

This writing guide is published under the auspices of the Faculty of
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LEGAL WRITING¹

1 Introduction

The purpose of this guide is to help you develop your ability to assess your work critically. You should be able to determine whether your writing has achieved its objectives – whether it is effective. By continually referring back to the principles contained in the sections below and doing what they suggest, you are assuming an active role in improving the quality of your work. This guide must be used in conjunction with the content of the following website: <http://blogs.sun.ac.za/legalwriting>, which is operated under the auspices of the Law Faculty of Stellenbosch University (“Faculty”) and is primarily aimed at improving your legal writing skills.

The publication of this guide is motivated by the fact that almost all students consistently make the same “mistakes”. This is evidence of a systemic misunderstanding among students as to what is expected in the completion of assignments, tests and examinations. Although the guide is primarily designed as a systematic account of how to approach the former, most of the principles it contains also apply to answering test and examination questions. The guide does not, however, amount to an exhaustive account of principles essential to effective legal writing. Principles pertaining to, for instance, the interpretation of legislation and “relevance” are extensively dealt with in other courses.

¹ This section of the guide was prepared by Reynard Hulme, Dr Karin Cattell, Theo Broodryk & Piet Kotzé.

We encourage you to summarise parts of the guide in a manner that will ensure the effective application in assignments. Misconceptions you may have had about legal writing will become clearer as you study the guide. Improving your legal writing has more to do with letting go of preconceptions regarding academic writing than with adding more concepts to it. In this sense, effective argumentation is simpler than you think.

2 How to make use of this section of the guide

This section of the guide is set out in two parts. The sequence of information is not coincidental. It is unlikely that you will be able to formulate your argument effectively (Part 2) before you have gained an understanding of the general principles of legal writing (Part 1). We therefore strongly recommend that you start with Part 1 and make notes as you work through the material.

PART 1: THE GENERAL AND INDISPENSABLE PRINCIPLES OF LEGAL WRITING

1 Good academic writing is accurate writing

Many students seem to think that using archaic, vague, or pompous language is good legal writing. Phrases such as “the most fundamental cornerstone of our democracy” or “an interpretation consistent with basic human justice”, may seem to add conviction to an argument. The truth is that they do not. Instead of contributing useful insight, these phrases do the opposite: they simply add another layer of abstraction and tend to add confusion to surrounding ideas. If

you are mindful of this tendency within your own work – that is to say, if you catch yourself trying to *sound* academic – you have already taken the first step towards improving the quality of your work.

As will be elaborated on later in the guide, readers of your work may, for example, include (in the context of the Faculty) lecturers and fellow students or (in a professional context) clients and judges. This may necessitate subtle differences in your choice of language. Regardless of the context, however, the aim of legal writing is to communicate content as simply and concisely as possible. It is therefore important that you remain mindful of the fact that the quality of your writing will be largely determined by the extent to which your content can be understood.

The practice of obscuring the content of an argument by using intelligent-sounding language manifests mainly in three ways:

- metaphorical language;
- the unchecked use of relative terms (the absence of criteria);
and
- vague or unnecessary concepts.

1 1 Metaphorical language

It is not always inaccurate to use metaphors in legal writing. The use of comparisons is, after all, a skill essential to developing legal principles. In other words, a metaphor – which is a comparison – may assist a reader in understanding a new idea by relating it to something with which he or she is familiar.

However, many metaphors are used merely as a linguistic convention. Politicians commonly speak of, for instance, the “war on

drugs” or the “fight against poverty”. There is of course currently no “war” being waged in our country and one cannot “fight” poverty. Instead of being aimed at accurate description, these metaphors are used to elicit an emotional response. This is not the purpose of legal writing. Effective legal argumentation is achieved by means of careful reasoning. It necessitates accuracy. Exaggeration is detrimental to it.

You may find yourself using certain metaphors habitually. **Ask yourself: does the use of metaphorical language here convey the intended meaning more accurately than a simple description would?**

Consider the following examples:

“Justice is the destination, law is the journey.”

The effectiveness of this metaphorical statement may vary depending on the meaning intended by the author. If, for instance, the author intended to assert that the meaning of justice can be known (justice is said to be a “destination”, which is generally understood to imply that it is achievable, that it *can* be arrived at), the phrase is vague at best. Similarly, it is unclear what is meant by “journey”. Is the author referring to the fact that the law is developed (takes on different forms akin to the contours of a road) in order to achieve justice or that mere adherence to the law will assist in the achievement of justice (that the law *is* the path to justice and that we stay on that path by adhering to it without necessarily having to alter it)? If you find reading these alternative explanations confusing (and there are certainly many more variations), do not worry - that is precisely the point. If the author had

merely said “the law is developed to ensure justice” or “adherence to the law results in a more just society”, it would be less ambiguous and you would be in a better position to agree or disagree.

“The accused was given a slap on the wrist.”

The phrase “slap on the wrist” is a linguistic convention meant to denote inadequate or relatively light punishment. Even if it is clear that the author intended to indicate that a certain punishment was inadequate, the nature of the inadequacy is – in the absence of an accompanying explanation – unclear. The inadequacy may be relative to certain characteristics of the accused. A R100 000 fine may be considered a slap on the wrist when awarded against a billionaire. The inadequacy may also refer to the relationship between the punishment and a crime, regardless of the characteristics of the accused. Certain animal rights groups may, for instance, regard the punishment associated with animal abuse as a slap on the wrist for what they believe to be inhumane conduct. The point is that using this metaphor is not necessarily wrong, provided that it is explained. By explaining why you regard a certain punishment as a slap on the wrist, you will construct a much more effective argument. The necessity of an accompanying explanation should, however, make you wonder about the effectiveness of using the metaphor in the first place.

1 2 The unchecked use of relative terms (the absence of criteria)

Never use relative terms such as good/bad, right/wrong or positive/negative without defining the criteria for evaluating good/bad, right/wrong or positive/negative. It means nothing otherwise. Instead, it is the criteria – the reasons why you are, for instance, calling

something positive/negative – that are of interest. It is essential, however, to resist describing these relative terms according to needlessly broad criteria. It is absurd, for instance, to describe good as “justice” and bad as “anarchy”.

You must relate your criterion to the legal principles applicable to your discussion.

The absence of a **criterion** makes any critical assessment or analysis impossible. In other words, you cannot “**evaluate**” or “**analyse**” without evaluating or analysing in terms of some criterion in the form of a value judgment. A criterion may be very simple. If, for instance, you are of the view that a certain piece of legislation is *too* vague, your criticism may be based on the following criterion: that the intended meaning of legislation should be clear enough to allow for its consistent application. Criteria can be much more complex than this, especially when the relative weight of various elements of a single criterion needs to be explained.

Therefore, whenever you call something good, bad, right, wrong, positive or negative, ask yourself: why exactly am I saying so?

1.3 Vague or unnecessary concepts

Vague language obscures your argument. Unnecessary words, whilst also likely to obscure your argument, are wasteful – particularly if you are subject to a word count. The added requirement of a word count is part of the test that your lecturers set for you in writing an

assignment. Its purpose is to see whether you can distinguish between *more* important and *less* important information, rather than whether you can simply fill the allotted pages with relevant information. **A poor assignment may well be saturated with observations that are merely relevant in the sense that they have something in common with the topic. An effective assignment shows the ability to identify the *most* important principles and to explain them (as well as the reasons for their importance) as precisely as possible.**

RECAP: BE SPECIFIC!

- 1 Ask yourself: Does the use of metaphorical language convey the intended meaning more accurately than a simple description?**
- 2 Every critical analysis requires a criterion.**
 - Whenever you call something good, bad, right, wrong, positive or negative, ask yourself: why exactly am I saying so?
- 3 Delete vague or unnecessary words.**
 - Retain a vague word (which is sometimes unavoidable) only if you are prepared to explain it.
- 4 An effective assignment shows the ability to identify the *most* important principles and to explain them (as well as the reasons for their importance) as precisely as possible.**
- 5 Ask yourself: Is what you have written the most accurate way of formulating the legal question, applicable legal principles, argument and conclusion?**

2 Language is imprecise (misconceptions about legal writing)

The introduction to this guide referred to “errors” typically made by students. The quotation marks are deliberate. That is because the description of the shortcomings in your work as “errors” carries the potential for great misunderstanding. If you regard an “error” as implying the existence (but absence) of an inherently correct answer, you have succumbed to two fundamental misperceptions regarding the nature of legal writing, namely:

- that there always exists a correct answer to a legal question; and
- that the quality of your work is assessed based on your conclusions.

2.1 The notion that there always exists a correct answer to a legal question

An example of a factual question may be whether an employer said to an employee: “don’t bother coming back to work tomorrow”. A witness may testify to having heard it. It may even have been recorded. The employer either said it or did not say it. It is therefore either true or false.

The applicable legal question may be more complex, since it **does not necessarily concern verifiable facts**. In this example, the legal question may well be whether the employer’s words were sufficient to amount to a “dismissal” in terms of the Labour Relations

Act 66 of 1995 (“LRA”). Any conclusion in this regard will depend on a selective interpretation of legally relevant language (concepts arising out of legislation and legal precedent). In other words, **there exists no answer to this legal question that can be considered as necessarily “true” or “false”**. Instead, the **“correctness” of the conclusion is determined by the extent to which it is shown to conform to an accepted interpretation of legal precedent, or why an alternative interpretation should be preferred**. Nothing precludes you from showing that a “dismissal” either did or did not take place. **Both conclusions – despite being contradictory – can be shown to be “correct”**.

