

Department of Jurisprudence



Skills Course
for law students
SCL1014

Workbook

University of South Africa, Pretoria

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Dear Student

This *SCL1014 Workbook* MUST be used together with your SCL1014, *Skills Course for Law Students*, study guide.

The purpose of the *Workbook* is twofold: First we want to force you to work through the study material; secondly we want you to see for yourself, by answering the exercises in the *Workbook*, whether you understand the work or not. You will have to mark the answers yourself; and by doing that you will immediately see where more attention is needed.

The answers to the questions will be sent to you during the semester in the form of tutorial letters (for example Tutorial letter 201, 202, 203 and so forth). These tutorial letters, as well as the *Workbook*, your study guide and the DVD constitute your study material for the exams.

Good luck!

The Lecturers for SCL1014

STUDY UNIT



STUDY SKILLS



ACTIVITY (1):

1.1

.....

.....

.....

1.2

.....

.....

.....



ACTIVITY (2):

Compare:

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Discuss:

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Criticise:

.....

Explain:

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ACTIVITY (3):

3.1

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3.2

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ACTIVITY (4):

Long-term goals:

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Obstacles:

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ACTIVITY (5):

Contract:

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ACTIVITY (6):

Time table:

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Monday:

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Tuesday:

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Wednesday:

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Thursday:

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Friday:

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ACTIVITY (7):

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ACTIVITY (8):

Summary: **Being a major at 18, what happened to 21?**

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STUDY UNIT



READING SKILLS



ACTIVITY (1):

1.1 Which Act lowered the age of majority to 18?

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1.2 Which misperceptions existed concerning “majority”?

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.....
.....

1.3 Where did the border-age of 21 between being a child and being an adult originated?

.....
.....
.....
.....

1.4 What is the age of majority in most Western countries?

.....

1.5 Why was the age of majority lowered to 18 in South Africa?

.....
.....
.....

1.6 What is an “infans”. What rights do he/she have?

.....

.....
.....
.....

1.7 What is the minimum age required for boys and girls to get legally married?

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.....

1.8 Whose permission is needed for boys under 18 and girls under 16 to get married?

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.....

1.9 What effect does getting married have on majority?

.....
.....

1.10 Are parents now obliged to maintain their children only up to 18?

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.....

1.11 Are you going to have another party when you turn 21 or are you a “grown-up” already?

.....



ACTIVITY (2):

Short title:

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Long title:

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Date on which the president signed the Act:

Date on which it became effective:



ACTIVITY (3):

Your opinion on the article:

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STUDY UNIT



RESEARCH SKILLS



ACTIVITY (1):

- 1.1
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- 1.2
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- 1.3
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- 1.4
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ACTIVITY (2):

To find a court case:
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ACTIVITY (3):

M Blackbeard ‘‘Consent to organ transplantation’’

3.1 What is this article about (briefly)?

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3.2 Who may consent in South Africa to the removal of tissue from a dead body?

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3.3 May a living person consent to organ removal? Explain.

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3.4 What does it mean to give ‘‘informed consent’’?

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ACTIVITY (4):

Bibliography:

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STUDY UNIT



COMMUNICATION SKILLS



ACTIVITY (1):

1.1 What is non-verbal communication?

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.....

1.2 Answer the following questions after watching Part I of the DVD.

1.2.1 What did the attorney do wrong during the unsuccessful interview?

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.....
.....

1.2.2 How should the attorney conduct an interview?

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.....

1.2.3 What did the advocate do wrong in the first scene?

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1.2.4 What should the advocate have done?

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1.2.5 What is expected from advocates in the High Court?

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.....

1.2.6 What did the advocates do wrong in the first court scene?

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.....

1.3 Describe how you will use non-verbal communication to add to your success as a lawyer.

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ACTIVITY (2):

Look at the images (next page) and answer the questions:

2.1 How does the person in picture A feel? Support your answer.

.....
.....

2.2 Look at pictures C and D. Who would you trust to represent you in court? Why?

.....
.....
.....

2.3 If the attorney interviewing you does what the person in picture F does during the interview, how will you feel? Why?

.....
.....

