte Pieters* is not prescribed for this module. The DVD is based on a tape recording from the Law of Persons. Ignore all the detail and just listen broadly to what they are discussing.



ACTIVITY 5

After you have listened to the discussion of *Ex Parte Pieters*, Part III of your DVD, answer the questions in your *Workbook*.

4.6 Logic and legal arguments

Before we delve into the technical and procedural aspects that characterise oral or trial advocacy we think it is necessary first to explain what argumentation as such entails. This is because argumentation forms the basis of all forms of legal argumentation or oral advocacy. The concept of oral advocacy will be explained in the next section.

The main idea is that when you have studied the content of the law, that is both the substance and the rules of procedure, you must have a sense and skill to use that knowledge to get the required results and achieve your set objectives. You should know, by now, that 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. This suggests that you should know how to convincingly find the relevant law and formulate ways of solving that particular legal problem. *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. After completion of your legal studies you will have theoretical knowledge at your disposal, but you would still have to acquire knowledge and experience of how to put this knowledge to good effect to convince judges or magistrates.

The ability to argue effectively depends on how logically your ideas are organised with reference to sequence, combination and reaching acceptable conclusions. It is very important that you hone these skills.

4.6.1 What is logic?

Logic has to do with the ability to solve problems by argumentation. It tries to provide answers on what is involved when a point is argued, and what good argumentation entails. In short, it gives guidance on how to argue and to get to grips with issues of argumentative nature. As such it has to do with good thinking. It should be obvious that meaningful and correct thinking is of utmost importance in the legal world.

In this section we shall try to teach you a few basics of logic. But remember that this is a skills module for law students — it is not possible to treat such a specialised field with its many forms, facets and approaches in depth. In fact, we can hardly scratch the surface. If you are interested in this field, the sources mentioned at the end of this study unit may be of some help, otherwise, consult the experts in this specialised field of Philosophy. Note: The sources mentioned at the end of this Unit are not prescribed.

We can say that 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. For example: ‘The garden is wet because it rains’ is a simple argument with the ground or reason (called premise), ‘it rains’ and a conclusion from it, ‘the garden is wet’. Thus $P \rightarrow C$.

The relation between the premise and the conclusion may be of different forms. We look at the two best-known forms.

1. Deductive reasoning

Here the conclusion follows directly and fully from the premise.

eg All humans are mortal
 Socrates is human
 \rightarrow Socrates is mortal

The premise so to speak ‘forces’ the conclusion on us. If we think about the conclusion it is clear that it does not contain new knowledge; perhaps a new insight, but to know what the premise claims is to know the contents of the conclusion. The conclusion shows what the premise in the ‘‘combination’’ contains. According to Palmer *et al.* (2003:10) this form of argumentation, called deductive reasoning/deduction, arrives at certainties.

Three aspects are of importance here:

(a) Form and content

This argument has the following form: $P1 + P2 \rightarrow C$. But it also carries certain contents: Socrates, humanness, mortality, which are linked (generalisation, particular instance) to give the above form. In deduction, the form determines the validity of the argument. We can link meaningless sentences which have the form of the above statements and derive a valid (but meaningless) conclusion from them. Thus, when we argue the form of the argument it is of utmost importance, otherwise we cannot arrive at valid conclusions.

(b) Truth

For an argument to be true and not only valid, the premises have to be true, ie meaningful facts. From these a valid conclusion which will be true too can be deduced.

(c) 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. Long and intricate legal battles were fought *inter alia* to decide what constitutes blasphemy or the transgression of a church rule and thus heretic activities.

Palmer *et al.* (2003:10–12) give the following example of deductive reasoning in the legal context:

Example 1*THE RAPE CASE*

Abel is charged with the rape of Barbara. He denies the charge, stating that he has never had sexual intercourse with her. The prosecutor calls an expert medical witness who testifies that he found traces of semen in Barbara's vagina (Sample A) and that a DNA analysis of this semen sample exactly matched DNA of a semen sample obtained from Abel (Sample B). The expert evidence further establishes that it is impossible for two strangers to have identical DNA characteristics.

Using **deductive reasoning**, the court may conclude as follows:

Premise 1	Semen sample A was taken from Barbara's vagina. [True]
Premise 2	Semen sample B was taken from Abel. [True]
Premise 3	The DNA of Sample A was an exact match of the DNA of Sample B. [True]
Premise 4	It is not possible for two different people to have identical DNA. [True]
Premise 5	Both semen Sample A and semen Sample B came from Abel. [True]
Conclusion	Therefore, Abel had sexual intercourse with Barbara. [A must!]

2. Inductive reasoning

The second form of argument, one which may be seen as the opposite of deductive reasoning is 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, eg 'Water boils at 100 degrees centigrade', 'All objects gravitate to the centre of the earth', 'Dreams have deeper meanings', etc. The problem then is how premises can still be seen as grounds for the conclusion. There are a number of possibilities:

(a) Argument from a (so-called) law

This is what scientists usually do. They try to formulate a law which they then argue further. 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. Also where the behaviour of people is under scrutiny this strategy is often relied on — eg if an action can be seen as part of a law-like pattern, it is often seen as not part of a conscious decision and thus pardonable.

(b) Connectedness or correlation

This is a weaker form of the foregoing. 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. Thus, "because a therefore b" that is what is to be expected. This may also be a form of an excuse.

(c) Causality

This is the strongest form of a connection between two events — there must be some form of necessity in their interconnection. This is a general argument form in the legal world, as causality is what often has to be proven.

Because the conclusion does not follow from the premises in this case, but only rely on them for support, inductive conclusions are always more or less vulnerable. Thus, 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. Similarly, when the object is to discredit an argument these are the places to look for weak points.

Palmer *et al.* (2003:10ff) discuss the following example of inductive reasoning in the legal context.

Example 2*THE BAIL HEARING*

Let us assume that Abel was arrested on suspicion of raping Barbara and now applies to court for bail ('bail' is a court procedure whereby the judge/magistrate may release an arrested person from custody on payment of a sum of money).