Remember:

There are instances where a legal question has a “correct” answer. For example, if the legal question is “when does a person reach the age of majority”, then the “correct” or “true” answer is “18 years”. But, in response to the question whether it is preferable that the age of majority is “18 years”, there is, naturally, no right answer.

The correctness of conclusions reached by argumentative processes cannot be determined with absolute certainty for two related reasons:

2 1 1 Words do not have inherent meaning

Unlike facts, the precise meaning of a word cannot be absolutely verified. You can certainly provide a convincing argument for why a certain interpretation should be preferred, but no amount of supporting claims can ever “prove” the meaning of a word beyond dispute. This

is because such an absolute meaning does not exist. A word, which signifies a concept, simply refers to other concepts that refer to other concepts, etcetera. The parameters of these concepts are entirely man-made – they are based on agreement not truth. However, no amount of agreement can define the word completely, since such an agreement is necessarily constituted of more words, more concepts. A dictionary definition of a word is simply a collection of cross-referenced concepts, the meaning of which cannot be known with absolute certainty. In other words, concepts used to explain the meaning of a word merely point to certain *characteristics* associated with the word. The meaning of a word is therefore always deferred.

All you need to accept at this point is that words have no inherent meaning.

2 1 2 The content of laws cannot be determined by logic alone

The word “should” points to a simple truth (note the use of metaphorical language). As with the meaning of words, the justification of any legal principle is subject to selective interpretation. The content (or existence) of any principle has no “correctness” independent of a man-made criterion. The study of law is therefore not only concerned with the meaning of words, but also the establishment of criteria in terms of which agreement regarding the function of the law should take place.

Lawyers argue about what interpretation should be followed and ultimately a judge decides what he/she believes should be preferred. The judge takes into account variables he/she believes should be considered relevant and decides what relative weight should be

attributed to each. Any declaration of how something should be is called a “value judgment” – a judgment based on what is often called “moral standards”. The point is that all moral standards – and consequently all the value judgments taken in the promulgation of laws and their interpretation – are questionable. This is expressed in the famous maxim “reason alone can yield no moral judgment”.

This means that the content of law cannot be determined exclusively by the use of logic.

2.2 The quality of your work is assessed based on your conclusions

It is sufficient to realise at this point that your lecturers are rarely concerned with whether you arrived at any particular conclusion. You are also unlikely to impress a judge by merely insisting that your conclusion is indeed the “right” one. **The skill that your lecturers are trying to develop by means of assignments is this: the ability to justify, in terms of legally relevant principles, why your conclusion should be preferred over other possible conclusions.** The number of “correct” conclusions to a given legal question may be vast. Your conclusion can be “correct” even if it is one that differs from that of the Constitutional Court, provided that you have shown sufficient grounds on which to justify it.

RECAP: SUBSTANTIATE YOUR INTERPRETATION!

There exists no inherently correct answer to a legal question.

- Words do not have inherent meaning.
- The content of laws cannot be determined by logic alone.

The justification of your conclusion is more important than the content of the conclusion.

- The skill that your lecturers are trying to develop by means of assignments is this: the ability to justify, in terms of legally relevant principles, why your conclusion should be preferred over other possible conclusions.

3 Criticism of your work

The purpose of this guide is to develop your ability to analyse your work critically. Before we explore some helpful advice in this regard, it is appropriate to consider what self-criticism entails.

Let go of the idea that you already know how to write well. In fact, as a new, first-year law student, it is highly unlikely that you already possess the necessary writing skills that will enable you to succeed in your studies at the Faculty. In high school, most comprehension tests required you to demonstrate understanding by paraphrasing (rephrasing/rewording) an original text. Many students seem to think that the purpose of legal assignments is to demonstrate understanding by paraphrasing legislation, textbooks and class notes. If you are instructed to complete an assignment at the Faculty, merely paraphrasing the content of the relevant legal sources is wholly insufficient and therefore unacceptable. This guide will help you to understand that there is much more to preparing legal assignments than merely presenting a collection of paraphrased sources.

Criticism of your writing is not criticism of you. If you confuse your writing with your identity, you will almost certainly be unable to look at it objectively, which may result in you being unable to make the

necessary changes. You are likely to waste precious energy obsessing about what your writing says about you. You will equate criticism in the form of a lower than expected mark with disappointment, instead of seeing it for what it is: an opportunity to learn something that you clearly do not already know. If work and identity are one, you are likely to respond with frustration that may take the form of thoughts such as “why do others not understand what I mean, when it is so clear to me?” You are also unlikely to enjoy doing what you do when you believe that your identity is at stake in the outcome. The realisation that criticism of your work is not personal brings with it opportunity for improvement instead of resistance to change, and enjoyment instead of unnecessary stress.

Furthermore, once you have completed your studies at the Faculty and pursue your legal career, your work will be subject to constant scrutiny. You must be able to see (and utilise) constructive criticism as a tool to improve the quality of your work.

RECAP: USE CRITICISM!

- 1 Let go of the idea that you already know how to write well.**
- 2 Criticism of your writing is not criticism of you.**

PART 2: HOW TO DEVELOP AN ARGUMENT

1 Overview: The three stages of an assignment

Unless you are an expert in the field, you are unlikely to have enough prior knowledge to start planning the argument central to your

assignment before doing some research. The overarching theme of the research stage is this: **do not limit yourself, but only collect information that is relevant to your topic.**

STEP 1: COLLECTION OF INFORMATION

This requires you to **read the instructions contained in your assignment very carefully**. You may, of course, summarise or jot down ideas, but at this point you do not have to concern yourself with what form your paper will take or even with writing coherent sentences. Instead, we suggest that you open a Word document and simply write down all the relevant information and ideas as you become aware of them. In other words, **do not start editing yourself prematurely**. If you have a six-page limit to your assignment, this document containing your information may, for example, be well over fifteen pages long. The more information you have to begin with, the greater the scope for possible nuances in your argument. The first stage is complete when you have in front of you, in no particular order or structure, a collection of information that you feel can be used to adequately elaborate on themes within your topic.

STEP 2: ASSIMILATING THE INFORMATION

This means that you start **planning the form that your argument will take** and that you **move** the information around to its appropriate place. It is especially important that during this stage you create a proper framework or structure for your assignment. This does not mean that you should “cut and paste” from the different legal sources. It means that you should at this stage be able to identify the argument(s) that you intend to make in your assignment, where you

intend to make the argument(s) and what information you will be using in support of the argument(s). It may be a slow process, piecing together bits of information. You should find, however, that you are in a much better position to decide where to position specific information than you would have been had you combined this stage with the research stage. In other words, it is best not to decide what you want to say before you have identified the most important themes within the topic. You may even start connecting sentences at this stage, but do not be too concerned with grammar or stylistic requirements yet.

STEP 3: EDITING

The final stage of your assignment can be loosely called editing. This involves **reading** through your written assignment numerous times (as many times as you can) and **making changes** as you go along. This entails **(re)formulating your sentences as concisely and precisely as possible**, paying attention to **formal requirements** (such as referencing and grammar) and making sure that all the aspects of your **argument** have been sufficiently developed.

It is unlikely that you will notice all the necessary changes to improve your assignment if you attempt to do your assignment in “one go”. Every time you read through and edit your paper its precision will increase. You are also likely to arrive at new insights that, if incorporated, may improve the quality of your paper. It is also recommended that you try to spread out these stages of the assignment. Allowing a day or two to pass whilst engaged in the editing stage will most probably allow for a fresh perspective.

Once you have edited your paper thoroughly, you will be left with a document that we may call your **first draft**. The purpose of handing in

a first draft is to receive suggestions from your lecturers or tutors regarding possible improvements (note that not all assignments allow you to submit a first draft). The more thorough your first draft is, the more helpful the comments are likely to be. Once the necessary changes have been made, you may have the opportunity to submit a second draft with the same purpose, or you may need to convert your first draft into the final version of your assignment.

Bear in mind that the writing consultants can help you to improve your first and/or second draft before you submit it to your lecturer or tutor.

Always record a brief description of your sources (such as the name of the author, the year of publication and the page number) immediately whilst collecting information. Failure to do so could lead to a frustrating search when finalising your referencing.

1 1 STEP 1: Collecting information

1 1 1 *What is legally relevant?*

Information can be considered legally relevant for a variety of reasons. If you are analysing a legal question on the basis of specific factual circumstances, case law with similar facts could be relevant. Alternatively, case law that does not necessarily share the same facts, but addresses an applicable legal principle, may also be legally relevant. It may also be that legislation – either expressly or implicitly – indicates which factors are relevant. Legislation may, for example, indicate a closed list of factors or simply provide examples of relevant considerations. Ultimately, “relevance” has its own legal principles

(which will be dealt with extensively in the course entitled “Law of Evidence”).