A



B



D



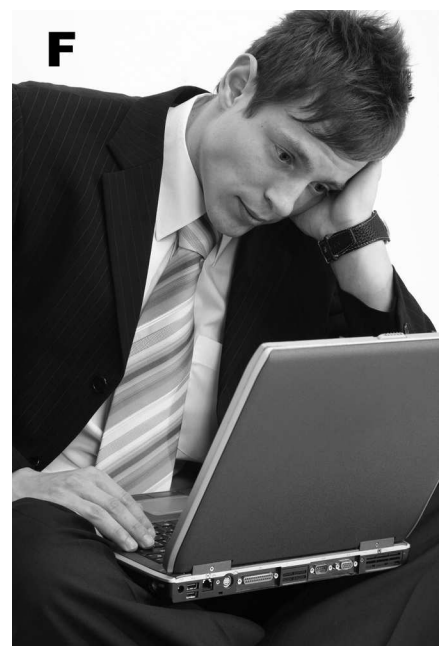
C



E



F



2.4 How does the man in picture B feel? Does the lady in picture E feel the same? Why/why not?

.....

2.5 Look at the two women in picture H. If you were the CEO of a dynamic international firm, which one would you hire as head of your legal department?

.....

2.6 If the man in picture I were your client, what would you conclude from his non-verbal communication?

.....

2.7 Look at the picture of the judge (K). Do you think she is listening? Why/why not?

.....

2.8 The person in picture L is busy interviewing a client who allegedly committed murder. The client keeps on changing his story about the events. How does this make the advocate feel?

.....

2.9 The student in picture O is discussing an issue with a group of students. What is he doing wrong?

.....

2.10 Look at the facial expression of the lady in picture M. Explain how you think she feels. Support your answer.

.....



ACTIVITY (3):

Think of possible questions you may ask your client concerning a case where he/she has been dismissed from work. Your questions should relate to each issue/heading written below.

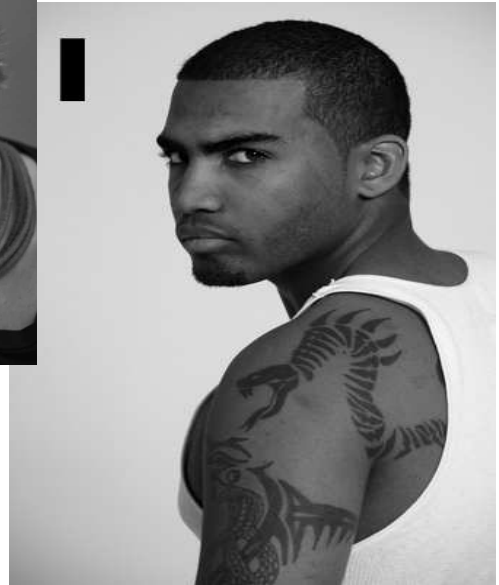
- Standing (*locus standi*): (*Locus standi* = the right to be heard in court)
 e.g. Is there a written contract of employment?

.....

H



I



K



L



M



O



.....
.....

- The offence/charge (e.g. theft)
e.g. Are there any security measures at the workplace?

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.....

- Witness(es) (to support for example, the defence of an alibi)
e.g. Is there anybody who you can call to support your version?

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.....

- Procedure
e.g. How did you get the message that you were dismissed?

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ACTIVITY (4):

4.1

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4.2

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4.3
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ACTIVITY (5):

Answer the following questions after listening to the last part of the DVD

EX PARTE PIETERS 1993 (3) SA 379 (D) 1993 (3) SA p 379

Citation 1993 (3) SA 379 (D)

Court Durban and Coast Local Division

H Judge Alexander J

Heard March 9, 1993

Judgment March 18, 1993

Annotations [Link to Case Annotations](#)

Births and deaths – Deaths – Presumption of death – When granted

I Person, who would have been about 73 years old at time of application, having disappeared in 1975 – Person having had no deep roots when it came to employment – No indication of emotional stress or financial embarrassment to throw light on reason for disappearance – Nothing to show that person when last seen in failing health or that he took own life or was victim of accident or attack

J Mystery of his disappearance not sufficient to serve as basis for excluding all explanations save that of death

A No order of presumption of death made but moneys standing to his credit in Guardian’s Fund ordered to be paid to his children.

Births and deaths – Deaths – Presumption of death – When granted – Courts reluctant to assume that death alone will serve to explain a

B disappearance when pointers to that conclusion minimal and rest on little else save conjecture – Notable exceptions to such rule arising where intervening effluxion of

time making it extremely unlikely that person in question still alive, or where there is evidence that person probably met death by accident, suicide or homicide.