The test the court will use to decide whether to 'release' Abel on bail or not, is the interest of society. The presiding officer (judge/magistrate) will consider factors such as:

- will Abel return to court to stand his trial, if released on bail?
- will Abel interfere with state witnesses?
- will Abel be a danger to society if he is released on bail?
- will Abel's own life be in danger? (Barbara's relatives might want to kill him)

In order to decide whether Abel should be released on bail, the court will look at evidence supporting the above. After hearing evidence and argument the court will ask:

- If Abel is released on bail, is it probable that he will stand his trial?
- If Abel is released on bail, is it probable that he will interfere with State witnesses?
- If Abel is released on bail, is it probable that society will be in danger?
- If Abel is released on bail, is it probable that his own life will be in danger?

If, for example, evidence is led that a mob of 30 armed men is waiting outside the courtroom, threatening to kill Abel as soon as he is released on bail, the court may reason as follows:

Premise 1 A group of 30 armed men is outside the courtroom. [True]
Premise 2 Many members of this group are uttering threats to kill Abel. [True]
Conclusion It is therefore probable that Abel's life will be in danger if he is released on bail.

Note: The court does not know for sure what will happen, but there is a probability that Abel could be killed and therefore he should not be released on bail.

4.6.2 General remarks

■ The nature of premises

Premises in arguments are different in nature. They can be perceived or acknowledged facts, or assumptions (at times they seem so obvious to the arguer that they are not even mentioned) from worldviews, about history or science, etc, or they can be meanings of words or expressions. They can of course also be the conclusions of an earlier argument — a long argument as you will find in court, often has the nature of a series of arguments strung together and which leads to a final comprehensive conclusion. Here an important principle applies — that of relevance: Everything which is put forward in an argument should be relevant to the main point — thus, do not deviate, stick to the point!

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, ie to introduce a name in an attempt to strengthen the argument. There is a correct way of using authority, ie the name stands for an argument or an accepted view. However, to rely on a name to bolster a weak argument cuts no ice.

■ Beware of arguing in circles

This happens when a conclusion (or rather the wished-for-conclusion) is introduced (usually camouflaged) as a premise. This results in a valid but unfortunately unacceptable argument which starts from what has to be proven.

■ Criticism

In criticising an argument one can focus on the premises or on the conclusion. The conclusion may be valid but not acceptable (not strong enough, irrelevant, etc) or it may not even be valid. Premises may be rejected as untrue or irrelevant. Note that any form of criticism has to be argued in its turn, and can and has to be treated/evaluated as such. Here again an important principle is at stake: 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. Without this principle our judicial system and in fact, our state cannot function.

■ *Non sequitur*

The rules of logic should be thoroughly mastered to ensure that the logical sequence almost leads us to very sensible results or a final conclusion. Thus without sensible or valid inferences, we cannot arrive at valid conclusions. One of the basic things to do to ensure that we arrive at sound conclusions is to avoid *non-sequiturs* (that is, the conclusions that do not follow the premise that they are supposed to be derived from).

Example:

Premise 1	My dog has a tail
Premise 2	All horses have tails
Conclusion	My dog is a horse [False!]

You will realise, with further practice, that though a logical process of reasoning may be used to persuade (especially in argumentation), the conclusions used in the arguments do not necessarily represent the *truth*. In other words, the process of logical reasoning may help in adding to one's persuasive power; but that does not establish the truth. In the case of a legal argument, it will be left to the presiding officer (for example the magistrate or judge) to give a ruling after considering what the legal position is as it applies to the facts. However, you should know that it remains your responsibility to organise the facts, find the law and formulate a logical argument that will win you the case.

In Philosophy (or Logic, to be particular), there are several ways in which one's logical reasoning may be challenged. Examples of how one may challenge such could be in situations where:

- 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*).

Let us look at this example:

Premise Brazil is the home of soccer.
Conclusion All Brazillians play soccer.

The conclusion drawn here can be challenged on the basis that it is a *non sequitur*.

The purpose of this section was to make you aware of, albeit in a small way, how logical reasoning works; and how it can be related to legal argumentation. As this is not a course in Logic or Philosophy, we will not take too much space here going deeper into this area. We, however, for your own personal development, urge you to read as much as possible in this area of Philosophy as you prepare yourself for your further studies in law or career in legal practice.

We conclude with the following remark:

The more extreme Sophists would have said that an argument is good if and only if it achieves what the arguer wants. The more extreme formal logicians would say that an argument is good if and only if its premises imply its conclusion. Somewhere between these two extremes lies sanity.

A good argument is a strong argument (and strength admits of degree). When we consider argument as something intended to persuade, another dimension of argumentative goodness emerges: The premises should not merely be true, but should be intelligible to and acceptable by the intended audience (Sparks 1991:97–98).



ACTIVITY 6

Read the following facts on a divorce case taken from Palmer *et al.* (2003:12) and afterwards answer the questions in your *Workbook*.

THE DIVORCE CASE

Abel and Barbara were married to each other on 1 January 1990 in Cape Town. They were happily married for ten years. Then, in January 2001, Barbara discovered that Abel was having an affair with his secretary, Clarissa. Would Barbara be entitled to a divorce on these facts?

The relevant rule of law, sec 4(1) of the Divorce Act 70 of 1979, reads as follows:

Irretrievable breakdown of marriage as ground of divorce — (1) A court may grant a decree of divorce on the ground of irretrievable break-down of a marriage if it is satisfied that the marriage relationship between the parties to the marriage has reached such a state of disintegration that there is no reasonable prospect of the restoration of a normal marriage relationship between them.

4.7 Oral advocacy

Appearing in a court of law is a substantial aspect of a lawyer's life. We need to emphasise, however, that you will not get all you need for a trial in this study unit. You will acquire much of what is needed with practice, for "no words will ever convey all that can be learned from personal experience" (Morris 2003:3).

4.7.1 Important points to consider

There are certain guidelines or procedural steps that a lawyer has to follow when handling a case. These are but some of the key points in this regard. You will, of course, learn more on these aspects in practice or your practical legal training.