A few general remarks are appropriate here:

- i. Whether information is relevant or not will depend on **the nature of the legal principle concerned**. For example, it may be that the personal circumstances of either one or more litigants are relevant if the applicable legal principle involves a “subjective test” (such as the test for “intent”). In the event of an objective test, these kinds of considerations may not be relevant (such as the test for “negligence”). Note that the words “subjective” and “objective” have a certain meaning in a legal context that differs from the general use of the words to indicate “opinion” and “fact”, respectively.
- ii. Regardless of the type of legal questions involved, you must explain **why the information you are presenting is relevant**. Many students simply fill their papers with facts and figures, assuming that the reader will make sense of how these support their argument. You, not the reader, are tasked with relating it to your argument.
- iii. You must also explain what **weight** the information carries. In other words, apart from showing why it is relevant, you have to show how important (relative to other information) it is for the purposes of your argument. The most effective way of doing this is of course by referring to legal precedent. You can find support for the relative importance of information by, for instance, looking carefully at the wording of a particular judgment or legislation.

- iv. Read your instructions carefully. Only if you read your instructions carefully will you know what precisely it is that your lecturer expects you to do in the assignment. Your understanding of the question will enable you to identify whether the information is relevant or irrelevant for the assignment. The relevance of a particular answer depends on the question that has been asked.

1 1 2 Legal databases

During the library orientation offered at the commencement of your LLB course, you were instructed on how to approach legal research. If you have not yet participated in the orientation, you are advised to take it seriously. It is not the purpose of this guide to repeat instructions pertaining to the vast amount of legal resources at your disposal. Assistance in this regard is available at the JS Gericke Library: discuss your queries with the subject librarian for the Faculty.

Due to widespread misunderstanding, we would, however, like to briefly repeat one invaluable instruction on how to search for journal articles. It appears that many students are under the impression that South African journal articles are found exclusively on LexisNexis or Juta. This is not the case. In fact, these two databases do not nearly include all the South African legal journals. You are therefore advised to use databases such as the Index of South African Periodicals ("ISAP"), which provides a list of applicable sources located in additional journals by means of a keyword search. Note that the list of sources generated by ISAP does not include the full text of the article. It will, however, indicate where you can find it. SA ePublications can

be used to conduct searches for full-text electronic African journals. If you choose to ignore this advice, you are making your research much more limited (and difficult) than it should be.

1 2 STEP 2: Assimilating information

Once you have collected a substantial amount of relevant information, do **not** start by trying to finalise your introduction or conclusion. Start by planning and putting together your argument.

1 2 1 *The argument*

1 2 1 1 What is an argument?

An argument consists of at least two related premises (supporting statements) that, when combined, result in a conclusion. Note that these three components are the **minimum** formal requirements for an argument, which is typically expressed as:

A B	=	Premise 1
B = C		Premise 2
(therefore) A = C		Conclusion

An argument may involve more than two premises. It may require you to draw multiple conclusions and use them as premises for a grand conclusion. Thinking about your argument in this way will help

you to identify contentious issues. In other words, **it will become clear which premises need to be examined more closely or are in need of further justification.** Although an entire course in the Philosophy Department is dedicated to the application of logic (“Practical Logic and Critical Thinking Skills”) and arguments are subject to certain typical formal errors, the purpose of this discussion is only to familiarise you with a few basic principles. Consider the following statement:

“Law firm X is the best law firm to work for.”

Is this an argument? Not yet. Due to the absence of supporting premises, it is merely a statement. In order to elevate it to the level of “argument”, we may add the following premises and conclusion:

The law firm that spends the most time training their candidate attorneys is the best law firm to work for.	Premise 1
Law firm X spends the most time training their candidate attorneys.	Premise 2
(therefore) Law firm X is the best law firm to work for.	Conclusion

Now that the sentence has taken the form of an argument, it is open to analysis. Had it merely remained an unsupported statement, a debate would have been meaningless, since the author had not explained what interpretation of the phrase “the best” he/she was advocating. In other words, a critical assessment would not be

possible if you merely speculate whether X is in fact the “best” law firm to work for or not. It necessarily requires the deconstruction (breaking down) of one of its premises. One could challenge the argument by challenging either Premise 1 or 2. You could justify why, for instance, the law firm that allows the most holidays is actually the best law firm to work for (a challenge to Premise 1). Alternatively, you can show that law firm Y, not law firm X, spends the most time training its candidate attorneys (a challenge to Premise 2). It is also possible to elaborate on – by means of a separate argument, of course – what constitutes “the most time”. The possibilities are endless.

In short, analysis takes three forms:

- 1 Challenging or confirming the validity of a premise.
- 2 Challenging or confirming the deductive process followed in the argument.²
- 3 Expanding (by means of a separate argument) on an aspect of a premise that has not been sufficiently defined. In legal analysis this may be an aspect of a premise that has not been sufficiently related to a legal principle.

² This is argumentation where the particular is deduced from the general. Deductive thinking departs from the general and proceeds to the particular. Deduction starts with the general principle and then attempts to relate the particular or the individual to it. In a deductively valid argument the relationship between the premises and conclusion is based on only the meaning of words or phrases in the premises and conclusion - the conclusion is implicitly part of the premises of the argument.

1 2 1 2 The two necessary arguments

If your assignment requires you to apply a legal principle to a set of facts, it could be useful to think of the argument central to your paper as a combination of two related arguments. The first is aimed at proving why your suggested interpretation of the applicable legal precedent should be followed. Assigning specific meaning to legal principles is what we call **INTERPRETATION**. For this argument to succeed, you must be mindful of certain general principles of interpretation. These legal principles are dealt with in the course titled “Interpretation of Statutes”.

The second argument seeks to establish why the application of this legal principle to the facts yields a certain conclusion. Using your interpretation of the applicable legal principles to motivate how a certain legal conflict should be resolved is called **APPLICATION**. In other words, your conclusion as to the appropriate interpretation of the legal principle becomes a premise in the argument explaining its application to the facts. This involves aligning the facts of the case with the elements present in the specific interpretation that you have established. Omitting either of these stages **will** result in your so-called “conclusion” being arbitrary. More specifically, it will not *be* a conclusion at all.

RECAP: PRINCIPLES OF ARGUMENTATION

- Omitting a premise logically necessary to your argument will result in the collection of information falling short of the formal requirements of an argument. What you may regard as your

“conclusion” will in fact, only be a “statement” – that is to say, an unsupported assertion.

- Thinking about the premises you require to arrive at your conclusion will enable you to identify which areas of your argument need more attention. For instance, you will be able to spot that a certain premise needs to be elaborated on by means of a separate argument in which it stands as the conclusion.
- Provide an argument for both your interpretation of the applicable legal principle and the application of that principle to the facts.
- This takes practice. In a sense, your entire legal study – every course, every lecture and every assignment – is aimed at developing an understanding of this skill.

1 2 1 3 Common mistakes

- Applying the Constitution

The Bill of Rights is written in an exceptionally vague language. The result is that rights such as the right to equality or dignity are open to a wide range of possible interpretations. The point is that a constitutional right (or any law for that matter) **cannot be applied without necessarily arguing the parameters of its provisions**. One cannot, for instance, rely on the right to equality *as it appears in* the Constitution. Instead, you must argue for **a certain interpretation of** the right to equality based on case law, legislation and, more often than not, the criteria as set out in section 36 (the “limitation provision”)

and section 39 (“Interpretation of Bill of Rights”). In other words, you cannot only look to the Constitution to find out what it means.

- Using democracy, fairness and justice to *support* a conclusion

It is meaningless to use “democracy”, “fairness” or “justice” as a premise to support a certain conclusion. This is because these terms *are* necessarily conclusions themselves, rather than verifiable premises. In other words, you cannot argue that your interpretation of legislation should be followed *because* it would be the most democratic, the fairest or the most just interpretation. This is not only because these terms are vague. It is also because the courts are already necessarily tasked with considering democratic ideals and justice when interpreting any legal precedent. It is unlikely that reminding the court that it has the duty to consider justice or fairness or democracy will assist your argument in any way.

- Not answering the question

It is not enough to submit your paper if it only contains a conclusion successfully supported by premises. **You must answer the question put to you in the assignment.** Do not needlessly discuss issues (however interesting they may appear) that are not relevant to your topic. If you discover an interesting issue that falls outside the ambit of your topic, consider writing a separate article on the issue.

- Perpetual agreement

You do not always have to agree with judges or your lecturers. If, for instance, you come across a passage in a judgment that you believe is ambiguous (and its ambiguity is relevant for the purpose of

the assignment), you are encouraged to communicate that observation in your paper. Be aware that some judges and academics do not write well. Instead of submitting to their reasoning or imitating their style – regarding it as some sort of template – focus on being accurate. Before criticising, however, you must be sure that you have made a thorough effort to consider all the possible interpretations and implications.

- Generalising the issue

Being specific also means describing the ambit of your topic as precisely as possible. If, for instance, your topic is about liability without fault (as a form of delictual liability), it may be inappropriate to simply refer to it as a more general issue of delictual liability. A failure to be specific can lead to misappropriating legal precedent. You may be unknowingly implying that *all* issues relating to delictual liability are subject to the same considerations. In the law of delict, however, a distinction is made between liability without fault and fault-based liability (both are forms of delictual liability but they are founded on different bases and have different requirements). Be aware of what you are implying.