- C In an application for an order of presumption of death, there is a general rule of thumb that the Court will be reluctant to assume that death alone will serve to explain a disappearance when pointers to that conclusion are minimal and rest on little else save conjecture. There are however notable exceptions to this general rule, namely where the intervening effluxion of
- D time has made it extremely unlikely that the person in question would still be alive, or where there is evidence that he or she probably met his or her death by accident, suicide or homicide.

The applicant applied in a Local Division for an order presuming the death of his father, who disappeared in 1975. In the alternative he sought an order on the Master to effect payment to the children of moneys that had been left by their mother to their father, which stood to his credit in the Guardian's Fund. The Court granted a rule nisi, to which there was no response. It appeared from the evidence that the applicant's father would

- E have been about 73 years old at the time of the application; that he had held a variety of jobs before he disappeared (which was possibly indicative, it was held, of the fact that he had no deep roots when it came to employment); and that there was nothing to indicate emotional stress, financial embarrassment or failing health prior to his disappearance (he was in fact still actively employed at the time). There was also no indication that he had met his death by accident, suicide or
- F homicide. The Court, applying the above-mentioned principle, held that the mystery as to the whys and the wherefores of his disappearance could not in itself serve as a basis for excluding all explanations save that of death, and declined to confirm the rule nisi. It was however ordered that the moneys in the Guardian's Fund be distributed among the children.

Application for an order presuming the death of the applicant's father.

- G The facts appear from the reasons for judgment.
Miss N Sewlal for the applicant.

Cur adv vult.

- H *Postea* (March 18).

Alexander J: This matter raises the question under what circumstances the Court will presume the death of a person who has disappeared for many years, unaccompanied, however, by any indication that through misadventure, or the like, he may have died prematurely.

- I The application to presume the death of Mr William Emmanuel Pieters is made by one of his sons. The applicant is one of six children. His siblings join with him also in seeking certain alternative relief in the event that their father's death is not presumed. Their mother had died and left certain moneys to their father. These

presently stand to his credit in the Guardian's Fund. An order is sought on the Master to effect payment

J on

A equal shares to the children as against their providing security *de restituendo*.

A rule *nisi* was granted with publication to be effected in the *Government Gazette* and the *Sunday Times*. There has been no further word from any source. This is now the return day, when the question of onus may assume a different dimension. As pointed out by Fagan JA in *Ex parte*

B *Alexander and Others* 1956 (2) SA 608 (A) at 611D, a *prima facie* case will suffice for the issue of a rule *nisi* but 'a decision as to the sufficiency or otherwise of the information submitted to support a presumption of death will have to be made by the Court . . . on the return day'. It may be that the absence of any response to the rule is a further factor to be taken into account, although, as pointed out by Hoffmann and Zeffertt in

C *The South African Law of Evidence* 4th ed at 557, '(i)n many cases it will be clear that a lack of response to the rule will add nothing to the probative value of the evidence . . .'. Nevertheless it is always implicit in the issuing of a rule that someone may come forward with relevant information. When, however, nothing has eventuated, the only question at

D the end of the day is whether what has been put up, coupled with the absence of any additional facts, is sufficiently cogent, as a matter of probability, to presume that death has taken place – compare *Ex parte Heard* 1947 (1) SA 236 (C) at 239 *in fine*.

These then are the facts. Mr Pieters was born on 31 May 1920, which

E would make him approximately 73 years old today. After his marriage in 1947 he appears to have had a variety of jobs in various parts of South Africa. First on his parental farm in Matatiele, then as a mine labourer in Johannesburg, next as a general assistant with the Post Office in Durban and, finally, at the time of his disappearance in 1975, as a cleaner at the Customs Office in Durban. This may or may not indicate that

F he had a peripatetic disposition, but mention is made of this aspect as possibly indicative of the fact that he had no deep roots when it came to employment. The same feature may also attach to his previous places of residence. At one stage in the early 1960s he was staying with a sister-in-law at Austerville. In 1968 he came to live with his son, the

G applicant, at Mayville, Durban. By that time his wife had gone back to Matatiele. Whether they had separated or not is not stated, but certainly at the time of his disappearance in 1975 Mr Pieters was staying with the applicant, who by now had moved to a flat in Wentworth, Durban. To complete this general background there is mention of only one illness that

H Mr Pieters had undergone. In 1963 he had injured a leg and been hospitalised for

some three months. Apart from some residual discomfort and inability to stand for lengthy periods, there is nothing to suggest that his general wellbeing was impaired to any meaningful degree nor, of more pertinent relevance, that his mental condition was adversely affected. There is moreover nothing on the papers that would indicate any

I emotional stress, financial embarrassment or other factor that may throw any light on why Mr Pieters vanished from the ken of his family in 1975.