(i) Preparation

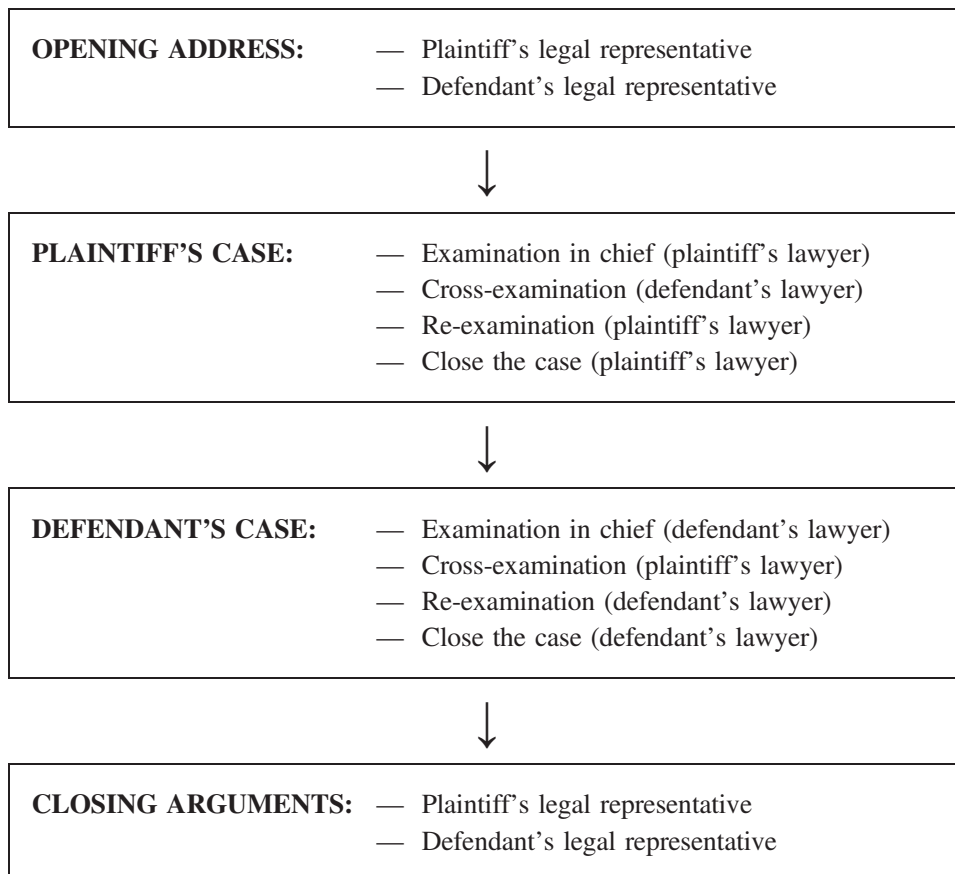
This may sound very simplistic, but it is a very important step in the trial process. Preparation starts with getting your mind and attitude right for the work you do. As discussed in the section on "Non-Verbal Communication" (see 4.3) even your body language plays a big role in your work as a lawyer. Although you will be expected to know the relevant and applicable law to the facts relating to your case, you should also ensure that your appearance (including body language) is prepared for the case. To avoid unnecessary embarrassment in court, make sure you are thoroughly prepared. This is what you should bear in mind:

- Do research on the relevant law (see Study Unit 3: Research Skills).
- Be conversant with the contents of your file.
- Make the necessary arrangements with your clients and other important role players (for example, witnesses).
- 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. It is helpful that you arrive early to avoid the unnecessary anxiety resulting from having to look for the right court in the last minutes. Remember that late-coming creates a negative impression. It says a lot about you (in the eyes of the magistrate or even your client). If you are early you would have the opportunity to introduce yourself to the magistrate in his/her office before the start of the trial. This is necessary if you had not previously represented a client before that magistrate.

(ii) Summary of procedural steps/stages in a trial

For the purpose of explaining the stages of a trial we will refer to a civil matter; in other words a case between two individuals called the plaintiff (the person instituting the action) and the defendant.



In the next section we will discuss each of these stages in detail.

■ **Opening address**

The purpose of the opening address is to introduce the matter to the presiding officer (magistrate or judge) briefly and simply. Normally, an opening address has the following segments:

- Address the magistrate: “Your worship”
- State your name: “My name is Joe Makolobe”
- State for whom you act: “I act for the plaintiff (or defendant etc)”
- State what the matter is about: “This is a claim for damages resulting from a motor collision that occurred on 31 December 2006 on the Lydenburg Road between Sasekani and Lenyenye”
- State the issue in dispute: “The parties differ on the quantum of the claim”
- State what evidence you will present: “I will call Prof Duvenage, an expert in reconstruction of accidents, as well as Mr Papenfous, a panel beater, as witnesses”.

It should now be clear that in an opening statement you should not give any arguments or evidence. Your evidence should be presented during examination-in-chief, and your arguments are made after the evidence has been led.

■ Examination-in-chief

The examination-in-chief may only be conducted after the witness has been sworn in. Here you should remember that the objective is to make sure that the witness tells the story logically, fluently and coherently. It is therefore important that you ensure that your client (or witness) is relaxed and is focused on the facts. You will find that his/her demeanour shows whether he/she is nervous. Thus you should always observe the witness’ body language as you go on with the examination-in-chief.

In order to encourage the witness to relax and tell his/her story, take care of your manner of questioning. Although you need to be formal, make the whole communication friendly, easy and purely conversational. Ensure that your way of framing questions will only prompt the witnesses to provide information that is relevant for your purpose. For example, information that would be in line with your particulars of claim or pleadings. Kok, *et al.* go to the extent of saying that “during examination-in-chief your witness’ evidence should mirror the information contained in the pleadings ... your opponent will attack discrepancies between the pleadings and your evidence”.

The most problematic aspect in examination-in-chief is your ability to avoid asking leading questions. In court you (and your opponent) are entitled to object if either of you asks leading questions.

The issue now, is how will you know that a leading question is being asked? Such questions presuppose information that has not yet been given. In other words the question somehow leads the witness to a particular answer, which usually favours your case. Typical leading questions require that the witness merely answers with a “yes” or “no”.

You should, however, note that not all leading questions may be objected to. Instances where you or your opponent may not normally object to include situations where that question is meant to elicit facts that are not in dispute. That is, facts which may simply be regarded as “common course”. In other words, both parties are in agreement as to the truthfulness of those facts.

Example: Is your name Matome Letsoalo? And you stay at Lephepane?

Another example could be in situations where the two opposing sides are in agreement on the date, place and time of occurrence of a particular event. Thus your opponent may not object to this “leading question”:

- Tell the court where you were on the 2nd of January 2006. But, “Were you in hospital on 2 January 2006?” will be leading.

Kok, *et al.* (2002:180) give examples and brief explanations of leading questions:

Examples

1. “How long have you been an industrial psychologist, Mrs Roberts?”