- Reluctance to get assistance

Your lecturers are available to discuss with you those legal issues that you – after you have reviewed your class notes or textbook – do not understand. **The writing consultants are available to assist you in structuring and refining your assignments.** Please keep in mind that the **assistance that your lecturers or the writing consultants can give you will be limited by the extent to which you fail to prepare sufficiently before meeting with them.**

1 2 2 *The introduction*

The primary purpose of an introduction is not to summarise the content of your paper. The purpose of an introduction is simply to explain to the reader **what you are writing about** as well as **the legal context** within which your discussion takes place – the importance of answering the legal question at hand.

Do not, however, attempt to grab the reader's attention by introducing your topic in exaggerated terms such as "the most fundamental right of all human beings". Nothing could be more predictable and more boring. Not only "big" issues are worth discussing. Often the most interesting discussions involve a nuanced interpretation of a previously overlooked phrase.

Avoid variations of the following statement at all cost:

"This paper will take into account relevant legislation and case law in order to critically assess the applicable legal principles."

This statement is supremely obvious at best. There is no need to remind the reader that legislation and case law have relevance in legal analysis. The statement also does not explain why the issue is worth being discussed.

You may want to give **some indication in your introduction as to what form your argument is going to take**. There is nothing wrong with that. The danger, however, is that you confuse your introduction with your conclusion. It is best to save an explicit account of your argument for your conclusion, since you will have used the

body of your assignment to elaborate on and justify its premises. Giving a detailed account of your premises and conclusions in the introduction will be premature.

1 2 3 *The conclusion*

Once you have established the validity of all your premises and conclusions, it is appropriate to end the paper by briefly outlining the structure of your central argument. This is what is meant by the “conclusion”. You may wish to think of it this way: the body of your paper was concerned with providing proof, whereas the conclusion is a concise account of what it is that you have proven.

As with the introduction, the temptation may arise to phrase your conclusion in the most grandiose and profound terms possible. Resist this temptation. A conclusion does not need to be presented in dramatic binaries such as right/wrong, good/bad or success/failure. A conclusion can concern a nuanced understanding of a single word or insist that certain factors should be given more weight. Focus on precision. There is no greater accomplishment in legal writing than a precise and (formally) sound argument.

1 3 STEP 3: Editing

Read through your assignment as many times as possible. If your assignment exceeds the designated word or page limit, you will be required to distinguish between *more* relevant and *less* relevant information. Eventually, your assignment will be constituted of the information that you consider to be the *most* relevant to your topic.

Make an appointment with your lecturer or writing consultant, depending on the nature of your uncertainties.

CHECKLIST

STEP 1: COLLECTING INFORMATION

- 1 Read your instructions carefully.
- 2 Make sure that you are aware of the legal resources at your disposal. If not, seek assistance at the JS Gericke Library.
- 3 Open a Word document.
- 4 Use the library's databases to find sources.
- 5 Read through the applicable books, articles, legislation and case law. Write down all the relevant information and ideas as you become aware of it, remaining mindful of:
 - Not editing the information prematurely;
 - The legal principle on which the relevance of the information is based;
 - The relative importance (weight) of the information; and
 - The details that you may require for referencing purposes.

STEP 2: ASSIMILATING INFORMATION

- 1 After you have collected as much information as possible, start planning the form of your argument (and be aware that this may change at any time during the writing process).

- 2 Make sure that your premises combine to produce a conclusion that is logically sound.
- 3 Start moving around pieces of information in a manner appropriate to the flow of your argument. In other words, start positioning information in order to support the premises needed for your conclusions.
- 4 Write an introduction explaining the topic and its legal context. Use the introduction to answer the question: why is this issue worth discussing?
- 5 Write a conclusion that briefly summarises the various premises and conclusions used in your argument.

STEP 3: EDITING

- 1 Read through your assignment as many times as possible and pay specific attention to:
 - Formulating your sentences as concisely and precisely as possible;
 - Formal requirements; and
 - The sufficient development of your argument.
- 2 If your assignment exceeds the designated word or page limit, you will be required to distinguish between *more* relevant and *less* relevant information. Eventually your assignment will be constituted of the information that you consider to be the *most* relevant to your topic.
- 3 Make an appointment with your lecturer or writing consultant, depending on the nature of your uncertainties.

LANGUAGE AND STYLE ASPECTS

1 Language aid in the Faculty

Consult this part of the guide whenever you are uncertain about the correct language usage, style or referencing in papers that you are required to prepare under the auspices of the Faculty. This part of the guide contains guidelines on language issues that students at the Faculty often get wrong. This is not a comprehensive language guide and it only looks at those issues that cause problems for law students in general.

Always bear in mind that the Faculty offers a free writing and language consultation service. This service is, generally, not compulsory, but can make a positive difference to your writing skills – and thus to your marks. No aspect of your writing, presentation or language ability is too insignificant for help from the writing consultants. They are there to help you! Just remember to make an appointment (and be prepared) before you approach a writing consultant.

2 General writing principles

2.1 Plan your time

Postponing until the last minute is not a good idea. Give yourself enough time for **(a) preparation**, **(b) the writing of the paper**, and **(c) revision** afterwards. Also, allocate time to seek the assistance of a writing consultant.

2.2 Prepare

This means that you have to understand what is expected of you in your paper; selecting and finding applicable sources; reading, interpreting, and analysing these sources, etc. Scribble simple notes to yourself, create a mind map, underline or emphasise with a highlighter while you are reading. Follow any method that works for you. Chat to a fellow student about the subject – it is an easy way to determine what you understand and what not. Or try to explain the subject as concisely and simply as possible to your room- or housemate. By this stage, you should have a fair understanding of your subject. Only now are you ready to write.

2.3 Be (aware and involved) in class

The planning and preparatory phases above can only be successful if you attend classes, are attentive and ask questions. The intelligent, serious student does not shy away from asking questions. If you are too scared, embarrassed, or lazy to ask questions, you are uninformed – and you will stay that way. However, if you have writing-related questions that you need to discuss before or after class, you may visit a writing consultant for a private consultation.

2.4 In general, read as much as possible

The better you can read, the better you will be able to write. Similarly to writing, reading also improves with practice. Concentrate while you are reading. Switch off your cell phone.

2.5 Beware of spelling and typing errors

Remember that spelling and typing errors are frowned upon at an academic institution, and especially in the legal profession – more so than at school. An assignment with spelling and typing errors immediately creates a bad impression. (See list of common spelling and typing errors on pages 76 and 77) It also makes it difficult for your lecturer to understand what you are saying (this is not a good idea, as it will be reflected in your marks).

2.6 Use a spell checker and other spelling guides

The use of a spell checker is not negotiable. However, remember that a spell checker identifies some words as correct, while they might be incorrect in a certain context. This especially relates to homophones, or words that have similar sounds. In this regard, examples are accessory / accessory, allowed / aloud, aural / oral, bare / bear, band / banned, board / bored, deviser / devisor, principal/principle, stationery/stationary, whether/weather, whose / who's, etc.

Example:

“The bored decided to accept the proposal.” A spell checker will accept “bored” as the correct spelling, while it should be “board” in this context. You should therefore ensure that you are using the correct word in a certain context. Supplementary to a spell checker you should also invest in the best dictionaries and thesauruses that you can afford. We recommend that you consult the *Oxford South*

African Concise Dictionary 2 ed and *Oxford Thesaurus of English* 3rd ed revised. Also, the trilingual legal dictionary of Hiemstra & Gonin is available electronically at Juta.

2.7 Maintain user-friendly language

Write intelligibly, simply and clearly without being familiar and intimate. Avoid lengthy or complicated words or phrases. If you use it to appear clever or to artificially extend the word length of an assignment, you are only fooling yourself (or in a couple of years, your clients or colleagues) and not the lecturer.

The current trend in law is more user-friendly or plain language. This means that law practitioners should use comprehensible language to help lay people understand complicated legal issues.

The media software company Adobe has released its in-house legal writing guide so that other lawyers can benefit from it. We recommend you obtain a copy thereof since it can help you create simpler, more user-friendly documents – especially “Guidelines for Writing Clearly” from page 16. It can be downloaded from <http://www.adobe.com/legal/legal-innovation.html>. Note that Adobe’s style and referencing guidelines differ from those of the Faculty and that some words in the document are spelled in terms of United States of America spelling conventions.

Example:

“Guidelines with regard to extent and content are dealt with herein below . . .” is unnecessarily clumsy. *“Guidelines about extent and content are set out below . . .”* is shorter and simpler.

Remember:

“The smaller the words, the larger the audience”.³

2 8 Use concrete words or phrases rather than abstract words or phrases

It improves the clarity, factuality and comprehensibility of your writing, and simplifies the task of the reader. It also helps to avoid ambiguities and vague statements.

Examples:

“The majority of the voters . . .” The impact of this sentence, with the abstract word *“majority”*, could be improved by a concrete fact. For example: *“70% of the voters . . .”*

“The documentation concerned . . .” gains impact if you are concrete and specific. For example: *“The client file and the e-mail correspondence . . .”*

Remember:

³ Law Society of South Africa (L.E.A.D) Practice Manual *Business Writing Skills* (2011) 8.