On 28 January 1975 Mr Pieters was paid. The next morning, which was a Thursday, he told the applicant that he intended visiting his daughter, Mrs Lillian Russon, in order to repay her some money. He would go to her

J home in Sydenham, Durban, straight after work, and stay the night there

A rather than return home. He apparently had enough spare clothing at her place, where he also kept his identity document and bank savings book. Leaving the balance of his salary with the applicant, he left their flat at about 04:30. The story is taken up by a Mr Abrahams, his brother-in-law, who also worked as a cleaner at the Customs Office. He had

B seen Mr Pieters at work that Thursday and when leaving at about 17:00 had been told by the latter that he intended visiting Lily. This is how Mrs Russon was known. She in turn confirms that she loaned her father some money and that he had undertaken to repay it the following weekend, which would be that following this Thursday. He never arrived then or at all. A subsequent search at the mortuary and hospitals by the family proved

C fruitless. So, too, did inquiries made at police stations and the prison.

Mrs Russon says that when she last saw her father he was cheerful and in good spirits. Mr Abrahams claims a very close relationship with Mr Pieters extending over the years, and is convinced that were Mr Pieters still alive he would unquestionably have been in touch with him.

The argument for the applicant accordingly goes thus. Mr Pieters had a

D job, he had a home, he had children who cared for him and, judging by the pattern of his last known movements, there is absolutely nothing to indicate that he was surreptitiously bent on taking on a new life, bereft of money, his personal documents and his family. He must therefore be dead. A persuasive argument at first blush, but it is one still to be

E measured against the fact that no clue as to his disappearance has come to light, nor is there anything to show why his body, if indeed he is dead, has not been found.

These particular considerations have loomed large where the Courts have been called on to deal with similar cases in the past.

F The remarks of Lansdown TS 870; *In re J* in *In re Cuthbert* 1932 NLR 615 at 616 echoed what by then had already been a long-established approach. See *Re*

Beaglehole 1908 TS 49; *Re Nicholson* 1908 Widdicombe 1929 NPD 311; *Ex parte Estate Russell* 1926 WLD 118. He said: 'I know of no rule of law or practice which would require the Court to presume death merely from

G the lapse of years alone . . .' The circumspection which underlies this attitude has been consistently followed since: see *Ex parte Heard (supra)*; *Ex parte Verster and Another* 1956 (1) SA 409 (C); *Ex parte Rookminia: In re Sardha* 1964 (4) SA 163 (D). It seems that there will always be a reluctance to assume that death alone will serve to explain a disappearance when the pointers to that conclusion are minimal and rest on

H little else save conjecture.

But having stated the general rule of thumb there are notable exceptions. It may prove the case that the intervening effluxion of time has made it extremely unlikely that the person in question would still be alive. So, for instance, in *Ex parte Engelbrecht* 1956 (1) SA 408 (E) the Court was inclined to presume death when the man had been missing for 35

I years and by then would have been 93. Even then, however, a rule nisi was issued. Only four years unexplained absence was the position in *Ex parte Rungsamy* 1958 (4) SA 688 (D), but the lady concerned was 83 or 84 years of age, was known to be in frail health, and she had ceased to collect her old age pension. The Court was prepared to presume death, but *ex abundante*

J *cautela* issued a rule.

A As noted earlier, Mr Pieters would by now be close to 73. He may well have passed his allotted three score years and ten, but in this day and age that would surely be no cause for undue surprise. And least of all when there is nothing to show that when last seen he was in failing health. On the contrary he was still actively employed as a cleaner which, one assumes, entails a fair amount of physical effort. I would be hard

B pressed on these facts to find a helpful analogy in either Engelbrecht or Rungsamy.

There is the further exception, which again on the facts, finds little sustenance, viz that Mr Pieters probably met his death by accident, suicide or homicide. The Law Reports abound with such instances where the missing body can be attributed to such causes: murder at the hands of the

C Nazis in Poland – *Ex parte Chodos* 1948 (4) SA 221 (N); irresistible pointers to drowning – *In re B R C Cook* 1907 NLR 315; *In re Labistour* 1908 NLR 227; *Ex parte Dorward* 1933 NPD 17; suicide – *Ex parte Holden* 1954 (4) SA 128 (N).