If the information that Mrs Roberts is an industrial psychologist has not yet been given by Mrs Roberts, the above question would clearly be a leading question. This is because you are already presupposing information, for example that Mrs Roberts is an industrial psychologist. And your opponent would certainly object.

Therefore approach it as such:

First question: “What is your name?”

Answer: “Mrs Roberts”

Second question: “What work do you do?”

Answer: “I am an industrial psychologist.”

Third question: “How long have you been an industrial psychologist?”

2. “So, Mr Roberts, you shot Mr Kitchen with a shotgun?”

If you start with a question like this, you are already presupposing certain information. For instance, that he shot someone that the said person is Mr Kitchen and that he used a shot gun. This becomes a leading question. The best way to ensure that you do not ask leading questions is to frame the so called open or WH-questions: where, when, why and how? The following example shows how the above question can be asked in this way:

First question: “Do you know why you are in court today, Mr Roberts?”

Answer: “Yes.”

Second question: “Why are you in court today?”

Answer: “I killed Mr Kitchen.”

Third question: “How did you kill Mr Kitchen?”

Answer: “I shot him.”

Fourth question: “With what did you shoot him?”

Answer: “With a gun.”

Fifth question: “With what kind of a gun did you shoot him?”

Answer: “With a shotgun.”

Remember, your task is, through your questions, to let a coherent story come out from your witness.

■ Cross-examination

Your opponent will cross-examine your witness after you have finished your examination-in-chief. Cross-examination is a very tricky activity for a lawyer. You will have to practise it a lot one day!

If you have to cross-examine be careful not to strengthen your opponent's case inadvertently. Thus, be focused: know what you want to get from the cross-examination. You have to be robust or even aggressive when you cross-examine so that you shake the witness to a point where his/her version of the events is tested and possibly exposed. In other words, your sole purpose is to “punch holes” in his/her version of the story.

■ Re-examination

Re-examination is conducted after your witness has been cross-examined. Generally, the purpose of re-examination is to try and lessen or repair the damage done during cross-examination. Some people feel that you should really re-examine when you have to, otherwise you should not as witnesses may actually worsen matters by further contradicting themselves.

■ Closing argument

The closing arguments are meant to *persuade* the court to follow your line of argument, and hopefully to find in your favour. It is at this stage that you may find some of the points discussed earlier, in the section, “logic and legal argument” very useful. Closing arguments are presented by the opposing sides after all the evidence has been presented to court.

Where possible, you should prepare typed *heads of argument* to support your argument. Heads of argument are written presentations whereby you briefly outline (i) the facts or background of the case, (ii) the evidence, (iii) applicable law and sources, and (iv) finally ask the court for a specific order or orders. These orders are sometimes referred to as “prayers” or “remedies”. You will orally present these heads of arguments as your closing statement.

Remember, as we have indicated already this module is only an overview of the real scenario in a court case. As your studies progress, you will see the bigger picture. Please try to attend a court case as soon as possible so that you can get a glimpse of the real world.

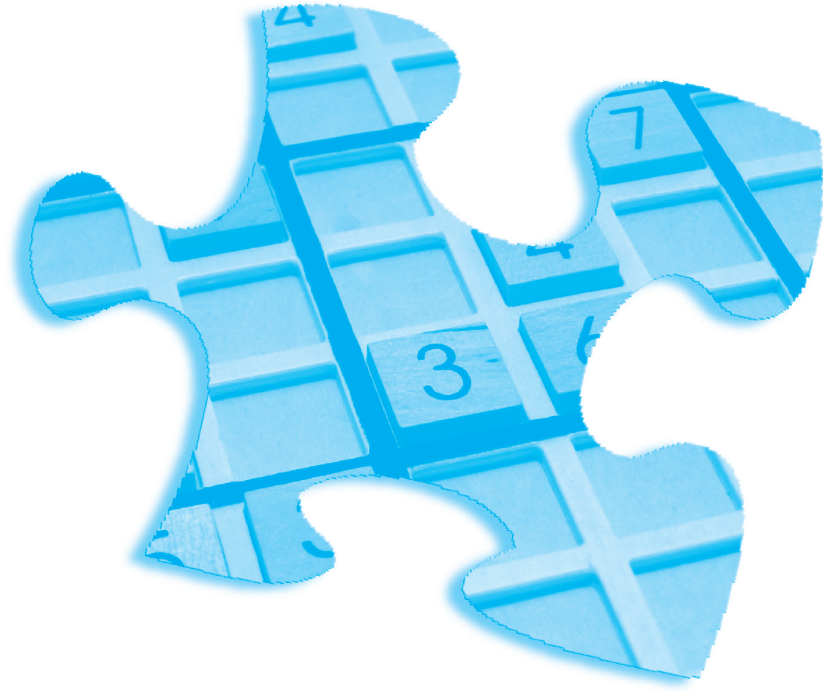
4.8 Conclusion

We hope you have enjoyed this study unit. Do not be anxious if you do not understand everything — you will have to learn some of the things we discussed here through

practice! We hope you have seen how intertwined all the skills function; the one cannot be utilised without the other.

4.9 Sources used in this study unit

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- (6) Maughan C and Webb J *Lawyering Skills and the Legal Process* 2nd ed (Cambridge University Press 2005).
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Study unit 5:

Numeric Skills

STUDY UNIT



NUMERIC SKILLS

5.1 Outcomes

At the end of this unit you should be able to:

- understand that a lawyer needs good numeric skills
- solve basic numeric problems
- use a pocket calculator correctly
- draw up an account for a client

5.2 Introduction: What are numeric skills?

Having numeric skills implies that a person can work confidently with numbers, understand numeric expressions, react to them and, where necessary, change ordinary language to numeric codes.



ACTIVITY 1

(Do not answer this activity in your workbook!)

Numbers are everywhere! You wake up at 07:00 and realise it is time to get out of bed. You put on your size 34 clothes and size 8 shoes. You run to catch the bus on route 2 or you drive your own 1 600 cc car at 40 km per hour in the traffic while you listen to the radio which is broadcasting at 94.7 FM. The presenter reads the traffic report every 30 minutes.