Circumstances may occur in the legal profession where a specific case may require you to use abstract words or phrases. For example, if you as a lawyer want to test the reaction of an opposing party for strategic reasons, but you do not necessarily want to provide the opposing party with all the information you may possess about the issue, it may be suitable to use abstract words or phrases.

However, your lecturer will rarely expect you to use abstract words or phrases – on the contrary, it will indicate that you are uncertain or that you do not know your work well enough!

2.9 Maintain the correct register

Aim for a fairly formal academic tone. The simple, user-friendly style referred to above does not mean that you should use slang, clichés (hackneyed sayings with no impact any longer, for example “role players” or “at grassroots level”), SMS or colloquial language. For example, avoid informal expressions such as “iron out problems” (instead of “solving problems”) and “put a proposal together” (instead of “draw up a proposal” or “design a proposal”). Also, try to avoid emotional expressions and unnecessary descriptions such as “hugely painful” or “terribly traumatic”.

Write in the third person – or simply make the statement without referring to yourself or somebody else – except where you are asked for your opinion on the issue.

2 10 Build healthy sentences

Good sentence construction forms the basis of good legal writing. Master it. You should especially remember the following:

- Keep your sentences as short as possible (fewer errors are also made in this way). If you do have to use a longer sentence, use punctuation marks to simplify the reading process.⁴ Shorter sentences are quicker and easier to read. It facilitates your lecturer's reading and, later in practice, that of your clients or colleagues. A reader who reads easily is a positive reader!
- A sentence should have a subject and a predicate (otherwise it is not a sentence). This means that a sentence should have a verb (or verbal group) that relates directly to the subject. The subject is that word or part of the sentence to which the verb/verbal group will relate.
- Where you are able to, use a single verb instead of a verbal phrase.

Example:

"The trade union leaders have reached the decision that . . ."

This is a verbal phrase in action. "The trade union leaders have decided that . . ." This is a powerful, single verb in action. It is shorter and has the most impact.

- Choose, where possible, the simplest word with the fewest syllables if you have a choice between words that, in your context, have similar meanings (synonyms).

⁴ S I Strong *How to write law essays and exams* 3 ed (2010) 144.

- Use punctuation marks in your sentences like you would use road signs when you drive.
- Ensure that your sentences are linked to each other. (Use the connecting words or phrases provided below.) Your reader should be able to see how a sentence relates to the previous and the following sentence. This is called cohesion. Without cohesion, your reader will be unable to understand your argument because your sentences would appear loose and unrelated to each other.

2 11 Structure good paragraphs

The purpose of paragraphs is to offer your writing to your reader in “consumable” format (“bite-sized”). Keep them as short as possible. Please also note the following:

- A paragraph is a unit that is centred on a single idea or point. When this idea or point has been concluded, you should start a new paragraph for a new idea or point.
- A paragraph may – only for exceptional emphasis – even consist of a single sentence.
- Provide a logical, reader-friendly flow within and between paragraphs. Your **reader should understand what the relation is** between the end of one paragraph and the beginning of the next. **Use connecting words or phrases to help you with this.**

<p><u>Examples:</u></p>

- To indicate condition: 'on condition that', 'if', 'unless', 'provided that'
- To indicate time: 'firstly', 'secondly', 'to start with', 'subsequently', 'thereafter'
- Cause: 'because', 'owing to', 'whereas', 'seeing that'
- Contrast: 'against this', 'nevertheless', 'however', 'but', 'in contrast to', 'although'
- Similarity: 'similarly to', 'in accordance with', 'likewise'
- Result: 'consequently', 'thus', 'therefore', 'hence', 'as a result of'
- Examples and illustration: 'in the case of', 'for example', 'as an example', 'by way of illustration', 'with reference to'
- Additional facts/information: 'besides this', 'and', 'as well', 'also', 'further'

2 12 Use active verbs rather than passive verbs

The active use of verbs is generally considered the best style of writing. It enlivens your writing and makes it precise. It therefore facilitates the task of your reader.

<u>Example:</u>	
Passive	The premises will need to be vacated before the deed of sale can be signed.
Active	The occupant, John Black, will need to vacate the premises (situated at 10 XYZ Street, Stellenbosch)

	before the seller, Thabo Moloi, and the purchaser, Sarah Black, can sign the deed of sale.
--	--

However, there are exceptions to this rule.⁵ Use the passive voice when you deliberately do not want to be too specific, do not want to sound too critical, want to soften information, or want to emphasise a specific part of a sentence.

2 13 Formatting and decoration

Do not frame assignments and refrain from using decorative front pages, fancy borders, or extravagant binding. Background styling is also unsuitable in an academic paper. It will not earn you more marks.

Although it is unlikely, your lecturer may provide you with specific instructions regarding style and layout that differ from those in the guide. Only in those instances are you allowed to deviate from these rules. Such a deviation does not affect the requirements in this guide and those assignment-specific requirements should not be followed in other law modules.

The following rules regarding style and layout apply to any assignment which you are required to complete at the Faculty. Even though it is unlikely, your lecturer may provide you specific style and layout guidelines which from these rules. Only deviate from these rules in such circumstances.

Headings

- **Font: Arial**

⁵ L.E.A.D. *Business Writing Skills* (2011) 13.

- **Size: 12**
- **Line spacing: 1.5**
- **Alignment: Justified**
- **Indentation: Used only to align subsequent lines of heading text.**
- **Paragraph spacing: 12pt before.**

[Note: Please see the section below on “Headings, numbers and bullets” for more information on the format applicable to headings.]

Main text

- **Font: Arial**
- **Size: 12**
- **Line spacing: 1.5**
- **Alignment: Justified**
- **First line indentation: 0.5 (every paragraph, does not apply to headings).**

Footnotes

With a correctly formatted document, Word should use these by default, but, if it does not, this is the format you should apply.

- **Font: Arial**
- **Size: 10**
- **Line spacing: 1.0**
- **Alignment: Justified**
- **Indentation: Used only to align subsequent lines of footnote text.**

Separate quotations

- **Font: Arial**
- **Size: 11**
- **Line spacing: 1.0**
- **Indentation: First and subsequent lines of text are left indented 0.5cm.**
- **Paragraph spacing: 6pt after last line of text.**

2.14 Last, but not least

When your paper is complete, you should still have enough time to read through it critically, make corrections, reread it once again and make corrections again. Rewriting is inseparable from good writing. It requires time and patience! (The good news is that it becomes easier and quicker with practice.) It is therefore in your best interest to acquire the habit of asking yourself the following questions – as objectively as possible – at the end of an assignment:

1	Is it clear (will my reader understand it)?
2	Is it concise (is it free of vagueness, unnecessary words, phrases or repetitions)?
3	Is it complete (have I addressed the entire assignment, are my sources cited correctly, are my references accurate and in line with the Faculty's referencing guidelines contained in this guide, and are my cover page, index and bibliography in order)?
4	Is it correct (did I understand the assignment correctly, are my facts, identification and exposition of the legal issue and the

	application thereof to the facts, and my spelling, grammar and academic register correct)?
5	Does the text flow (do sentences and paragraphs follow upon one another logically and meaningfully)?
6	Did I keep to the prescribed word count?

It requires practice to observe one's own work objectively, but a simple mind game might help:

Imagine that you are the lecturer. It is late at night. The assignment of the student in front of you (remember, this is your own) is one of many that you are marking tonight and there are many more to follow. You are tired and your patience is wearing thin. You are after all just a normal human being even though you are a clever law lecturer ... imagine this and see for yourself how critical one can become in such a situation!

Another dyed-in-the-wool tip is to read your assignment aloud to yourself – you will be surprised how many errors suddenly jump out of your text like little red flags. Alternatively, you can ask someone else to read and comment on your assignment.

Also, remember that the writing consultants are there to help you at any stage of the writing process.

And when you become completely despondent about your writing abilities (or the lack thereof), remember the words of the golf legend, Gary Player: “The harder I practice, the luckier I get.”

3 Specific language and style issues

3 1 Punctuation marks

3 1 1 *Dash and hyphen*

- These two punctuation marks have different functions:
- The **dash** is longer than a hyphen and used with spaces on either side. You can use it when you want to explain or emphasise something in a sentence.

Example:

The judge ordered that the defendant – who lost the case – should bear all the costs.

- Use dashes sparingly; rather use commas. Too many dashes, and thus too many explanations or emphases in your sentences, hinder the flow of the text. It impairs your paper's readability.

Remember:

If your paper does not read easily, the chances are good that your mark will be negatively affected.

- The **hyphen** is short and used without spaces on either side. It is used to join words and to separate syllables of a single word.
- Your computer often hyphenates words automatically at the end of a line. When you are reviewing your paper, ensure that the hyphen at the end of the line appears

after the word division. If it appears at the beginning of the next line in front of the following section of the word, it is incorrect.

3 1 2 *Full stop and abbreviations*

- Remember to place a full stop at the end of each sentence. A full stop is always followed by a space. Also remember that abbreviations in references in legal writing are used without full stops. Spaces in abbreviations should also be avoided.
- Do not use abbreviations in the main text, except if a proper name is used repeatedly. In such a case, the first full citation of the proper name should be followed by the abbreviation (in italics if the source is a case), enclosed in double quotation marks and brackets – you thus define the longer source title or reference as something shorter to subsequently be referred to. The abbreviation should be consistently referred to thereafter. Use abbreviations as far as possible in the footnotes. [**Note:** see the section on referencing in this guide for further information on the use of abbreviations in footnotes.]