Nothing, however, surfaces on these papers to suggest that Mr Pieters

D has taken his own life or become the victim of some accident or attack. As a matter of probability any such reason seems remote when no information could be gleaned from the police, hospitals or mortuary. Nor can it readily be imagined, much less inferred, that he was waylaid by some thugs en route to his daughter, who not only killed him but did away with his body.

The mystery as to the whys and the wherefores of his disappearance

E persist, but that in itself cannot serve as a basis for excluding all explanations, save that of death. I must, with some regret, decline to confirm the rule.

The Master, however, raises no objection to the moneys in the Guardian’s Fund being distributed among Mr Pieters’ six children. They, however,

F total only R6 148,14. The amount each will receive is so small that should the Court so order, he would be prepared to dispense with their providing security. In any event he doubts that they would be able to obtain the necessary bonds of security from an insurance company. It seems that this approach is eminently reasonable.

In the result:

- G 1. Paragraph 1 of the rule nisi is discharged. Accordingly no order is made presuming William Emmanuel Pieters born on 31 May 1920 to be dead.
- 2. The Master is authorised to distribute the amount of R6 148,14 presently held in the Guardian’s Fund under his reference S 10 P 37

H equally between Johannes Pieters, Lillian Lynette Russon, Francina Meth (born Pieters), Mervyn Pieters, Maria Buys (born Pieters) and Gertrude da Gama (born Pieters) without the necessity of their providing security *de restituendo*.

Applicant’s Attorneys: G L Abrahams & Associates.

- 3.1 Who are talking to each other?
.....
- 3.2 From which Law Department are they?
.....
- 3.3 What is this part of the DVD about?
.....
- 3.4 Why are court decisions important?
.....
- 3.5 What does a lecturer want if she asks you to give “authority”?
.....
- 3.6 Briefly explain the “precedent system”.
.....
.....
.....
- 3.7 To whom does Alexander J refer?
.....

STUDY UNIT 4

3.8 On which date was judgement given in this case?

.....

3.9 What does the abbreviation DCLD stand for?

.....

3.10 Discuss the difference between the following case names:

Ex Parte Pieters

S v Blom

Dickens v Daily

.....

.....

.....

3.11 What is the case of *Ex Parte Pieters* about?

.....

3.12 If there is a reference in a case to “*Edelstein NO*” what does it mean?

.....

3.13 What is the headnote of a court case?

.....

.....

3.14 Why should you not only read the headnote?

.....

.....

3.15 What does the words “beslis” (Afr) or “held” mean in a court case?

.....

3.16 How do you refer to a court of first instance in another case?

.....

3.17 What is the meaning of SC after an advocate’s name?

.....

3.18 What is the Latin phrase for ‘friend of the court’?

.....

3.19 What is the meaning of the word ‘*supra*’ and why is it used?

.....

3.20 What is the difference between a minority and a majority judgment? Which type of judgment is followed in the precedent system?

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.....

3.21 List the hints on how to read a court case.

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.....

3.22 What is the ‘*ratio decidendi*’ of a court case?

.....

3.23 What is the ‘*obiter dictum*’?

.....

3.24 What is a *rule nisi*?

.....
.....

3.25 What is the legal principle in the Pieters’ case?

.....

3.26 What is the most important part of any court case?

.....

3.27 How do you refer to a court case in an assignment?

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ACTIVITY (6):

Convert sec 4 of the Act into a series of premises and a conclusion:

Premise 1

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STUDY UNIT 4

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Premise 2
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Conclusion

Test these premises against the given facts:

Premise 1
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Premise 2
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Therefore
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STUDY UNIT



NUMERIC SKILLS

(PLEASE NOTE: You are allowed to use a pocket calculator for these exercises. You will also be allowed to use a calculator in the examination, NOT a cell phone!)

(Activity 1 should not be done in your workbook.)



ACTIVITY (2):

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ACTIVITY (3):

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ACTIVITY (4):

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ACTIVITY (5):

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ACTIVITY (6):

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ACTIVITY (7):

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ACTIVITY (8):

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ACTIVITY (9):

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ACTIVITY (10):

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ACTIVITY (11):

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ACTIVITY (12):

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This is the end of SCL1014 (Skills Course for Law Students).
Good luck with your future studies and may you become the best judge ever!

The Lecturers
SCL1014