You attend class in room 102 and write your notes on an A4 desk pad. You write with a pen that costs R3,36. For lunch you eat a sandwich of R12,00. After lunch you study in the library on the 3rd level. You want to get 18 out of 30 for your test in order to have a good year mark. You go home at 6 o'clock and look at the television programme on channel 3 while you are lying on the three-seater couch. At 22:00 you are tired and go to bed. You sleep on a single bed under two blankets of R198,00 each.

In order to plan ahead you should be able to work out departure times, draw up a budget, keep your expenses low, and make appointments — basically everything that needs a numeric calculation!

1. *Underline all the elements connected to a number in the above text.*

2. Give a numeric expression for the following:

- (a) *It takes me an hour to get from home to my work place.*
- (b) *This month my expenses are more than my income.*
- (c) *Every month I pay on water, lights and estate tax the same amount I pay towards my children's school funds.*

Before we proceed, let us first solve **the riddle of the bottle and the cork.**

A bottle of cool drink and its cork together cost 11c. The bottle is 10c more expensive than the cork. What is the price of the cork?

Solution: The answer is not 1c! Why not? If the cork costs 1c and the bottle 10c, the bottle will only be 9c more than the cork and not 10c. The bottle therefore costs $10\frac{1}{2}$ c and the cork $\frac{1}{2}$ c. Were you caught out? The message of this riddle is that you should not act precipitately in this chapter. The recipe is: little by little but you will have to work constantly and thoroughly. Do every exercise as required from you and the rest will look after itself. A sage once said: ‘I hear — but I forget; I see — and I remember; I do — and I understand!’

Numbers are also important for a lawyer because ‘time is money’! When you have your own law firm one day, you will have to pay your employees their salaries, you would also have to work out consultation fees, divide estates, determine damages especially concerning motor vehicle accidents, work out the interest on defamation claims, and so on. Bad numeric skills will disadvantage you in your practice. We cannot teach you basic numeracy skills at university level. We therefore take certain knowledge for granted and consequently only focus on relevant issues for a lawyer. If you feel uncertain about the calculations we urge you to take the responsibility to look for assistance!

5.3 Addition and subtraction of numbers

Example 1

Thembu and Paul decide to form a partnership and to combine their **assets** and **liabilities**. Thembu's assets are worth R120 000 and his liabilities are R3 500. Paul's assets are worth R168 000 and his liabilities are R54 000. Determine the value of the partnership assets.

Assets: what you possess; eg your car, house, policies, cash etc
Liabilities: your debt

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Assets:	R120 000	Liabilities:	R 3 500
	+ <u>R168 000</u>		+ <u>R54 000</u>
	R288 000		R57 500

Assets minus liabilities:	R288 000
	- <u>R 57 500</u>
	R230 500

The total value of the partnership is therefore R230 500.

Example 2: Addition

If we calculate we say we have to find the sum of a few numbers. For example, the sum of 12 and 13 = 25. It does not matter in which order it is done. In other words we can say: $12 + 13 = 25$ OR $13 + 12 = 25$.

If we have to find the sum of more numbers, for example $3 + 4 + 5 + 6 = 18$ we can also put it this way: $3 + (4 + 5) + 6 = 18$ OR $(3 + 4) + (5 + 6) = 18$.

In the first example we calculated 4 and 5 and then added the 3. In the second example we added 3 and 4 together, added the 5 and 6 together and then we added 7 and 11 to get the sum of 18.

NOTE: The order in which we add numbers does not matter. Be careful that it is only applicable to additions. Thus $6 - 3$ is not the same as $3 - 6$!

Example 3: Subtraction

$$9 - 3 - 2 = 4 \text{ OR } (9 - 3) - 2 = 4 \text{ BUT } 9 - (3 - 2) = 8$$

We must be careful when we subtract! The calculation within the brackets must be done first! When we subtract we say we have to find the difference between numbers.



ACTIVITY 2

1. John, Susan and Zinzi decide to put their assets together in a partnership. Calculate the total value of the partnership if John contributes R243 500, Susan gives R543 285 and Zinzi R68 358.
2. Your client has to pay R11 000 for damages as well as R188,00 interest. What is his total liability?
3. The assets of a deceased estate are worth R885 000. The debt of the estate is R153 684. Calculate the distributable amount.
4. A, B and C are partners. The total value of the partnership is R1 355 000. C wants to leave the partnership. He withdraws his full contribution of R554 000. What is the value of the partnership now?
5. Your client has to pay maintenance to his estranged wife. You have to calculate his nett earnings per month. He earns R12 000 per month. His deductions are R2 440 for PAYE, R890 for pension and R12,33 for insurance.

6. The values of the assets of a deceased estate are R29 250, R1 456 and R11 394. The liabilities are R330,00, R456,00 and R11 384. Calculate the distributable amount.

5.4 Multiplication and division

Example 1: Multiplication

You have three secretaries employed in your company. Each one earns R8 800 per month. What are your monthly expenses to pay them?

$$\begin{array}{r} \text{R } 8\,800 \\ \times \quad 3 \\ \hline \text{R}26\,400 \end{array}$$

The three secretaries will cost you R26 400 per month.

It does not matter in which order you multiply. For example:

$$4 \times 2 \times 5 = 40 \text{ OR } 4 \times (2 \times 5) = 40 \text{ OR } 2 \times (4 \times 5) = 40$$

When we multiply we say we find the product of numbers. For example, the product of 4 and 2 is $4 \times 2 = 8$.

Example 2: Division

A, B and C are members of a close corporation. They share equally in the profit of the business. The yearly profit is R300 000. How much will each one get?

$$\begin{array}{l} \text{R}300\,000 \div 3 = \text{R}100\,000 \\ \text{Each one gets R}100\,000 \end{array}$$

When we divide a number we call the answer we got from that the quotient.

BUT PLEASE NOTE:

$$\begin{array}{l} 24 \div 4 \div 2 = 3 \text{ OR } (24 \div 4) \div 2 = 3 \\ \text{BUT } 24 \div (4 \div 2) = 12 \end{array}$$

The calculations in the brackets must be done first!



ACTIVITY 3

1. You have to pay two secretaries R4 540 each per month. Calculate each one's yearly salary as well as your salary expenses for both of them for a year.
2. You worked for 20 hours and were paid R700 per hour. How much were you paid?