Examples:

According to **section 6** of the Constitution of the Republic of South Africa, 1996 (“Constitution”)...

[Note the use of the small letter “s” for “section” and not “s 6” or “sec 6” in the main text.]

The Treatment Action Campaign (“TAC”) aims to influence government policy in various ways. The TAC has often stated that...

- Abbreviations which are commonly used in footnotes to legal articles include the following:

art – article (unless legislation customarily requires capital A)
arts – articles (unless legislation customarily requires capital A)
ch – chapter
chs – chapters
cl – clause
cls – clauses
ed – editor; edition (second edition = 2 ed)
eds – editors; editions
GG – Government Gazette
GN – government notice
n – footnote; note
nn – footnotes; notes
no – number
nos – numbers
OS – original service
para – paragraph
paras – paragraphs
Proc – proclamation
reg – regulation
regs – regulations

RS – revision service

s – section

ss – sections

sch – schedule

schs – schedules

subs – subsection

subss – subsections

vol – volume

vols – volumes

- Do not use abbreviations such as *op cit*, *loc cit*, *ibid* and *idem* and “p” or “pp” for “page” or “pages”.
- If you refer to a judge in your paper, the judge’s surname should be followed by his or her official title in capital letters.

Example:

“[T]he judgment of Steyn CJ in [*Ex parte die Minister van Justisie: In re S v Van Wyk* 1967 1 SA 488 (A)] is ripe for reconsideration by the Constitutional Court in South Africa.”⁶

Examples of official titles:

J – Judge

JA – Judge of Appeal

CJ – Chief Justice

⁶ J Burchell *Principles of Criminal Law* 4 ed (2013) 138.

DCJ – Deputy Chief Justice
JP – Judge President
DJP – Deputy Judge President
AJ – Acting Judge
AJA – Acting Judge of Appeal
P – President

3 1 3 Comma

- Do not use a comma to separate the subject from the verb.

Example:

- An eighteen-year old in California is now considered an adult.

[**Note:** The incorrect use would have included a comma after “California”.]

3 1 4 Other comma uses

- To separate independent clauses when they are joined by any of these seven coordinating conjunctions: *and*, *but*, *for*, *or*, *nor*, *so*, *yet*.

Example:

The student explained her question, yet the lecturer still did not seem to understand.

- Use commas after introductory a) clauses, b) phrases, or c) words that come before the main clause.

Examples:

While I was eating, the cat scratched at the door.

Because her alarm clock was broken, she was late for class.

- Use commas to separate three or more words, phrases, or clauses written in a series.

Examples:

The Constitution establishes the legislative, executive and judicial branches of government.

The prosecutor argued that the defendant, who was at the scene of the crime, had a strong revenge motive, and who had access to the murder weapon, was guilty of homicide.

- Remember that a comma is always followed, but never preceded by a space.

3 1 5 Colon

- Use before a quotation and before a list or an explanation that is preceded by a clause that can stand by itself.

Examples:

Before a quotation:

The defendant maintained his innocence:

“Because I have paid the price in full, I do not owe the plaintiff any more money.” **[Note:** Since this sentence is quoted in full, the quotation is a separate quotation and formatted as such. Please

see the sections above on “Formatting and decoration” and below on “Quotations and italics”, respectively, for more information on separate quotations.]

Before a list:

The three stages of an assignment include:

- 1 Collecting information;
- 2 Assimilating information; and
- 3 Editing.

- Use in numeric time indication.

Examples:

09:30 (half past nine a.m.)

16:00 (four o'clock p.m.)

3 1 6 *Ellipsis*

Use the ellipsis only when you want to indicate that irrelevant words, phrases or sentences have been omitted. An ellipsis always consists of only three points or dots.

Example:

According to Quirk and Greenbaum, the distinctions are unimportant ... for nouns with specific reference to definite and indefinite pronouns.

3 1 7 *Capital letters*

The use of capital letters should be limited to proper names, full titles or designations. Do not capitalise important words or phrases for emphasis.

Examples:

the Cape Provincial Division, the Minister of Justice, the Department of Trade and Industry, the Interpretation Act, etc., *but* the judge, the supreme court, the minister, etc.

3 1 8 Quotations and italics

- Try to use quotations sparingly, preferably only as a striking example.
- Try to keep your quotation as brief as possible without sacrificing the authoritativeness of the statement.
- Quotations should correspond exactly to the original version. This means that, where the original makes use of capital letters, for example, your quotation should also include this.
- If a quotation contains a reference to a footnote, it is preferable to indicate that the footnote is omitted, or to insert the content of the footnote in square brackets in the main text.

Examples of quotations containing reference to a footnote:**Main text:**

According to Harms JA:

“The effect of a non-variation clause has been the subject of two judgments of this Court, namely *Shifren* and, latterly, *Brisley v Drotsky*.^{123”}.⁹

Footnote:

⁹ *Telcordia Technologies Inc v Telkom SA Ltd* 2007 3 SA 266 (SCA) para 12 (footnotes omitted).

or

Main text:

According to Harms JA:

“The effect of a non-variation clause has been the subject of two judgments of this Court, namely *Shifren* [SA *Sentrale Ko-op Graanmaatskappy Bpk v Shifren* 1964 (4) SA 760 (A)] and, latterly, *Brisley v Drotsky* [2002 4 SA 1 (SCA)]”.

Footnote:

⁹ *Telcordia Technologies Inc v Telkom SA Ltd* 2007 3 SA 266 (SCA) para 12.

Separate quotations

- When a complete sentence is quoted or the quoted text is longer than three lines, the quotation should be preceded by a colon and must appear as a separate paragraph with the first and subsequent lines of text left indented. **[Note:** Please see the sections above on “Formatting and decoration” and “Quotations and italics” for more information on separate quotations.]
- Ensure that quotations have been checked for accuracy and references comply with the style requirements.

Exception:

Where you quote something that contains a quote in itself, the double quotation (“...”) marks should be replaced by single quotation marks (“...‘...’..”).

Example:

Nicholson J held:

“Of significance are the following comments in 1986 *TSAR* 232 by Van der Walt who states ‘In gevalle soos die wat hierbo vermeld is, herstel die Hof deur verlening van die gevraagde regshulp die versteuring van die *daadwerklike beheer ...*’.”¹²⁴

- Where you have made changes or additions to a quotation, those changes or additions should be placed in square brackets.
- Do not start a quotation with an ellipsis. The quotation may, however, end with an ellipsis.
- Do not type quotations in italics, except when the original quotation is italicised.
- Italics may be used to emphasise words, clauses or sentences. If used for this purpose in quotations, the change must be clearly indicated at the end of the quotations by expressions such as “emphasis added” or “own italics”.
- Underlining is not allowed, especially not as an alternative to italics.
- It is important to remember that quotation marks at the end of a quotation should be placed after the last

punctuation mark (full stop, comma, etc.) within the quotation.

3.2 Headings, numbers and bullets

- It is very important that you make use of headings, subheadings and numbering when you prepare your paper. This makes it easier for the reader to follow your writing without having to stop in the middle of your paper to try and figure out what you are writing about.
- In the headings contained in your assignment, a capital letter should only be used for the first letter of the first word, except where the further use of capital letters in the heading is required. No heading should be written completely in capital letters.

Examples:

- Incorrect: THE PROMISE OF REFORM
- Incorrect: The Promise of Reform
- Correct: The promise of reform

- Headings are consecutively numbered **without automatic numbering**, no headings are underlined, paragraphs are not separated by a full blank line, but only by an indent at the beginning of the new paragraph.
- The following should be used as sparingly as possible:
1) (1) (i) (ii) (I) (III) (a) (d), etc. If the use of one of these

styles is essential, lower case Roman numerals are preferable.

- Bullets may be used to separate entries in non-numbered lists. First level headings are done in **bold**, second level headings are plain, third level headings are done in *italics* and from fourth level onwards headings are plain. For example:

3	Considering foreign law as a foundation for improved principles
3 1	Discussion of international theory
3 2	Examples of international practice
3 2 2	<i>Introduction</i>
3 2 2 1	Hypothesis

When you divide your paper into numbered units or paragraphs, the following style should be used (omitting full stops between numerals):

1

1 1

1 1 1

1 1 2

1 1 3

1 2

2

3

3 1

3 1 1

3 1 1 1

3 1 1 2

3 1 2

3 2

[**Note:** You may use automatic numbering if you change the settings to reflect the requirements set out herein.]

You should never have only one subheading at any particular level. You should rather discuss such ideas in separate paragraphs under the same heading.