3. A client owes your firm R18 666. He is allowed to repay the amount interest free over six months. How much does he have to pay you every month?
4. Four attorneys earn R10 000, R23 000, R20 000 and R31 000 respectively each month. Calculate their average income per month. (average = distributed equally)

5.5 Fractions, decimals and percentages

5.5.1 Fractions

Before we can do calculations, it is important to understand the following terminology:

Fractions: A fraction can be described as a number that is only part of a whole. If you should cut an orange in half you will have two halves. Numerically it will look like this: $\frac{1}{2} + \frac{1}{2} = 1$. $\frac{1}{2}$ is therefore a fraction of 1 whole. Half a dozen (6) is a fraction of a dozen (12); $\frac{6}{12}$ or $\frac{1}{2}$.

Numerator: The top number in a fraction is called a numerator. For example: In $\frac{3}{4}$, 3 is the numerator. It indicates the number of a specific fraction — here *three* quarters.

Denominator: The bottom number in a fraction is called the denominator. For example: In $\frac{3}{4}$, 4 is the denominator. This names the fraction — in this instance — quarters.

Fractions must always be written in their simplest form. For example:

$$\frac{12}{36}$$

Divide the numerator and the denominator by the biggest possible amount that both can be divided by.

$$\frac{12 \div 12 = 1}{36 \div 12 = 3}$$

The simplest form to write $\frac{12}{36}$ is thus $\frac{1}{3}$.

As said earlier, a fraction indicates a part of the whole. If a dozen is 12 then a half a dozen is half of 12. We can write it as $\frac{1}{2} \times \frac{12}{1} = 6$. A third of a dozen is then $\frac{1}{3} \times \frac{12}{1} = 4$.

For a lawyer it can look something like this: A man has 4 children. He dies and left them R20 000. In his will he had said the 4 children were the only heirs and they had to inherit equally.

Four parts are therefore the whole and = R20 000
 Each one will get a $\frac{1}{4}$ of R20 000 = $\frac{1}{4} \times \frac{20\,000}{1} = \text{R5 000}$
 Therefore each child will inherit R5 000.



ACTIVITY 4

1. Write $\frac{14}{20}$ in its simplest form.
2. A deceased farmer leaves behind a herd of 600 cattle for his three sons. The eldest gets half of it and the youngest gets $\frac{1}{3}$ of the rest. How many cattle will the youngest get?
3. If you have to drive 48 km and you have already driven 12 km, which fraction of your journey have you completed?

5.5.2 Decimals

Decimals: A decimal is written by using a comma followed by numbers indicating tenths, hundreds, and so on. For example:

$$\frac{1}{10} = 0,1$$

$$\frac{1}{100} = 0,01$$

$$\frac{1}{1000} = 0,001$$

In other words a decimal is another form of representing a fraction.



ACTIVITY 5

Write the following fractions as decimals:

$$\frac{6}{100000}, \frac{4}{1000}, \frac{11}{100}, \frac{7}{100}.$$

5.5.3 Percentages

Percentages form a big part of our daily living. When we read a newspaper or listen to the news over the radio, the reporter or presenter would, for example say there is a 60% chance for rain; or a retail store can advertise a sale of less 25%. VAT (Value added tax), which we all have to pay on certain items is at 14%. When we borrow money from the bank we have to pay a percentage of interest. As a student your results are indicated in percentages and you need a certain percentage to pass.

Percentages are in essence a fraction of one hundred. VAT therefore is $\frac{14}{100}$.

Example 1

If you got $\frac{13}{25}$ for TEST A, $\frac{32}{50}$ for TEST B and $\frac{34}{40}$ for TEST C; in which of the tests did you obtain the highest percentage?

$$\text{TEST A: } \frac{13}{25} \times \frac{100}{1} = 52\%$$

$$\text{TEST B: } \frac{32}{50} \times \frac{100}{1} = 64\%$$

$$\text{TEST C: } \frac{34}{40} \times \frac{100}{1} = 85\%$$

You did the best in TEST C.

But what is your average for this subject at this stage?

$$52\% + 64\% + 85\% = 201 \div (\text{the number of tests written}) 3 = 67\%$$

Example 2

Change $\frac{3}{4}$ to a percentage:

$$\begin{aligned} \frac{3}{4} \times \frac{100}{1} \\ = 75\% \end{aligned}$$

Example 3

If Bafana Bafana wins 15 soccer matches and they lose 5; what percentage of matches did they win?

$$\text{Total number of matches played} : 15 + 5 = 20$$

$$\text{Matches won} : 15$$

$$\frac{\text{Matches won}}{\text{Matches played}} \times \frac{100}{1}$$

$$\frac{15}{20} \times \frac{100}{1}$$

$$= 75$$

Thus they have won 75% of their matches.

Example 4

You earn a salary of R6 000 per month. Your employer indicates that he will give you a 20% increase. How much will your salary be after the increase?

$$\text{Your salary of R6 000} = 100\%$$

$$\text{Increase} = 20\%$$

$$\text{Thus your new salary is } 100\% + 20\% = 120\%$$

$$6\ 000 + \left(\frac{20}{100} \times \frac{6\ 000}{1}\right) = \text{new salary}$$

$$6\ 000 + 1\ 200 = \text{R7 200}$$

Your new salary will be R7 200.

Example 5

The distance between two towns is 175 km. When the highway, which is under construction is finished, the distance will be 12% shorter. What will the distance in km's then be?

$$\begin{aligned} \text{New distance} &= 175 \text{ km} - 12\% \\ &= 175 - \left(\frac{12}{100} \times \frac{175}{1}\right) \\ &= 175 - 21 \\ &= 154 \text{ km} \end{aligned}$$

The new distance between the towns will be 154 km.

**ACTIVITY 6**

1. To pass SCL1014 you need a semester mark out of 10 and an exam mark out of 90. If you get 8 out of 10 and your exam mark is 54% what will your final mark be?
2. Change $\frac{3}{5}$ to a percentage.
3. You are alleging that you have been dismissed unfairly. You were supposed to work 284 days. You were absent for 78 days during this period. What percentage of time did you not work?
4. Your employer indicates that you will get an increase of 8,25% on your salary at the end of May. You will also receive a once-off bonus of R5 000. Your normal salary is R7 500 per month. How much will you get at the end of May?
5. The international price for a barrel of oil is \$108. The rate of exchange is R7,86 = \$1. If we can produce petrol locally we can save 12% on each barrel. How much will a local barrel of oil cost?

5.6 Pocket calculators

HOW DO WE WORK OUT $5 + 6 \times 3$?
Is the answer 33 or 23?

Mathematicians have agreed that calculations must be done in a specific order. **It must be done in the following order:**

- left to right
- brackets
- multiplication and division
- additions and subtraction

$$\begin{aligned} \text{Therefore: } 5 + (6 \times 3) &= 5 + 18 = 23 \\ (5 + 6) \times 3 &= 33 \end{aligned}$$

BE CAREFUL!

Some calculators will do it automatically, others not. Look at
 $4 + 3 \times 6 - 4 \times 2 = 76$

BUT the CORRECT answer is 14!

$$4 + (3 \times 6) - (4 \times 2) = 14$$



ACTIVITY 7

You fly to Port Elizabeth. You have to hire a car to visit a client in another town. You ask two agencies for quotations. Agency A rents out cars for R118 per day plus R1,15 per km. Agency B rents out cars for R124 per day plus R1,20 per km. What is the difference between the total rental expenses for a journey of 1 550 km if it will take you two days?

5.7 Apportionment

We are constantly comparing things with each other. For example we can say a Pajero is a better car than a Yaris. Such a comparison says nothing except that it is our opinion. But if we say the strength of a Pajero is 3 times higher than that of a Yaris we have a comparison that can be tested. We can then say the strength of the Pajero in comparison to the Yaris is: 3 to 1 or 3:1.

Example 1

You and your partner have to share R10 000 on the basis of 5:3. How will you determine how much each of you has to get?

SOLUTION: Add the portions together $5 + 3 = 8$
 Divide R10 000 by 8 = R1 250
 Therefore one portion = R1 250

You get 5 portions thus $5 \times \text{R1 250}$	=	R 6 250
Your partner gets 3 portions thus $3 \times \text{R1 250}$	=	<u>R 3 750</u>
		R10 000

The apportionment can also be done as fractions: $\frac{5}{8}$ and $\frac{3}{8}$.

Example 2

Three friends, Tom, Dick and Harry invest money. The amounts invested by them are respectively R10 000, R12 000 and R6 000. At the end of the first year their profit is R14 350. Each one receives his share of the profit according to his contribution. How much does each one get?

SOLUTION:	TOM	:	DICK	:	HARRY
	R10 000		R12 000		R6 000

(make the amounts simpler by dividing the biggest number possible between all of them. R2 000 seems to be the biggest amount that will divide in all of them)

In other words 5 : 6 : 3

Now calculate the three numbers: $5 + 6 + 3 = 14$

Divide 14 in the total profit: $R14\ 350 \div 14 = R1\ 025$ (one portion)

Tom gets 5 portions	=	$5 \times R1\ 025$	=	R5 125
Dick gets 6 portions	=	$6 \times R1\ 025$	=	R6 150
Harry gets 3 portions	=	$3 \times R1\ 025$	=	<u>R3 075</u>
				<u>R14 350</u>

OR YOU COULD HAVE SAID:

Tom gets $\frac{5}{14} \times R14\ 350$

Dick gets $\frac{6}{14} \times R14\ 350$

Harry gets $\frac{3}{14} \times R14\ 350$



ACTIVITY 8

Mr Wealthy died. He left behind 3 children: A, B and C. The value of his estate is R12 000.

1. How much will each child get if they share equally?
2. How much will each child get if the amount is divided on the basis of 2: 3: 4?

5.8 Rate of exchange

Globalisation and the internet have made it possible to do business in different countries. Products are imported and exported on a daily basis. Because all countries do not use one single monetary system it is necessary to know how to convert money from one currency to another; for example, Rand to Dollar. The rate of exchange differs daily. It is therefore essential to find out what the current rate of exchange is before you conclude a transaction abroad. You can find the rates of exchange in a newspaper or on the web. Financial institutions should also be able to give you information on the rate of exchange.

Example 1

You have to go to London to investigate a case of fraud. You have R10 000 to spend on gifts for your children. How many pounds will you have if the exchange rate is R15,00 = 1 British Pounds?

$$R10\ 000 \div 15,00 = 666,67 \text{ British Pounds.}$$



ACTIVITY 9

You are trading in wool. You have completed a contract for \$ (US) 6 554 by paying it electronically. How many Rand do you have to deposit in your bank in order for the transaction to go through. The rate of exchange is R7,60 = 1\$

5.9 Interest

To borrow money from a financial institution is nearly a necessity for everyone including businesses. The institution lending you the money is entitled to charge interest in order to make a profit.

Things bought on credit like fridges from Game Stores, or a music centre from Joshua Doore furnishers; also include a percentage of interest. The interest rate is presented as a percentage. In other words you have to pay 12% or 17% interest, and so on.

The amount borrowed or the amount you bought for, if you bought something on credit, is known as the principal debt. Interest is a percentage of this principal debt. Money is lent out for a specific period in which you will have to repay it.

Interest therefore = principal debt \times interest rate \times time agreed upon.

The principal will always be in Rand.

The interest is always in a percentage.

The time will be in years. A 2 months period is therefore $\frac{1}{6}$ of a year, 3 months are $\frac{1}{4}$ of a year, 6 months are a half a year, and so on.

Example 1

You borrow R200 000 to buy a BMW. The interest rate at the bank for motor vehicles is 17,25%. You are going to repay the amount in 54 months. How much will you eventually pay for the car?

$$\begin{aligned} \text{Interest} &= \text{principal debt} \times \text{interest rate} \times \text{time} \\ &= 200\,000 \times \frac{17,25}{100} \times 4\frac{1}{2} \text{ years} \\ &= 200\,000 \times 0,1725 \times 4,5 \\ &= \text{R}155\,250 \end{aligned}$$

Therefore the principal debt is R200 000 + interest of R155 250 = final amount paid for the car. The BMW will eventually cost you R355 250 after 54 months.

Example 2

If you invest R120 000 at a bank for a year and you earn 15% interest per annum, how much interest did you earn for the year?

$$\begin{aligned} &\text{R}120\,000 \times 15\% \\ &\text{R}120\,000 \times \frac{15}{100} = \text{R}18\,000 \end{aligned}$$

You have earned R18 000 in interest for the year.

5.10 Tax

VAT (Value added tax) is tax everyone must pay to the government. VAT is added to nearly all products bought or services rendered. The VAT rate at this moment in South Africa (2008) is 14%. In other words if you pay R114,00 for an item, R14,00 goes to the state.