Example of how it should *not* be done:

1 Labour legislation

1 1 Unfair dismissal

1 2 Automatically unfair dismissal

2 Employment equity legislation

2 1 Equality ← incorrect use

3 The Basic Conditions of Employment Act

[**Note:** There should not be a heading numbered “2 1” as there is only one subheading under heading “2”. The subheading should therefore be removed:

After correction:

1 Labour legislation

1 1 Unfair dismissal

1 2 Automatically unfair dismissal

2 Employment equity legislation

3 The Basic Conditions of Employment Act

3 3 Numerals

- The point of departure is that numbers below 20 should be written out in words (for example: one, two); numbers of 20 and higher should be expressed as numerals (for example: 21, 22).
- Monetary amounts are written in numbers. Also remember the importance of spaces and commas in the use of monetary amounts. For amounts above R1 000 a space is used, for example “R35 000”. Use a comma between the rand and cents, for example “R360,75”.
- Age is always written in numbers: “The boy was 11 years old.”

- Dates: note the use of words with the numbers, for example “from 2008 to 2010” and “between 2008 and 2010”. Avoid “2008–2010” – it is a more informal style of writing.
- Percentage: always use the % sign and never the word “percentage”, for example “10%” and not “10 per cent” or “ten per cent”. There is no space between the number and the % sign.
- Page numbers: the number of the page to which you refer must always be expressed as numerals.

3 4 Prepositions

- Fixed preposition groups consist of combinations of two or more words that include at least two prepositions. The words in these groups, as well as the order in which they are used, may not be altered.

Examples:

in answer to

by means of

with reference to

on the basis of

with regard to (not with regards to). “Regards” is used, for example, when sending greetings to someone that is, “Give my regards to your parents.”

in respect of

in connection with

as a result of

- If you wish to keep your sentences concise and clear (exactly that which you should be striving for in your writing), you may replace these preposition groups with one word:

Examples:

as a result of – because/due to

on the occasion of – by

by means of – by/through

in connection with – about/regarding

with regard to – about

in respect of – about

by virtue of – by/through

3.5 Verbs

A verb is a word that conveys an action (for example: eat, read, play), an occurrence (for example: happen, become) or a state of being (for example: exist, stand). Verbs have a present tense, to indicate that an action is being carried out, a past tense to indicate that an action has been done and a future tense to indicate that an action will be done. To be grammatically complete, a sentence must have a subject and verb, and present a complete thought. Take care to be consistent with your use of tenses in an assignment.

Example:

Incorrect: "The judge rejected the defence and orders that the defendant pay damages."

Correct: "The judge rejected the defence and ordered that the defendant pay damages."

3 6 Adjectives

Degrees of comparison

- The comparative (second) degree is usually used as follows: with the suffix "-er" or with "more" in front of the word (if it is a long word). Consult a good dictionary for the correct form if you are unsure.
- The superlative (third) degree is usually used as follows: with "the" and the suffix "-est" or "the most" in front of the word (if it is a long word).

Examples:

Large larger the largest

Convincing more convincing the most convincing

Practical tip:

Never merge the two possible forms of the comparative or superlative degrees. It is incorrect for example to use "the most largest".

3.7 Choose the most suitable word

Archaic (old-fashioned) and exaggerated formal words and style

- Try to use modern language as far as possible. However, “modern” does not refer to the language that you would use on Facebook or in SMSs! You have to use correct grammar and in full sentences. Your sentences have to be clear and understandable at all costs and portray respect to your reader.

<u>Examples:</u>	
Afore	before
Amongst	between; during; throughout
Heretofore	until now
Hereof	about, in this regard; of this
Thereupon	directly; suddenly; then
Whosoever	everyone who
Whichsoever	every one that
Whilst	although; during
Whereupon	consequently

The repetition of words with similar meaning (tautology)

- It was mentioned earlier in this guide that good writing implies, *inter alia*, short, concise sentences without any clutter. Another way (in addition to what was mentioned previously) to write clearly and unambiguously is to

eliminate tautology – an accumulation of words with similar meanings.

Examples:

1 The basic fundamental principles upon which the law is founded...

In this context the word “basic” (in any case a word that is often unnecessarily used as a stop word) is similar to “fundamental”. But that is not all. “Principle” also refers to “fundamental” or “foundation”. The sentence could thus be shortened and clarified as follows: “The principles upon which the law is founded . . .”

2 Personally, I feel that the Constitution does not protect all human rights.

The words “personally” and “I” say the same thing – how else would you feel? Improve the sentence in this manner: “I feel the Constitution does not protect all human rights.” Also see what happens to the word “that”.

3 8 Spelling

Words are codes used to convey or receive information. Languages therefore have spelling rules and guidelines in order for people to understand each other. There is also no room for ambiguity and factual errors (both could occur due to spelling) in law or in the academic world. It is therefore important for you as a student – and later as legal practitioner – to spell correctly.

The good news regarding spelling is: there are no grey areas. A word is spelt either correctly, or incorrectly.

Please ensure that your proofing tools (spell checker) are set up in Microsoft Word and set to English (South Africa). You can download the Afrikaans spell checker for Microsoft Word at <http://goo.gl/uelB4l>. Further spelling and grammar assistance is available on the Faculty's Legal Writing blog under the heading Resources at: <http://blogs.sun.ac.za/legalwriting/resources/>.

Words often misspelt:

Correct	Incorrect
accommodate	accomodate
adolescence	addolescence / adoleseence
aggression	agression
argumentative	argumentitive
analyse	analise
apparently	apparrently / apparantly
appealable	appealeble \
appellant	appelant
commission	comission / commision
committee	comittee / commitee
definitely	defnitely or definately
delegate	deligate
disappear	dissappear
discretion	discesion
graffiti	
immediately	graffitti / grafiti
implement	imediately
incredible	impliment

interesting	incredible
irritate	interisting
mysterious	iritate
observant	misterious
opportunity	observent
professional	oppertunity
representative	proffessional
relative	representitive
relevance	relitive
separate	relavence
statutory	seperate
simultaneously	statutory
successful	simltaneously / simultanuously
tolerance	sucesfull / succesful / sucessful
whether	tolarance
	wheather / wether

3.9 General

- Avoid expressions like “the learned judge”, “respectfully” and “with respect”.
- Gender-neutral language is encouraged. This can be promoted by using the plural or by avoiding use of a gender-specific pronoun. If this is not appropriate, use either “he” or “she”, but then do not alternate within a single piece of text, use **“he or she”**, **“he/she”** or **“(s)he”**.

- Where words appear in brackets, punctuation marks (that is, full stops, commas, colons, etc.) must always be placed after the final bracket. However, if a *complete sentence within a paragraph* appears in brackets, the full stop must be placed in front of the last bracket.

Examples:

... these factors are mistake (*error*), fraud (*dolus*), as well as ...

... domestic public procurement regulation is highly fragmented.

(This was also confirmed in the 2002 World Bank CPAR.) Current reforms focus on consolidating ...

THE FACULTY'S REFERENCING GUIDELINES

1 Introduction

The purpose of referencing is essentially twofold:

- 1 1 to acknowledge the intellectual property rights of others and therefore to avoid being accused of committing plagiarism. See the [plagiarism section](#) of this guide for more information; and
- 1 2 to allow the readers of the written work to locate the source material and to learn more about specific cited aspects of the written work.

It is therefore very important that the information contained in your assignment distinguish between information that you have developed and information that you have borrowed from someone else. These referencing guidelines will enable you to draw this distinction and it should be applied to every assignment that you complete at the Faculty.

2 Footnotes

When you use a footnote, the footnote number must always appear after the last punctuation and/or quotation mark.

Footnotes (both in the main text and at the bottom of the page) are consecutively numbered by way of automatic numbering; footnotes are not separated by a full blank line (in other words single line spacing); footnotes appear at the end of each page (footnotes) of the

manuscript and not at the end of the manuscript (endnotes). All footnotes should begin with a capital letter and end with a full stop. If, in your footnote, you refer to relevant sections of legislation using an abbreviation, which is normally written using small letters, you must capitalise the first letter of that abbreviation.

Examples of correct use:

Main text: “it is the best law school”.¹

Footnote: Ss 12 and 14 of the Constitution. [**Note:** sections’ abbreviation is “ss”.]

- Footnote numbers must not be italicised.

Main text: “situated at the heart of Stellenbosch”.¹

- You must include full stops at the end of each footnote entry.

Footnote: Bean *Engaging Ideas* 117.

- Footnote entries must be justified and aligned to the left.

Footnote:

¹ A Boye “How do I create meaningful and effective assignments?” (2011) *Teaching, Learning, and Professional Development Center Texas Tech University* <<http://www.tlpd.ttu.edu/teach/TLTC%20Teaching%20Resources/CreatingEffectiveAssignments.asp>> (accessed 11-12-2012).

- Page references should, if possible, only be referred to in the footnotes.

Main text: “the writer alleges¹” or “according to the court²”

[**Note:** the footnote should refer to the relevant page number]

- Simply refer to pages by providing their respective numbers. The abbreviation “p” for “page” should thus never be used in footnotes.
- Where consecutive pages are referenced, page numbers must be provided in full.

Footnote: 72-79 or 164-178.

- Refrain from using *supra* and *infra* in your assignment. Rather repeat the reference to the sources in its abridged form with the relevant page numbers you want to refer to. In other words, you need not cite the full reference every time you refer to the same source.
- References in the text may be followed by the words “above” and “below”
- The use of *ibid*, *op cit* and/or *loc cit* is not permitted.