Example 1

A Cooldrink costs R9,80 VAT inclusive. What is the price for the cooldrink VAT exclusive. In other words you have to take out 14% from R9,80.

STUDY THE FOLLOWING FORMULA:

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

In order to work out the amount without VAT you have to put:

$$\frac{100}{(100 + \text{VAT rate})} \times \text{the amount inclusive of VAT}$$

According to our example: $\frac{100}{114} \times R9,80 = R8,60$

VERY IMPORTANT!!!!

When you have to ADD VAT you can simply take your pocket calculator and add 14% to the amount. For example $1567 + 14\% = 1786,38$.

BUT if you have to subtract VAT you HAVE TO USE THE FORMULA! (Remember the riddle of the bottle and the cork!)



ACTIVITY 10

1. A plastic motor car costs R123,45 VAT inclusive. How much will it cost excluding VAT?
2. An advocate sends you an account for R6 788.

According to the law VAT must be added to professional services. What amount must the advocate be paid?

5.11 Apportionment of damages

Should you practise as an attorney one day the apportionment of damages after a motor vehicle accident will be a big part of your responsibilities.

Example 1

A Jeep and a Polo collide at a crossing. The owner driver of the Jeep was found to have been 30% negligent and the owner driver of the Polo was found to have been 70%

negligent. The damage to the Jeep amounts to R50 000. It was uneconomical to repair the Polo. The pre-accident value of the Polo was R150 000. The salvage value of the wreck is R10 000. Which driver must pay damage to which owner and what should be the amount of damages?

SOLUTION:

The owner-driver of the Polo was 70% negligent and therefore has to pay 70% of the damage to the Jeep:

$$\frac{70}{100} \times R50\,000 = R35\,000$$

The owner of the Polo has to pay the owner of the Jeep R35 000.

The owner-driver of the Jeep was 30% negligent and therefore has to pay 30% of the damage to the Polo.

Pre-accident value – value of the wreck = total damage

$$R150\,000 - R10\,000 = R140\,000$$

$$\frac{30}{100} \times R140\,000 = R42\,000$$

The owner of the Jeep has to pay the owner of the Polo R42 000.

It does not make sense that the owner of the Jeep pays R42 000 to the owner of the Polo but then the owner of the Polo must pay the owner of the Jeep R35 000. The owner of the Jeep can only pay the owner of the Polo $R42\,000 - R35\,000 = R7\,000$.

NOTE: It is not necessary that the degrees of negligence count up to 100.



ACTIVITY 11

Based on the facts given above, pretend that the owner-driver of the Jeep was 35% negligent and the owner driver of the Polo was 25% negligent. Which driver must pay damage to which owner and what should be the amount of damages?

5.12 Attorney's account

Before we draw up an attorney's account it is important to keep a few points in mind.

You as an attorney have studied hard and for a long time. You are therefore entitled to ask money for your services. The Law Society and the Bar of Advocates release from time to time scales of the amounts you may charge your client. When you start your practice one day you will have to find out what their standard rates are.

A client never pays an advocate directly. An advocate always has to work with a brief from an attorney. The attorney pays the advocate and then recovers the amount from his/her client. The advocate's fees are therefore an expense for the attorney and need to be listed as an expense inclusive of VAT.

According to tax legislation attorneys and advocates have to charge VAT on all their accounts.

Example

Pretend you are a practising attorney. You and your client agree that you will invoice him monthly for services rendered. You agree on the following terms:

- R25 for every letter written.
- R8 postage for every written letter posted. All written letters need not be posted as it can be delivered by hand. (Postage is an expense for an attorney and the amount is VAT inclusive.)
- R10 for 5 minutes or part thereof for each telephonic enquiry (Note: here the client pays for the making of the call as well as the actual costs to the service provider eg Telkom, Vodacom, MTN!)
- R250 per consultation of 30 minutes or any part thereof.
- R300 for a summons
- R280 for an affidavit
- VAT = 14%

During last month you did the following for your client:

- You wrote 5 letters and posted all of them.
- You made one telephonic enquiry for 18 minutes.
- You consulted twice for two and a half hours.
- You compiled a summons.
- You compiled an affidavit.
- You briefed an advocate. His fees were R850 VAT inclusive.

Draw up your clients' account.

(For the purpose of this exercise ignore stamp costs except postage stamps, also ignore the service provider's costs concerning the telephonic enquiry)

Services rendered	Fees (VAT excl)	Expenses (VAT incl)
5 Letters written	R 125,00	
5 Letters posted		R 40,00
Telephonic enquiries (18 min)	R 40,00	
Consultations (5 hours)	R2 500,00	
1 Summons	R 300,00	
1 Affidavit	R 280,00	
Advocate's fees		R850,00
	R3 245,00	R890,00
Plus VAT 14%	454,30	
Plus expenses	890,00	
	R4 589,30	



ACTIVITY 12

You and your client agree on the following concerning your account:

- R10 for every letter written.
- R6 postage for every letter posted.
- R12 for every letter received.
- R25 for every telephone call of 3 minutes.
- R130 for every consultation of 15 minutes or part thereof.
- R300 for a summons
- R50 for the sheriff to serve the summons.
- R280 for an affidavit.

During the past month you did the following for your client:

- You wrote 6 letters; 3 were posted and 3 were delivered by hand.
- You received 4 letters.
- You briefed an advocate who submitted an account for R1 250 (VAT excluded).
- You compiled a summons and the sheriff served it on the defendant.
- You compiled two affidavits.
- You made 16 telephone calls of 6 minutes each (ignore the service provider's costs)
- Prepare your client's account.

5.13 Conclusion

This study unit should not be underestimated. A lawyer should have numeracy skills. If you had difficulties with the content of this unit, contact the student support services immediately.

This is also the end of the module Skills Course for Law Students. We hope you have enjoyed it and are equipped for your future studies and practice one day. Keep this guide on your desk for the duration of your LLB studies — it will help you!

It was a pleasure and a privilege to help you. Good luck!

5.14 Sources used in this study unit

- (1) Kleynhans B *Syfervaardighede vir regstudente* MTL114 (UFS 2005).
- (2) Kok *et al. Skills Workbook for Law Students* (Juta Landsdowne 2002).
- (3) Palmer *et al. Becoming a lawyer: Fundamental skills for law students* (Butterworths Durban 2003).