Note:

- Where only one source is referred to in a footnote (e.g. *Conradie v Rossouw* 1965 2 SA 589 (C) 593F (full reference) or *Conradie v Rossouw* 593F (abridged reference) and the immediately subsequent footnote(s)

refers to only that source, only the relevant page/paragraph needs to be indicated in the subsequent footnote(s) (e.g. 593F or para 14).

- As soon as a footnote refers to two or more sources, full references or abridged references must be provided in the subsequent footnote.

- Semicolons should separate multiple sources in a footnote from each other.

Footnote:

Bean *Engaging Ideas* 6; A Boye “How do I create meaningful and effective assignments?” *Teaching, Learning, and Professional Development Center Texas Tech University* <<http://www.tlpd.ttu.edu/teach/TLTC%20Teaching%20Resources/CreatingEffectiveAssignments.asp>> (accessed 11-12-2012).

[Note the use of the semicolon between sources.]

3 Referencing various sources

Top tip: All guidelines and examples here, under 3 1 to 3 12, are for references in footnotes. The differences between footnote and bibliography references are explained under 3 13.

3 1 Books

- The first reference to a book should provide the following information:

- Initial(s) and surname(s) of author(s) - where there are two authors, do not write “and”; rather use an ampersand (“&”);
 - If there are more than two authors, the initials and surnames of all the authors, separated by commas and an ampersand (“&”) before the last initial and surname, should appear in the first citation;
 - Full title of book in italics;
 - Only second or further editions if any, are cited;
 - Year of publication in brackets; and
 - Page(s) to which reference is made.
- If a work consists of more than one volume, the number of the volume, in italicised Hindu-Arabic or Roman numerals, depending on the numerals used in the publication, should be inserted after the title, without being preceded by vol or bk. This applies to both the full and abridged titles.

Examples:

Footnotes:

(first/full reference)

PJ Schwikkard & SJ Van der Merwe *Principles of Evidence* 2 ed (2002) 211.

N Redlich, J Attanasio & JK Goldstein *Understanding Constitutional Law* 3 ed (2005) 78.

I Currie & J de Waal (eds) *The new constitutional and administrative law* I (2002) 113.

FJ van Zyl & JD van der Vyver *Inleiding tot die Regswetenskap*

2 ed (1982) 526.

- As per the above examples, the full title of a book is cited where the book is referred to for the first time. **For references directly following one another only a short reference, consisting of descriptive keywords is used.**
- Subsequent references to a book should provide the following information:
 - Surname(s) of author(s) – where there is more than one author, do not write “and”; rather use an ampersand “&;
 - Where there are more than two authors, only the first author's surname, followed by “et al” is cited with an abridged title. “et al” should not be italicised;
 - Abridged title of book in italics;
 - Page(s) referred to.
- In other words, initials, edition number, volume number (if any) and the date of publication are omitted from subsequent references.

Examples:

Footnotes:

(abridged reference)

Schwikkard & Van der Merwe *Principles* 211.

Redlich et al *Understanding Constitutional Law* 78.

Currie & De Waal (eds) *The new constitutional and administrative law* 113.

- Where the same source, and only that source, is referred to in immediately consecutive footnotes, it is sufficient to cite only the page number in the consecutive footnotes. It is then not necessary to use the abridged title. This applies to books as well as other sources that use page numbers – such as journal articles.

Example:

Footnotes:

¹ PJ Schwikkard & SJ Van der Merwe *Principles of Evidence* 2 ed (2002) 211.

² 217-218.

³ 224.

⁴ 2003 1 SACR 143 (SCA).

⁵ Schwikkard & Van der Merwe *Principles* 228.

[Note the use of the abridged source (footnote 5) when directly subsequent citations of sources are interrupted by a new source (here a case): 2003 1 SACR 143 (SCA).]

3.2 Chapters in edited collections (chapters in books)⁷

- The first reference should contain the following information:
 - Initial(s) and surname(s) of author(s) of the chapter - where there are two authors, do not write “and”; rather use an ampersand (“&”);
 - If there are more than two authors, the initials and surnames of all the authors, separated by commas and an ampersand (“&”) before the last initial and surname, should appear in the first citation;
 - Title of the chapter in double quotation marks, not italicised and followed by the word “in”;
 - Initials and surname(s) of the editor(s) followed by “(ed)” or “(eds)”;
 - Title of the book in italics;
 - Year of publication in brackets; and
 - First page number of the chapter followed by the cited page number(s). Do not use “at” between the first and cited page number(s).

Example:

Footnote:

(full reference)

M Tushnet “Comparative Constitutional Law” in A Reimann & R

⁷ An edited collection is a book that is divided into chapters, each of which is written by a different author or group of authors.

Zimmermann (eds) *The Oxford Handbook of Comparative Law* (2006) 1225 1229-1230.

- Subsequent references to a chapter in a book should contain the following information:
 - Surname(s) of author(s) of the chapter – where there are two authors, do not write “and”; rather use an ampersand (“&”);
 - Where there are more than two authors, only the first author's surname, followed by “et al” is cited with an abridged title. The expression “et al” should not be italicised;
 - Abridged title of the chapter in double quotation marks, not italicised, and followed by the word “in”;
 - Abridged title of the book in italics;
 - The cited page number(s).
- In other words, initials, names of editors, year of publication and the first page of the chapter are omitted from subsequent references.

Example:

Footnote:

(abridged reference)

Tushnet “Comparative Constitutional Law” in *Handbook of Comparative Law* 1231-1233.

3.3 Loose-leaf publications

- The first reference, where the particular section of the loose-leaf publication is attributed to a specific author or authors, should contain the following information:
 - Initials and surname(s) of the author(s) of the section - where there are two authors, do not write “and”; rather use an ampersand (“&”);
 - If there are more than two authors, the initials and surnames of all the authors, separated by commas and an ampersand (“&”) before the last initial and surname, should appear in the first citation;
 - Title of the section in double quotation marks followed by the word “in”;
 - Initials and surname(s) of the editor(s) followed by (ed) or (eds);
 - Title of loose-leaf publication in italics;
 - Second and further editions, if any;
 - Year of publication of the current update service of the loose-leaf (not the section/chapter) preceded by OS (definition: original service) or RS (definition: revised service) with the service number in brackets (where indicated); and
 - Cited page reference.

Example:

Footnote:

(full reference)

T Roux “Democracy” in S Woolman, T Roux & M Bishop (eds)
Constitutional Law of South Africa 2 ed (RS 1 2009) 10-3 – 10-22.

[Note: Page ranges are usually indicated using a hyphen and no spaces between the page numbers, however, as loose-leafs themselves use hyphens in their page number format we insert spaces between the page numbers and the hyphens to enable the reader to distinguish the page numbers from the page range.]

- Subsequent references are done the same way as abridged references of chapters in books:

Example:

Footnote:

(abridged reference)

Roux “Democracy” in *CLOSA* 10-22.

[Note: There are no spaces because here we are referring to only one page, 10-22.]

- If a particular section of a loose-leaf is not attributed to a specific author, the first reference should contain the following information:
 - Initials and surname(s) of the author(s) or editor(s) followed by (ed) or (eds);
 - Title of the loose-leaf publication in italics;

- Second and further editions if any;
- Year of publication of the current update service of the loose-leaf (not the section/chapter) preceded by OS (definition: original service) or RS (definition: revised service) with the service number in brackets (where indicated);
- Cited page reference.

Example:

Footnote:

(full reference)

E du Toit, F de Jager, AP Paizes, A St Q Skeen & SE van der Merwe *Commentary on the Criminal Procedure Act* (RS 44 2010) 5-34A.

- Subsequent references are done the same way as abridged references of books:

Example:

Footnote:

(abridged reference)

Du Toit et al *Commentary on the CPA* 5-34A.

3 4 Theses and dissertations

- The first reference should contain the following information:
 - Initials and surname of author;
 - Full title in italics;

- Name of the degree for which thesis was presented;
- Name of the university;
- Year (in brackets); and
- Page number(s) to which reference is made.

Example:

Footnote:

(full reference)

S Scott *Unjust Enrichment by Transfer in South African Law: Unjust Factors or Absence of Legal Ground?* DPhil thesis, Oxford University (2005) 8-9.

- The abridged title is the same as with subsequent references of books:
 - Surname of author;
 - Abridged title of thesis;
 - Page number(s) to which reference is made.

Example:

Footnote:

(abridged reference)

Scott *Unjust Enrichment* 8-9.

3 5 Official publications and South African Law Reform Commission publications

- Official publications and SA Law Reform Commission Reports are, generally, the same as books. If a report has a number, the number is used instead of the date.

Example:

Footnote:

(full reference)

RSA First Report of the Constitutional Committee of the President's Council PC 3/1982 112-115.

[**Note:** In the above example the information refers to the following:

RSA – author

Title – *First Report of the Constitutional Committee of the President's Council*

PC3/1982 – reference number

112-115 – page reference.]

Example (abridged reference):

Footnote: *RSA First Report of Constitutional Committee* 112-115.

3 6 Unpublished materials

- References to unpublished material should be **avoided as far as possible**. If it is used, it should be treated as

books and include an indication of where the relevant material can be obtained.

Examples:

Footnotes:

(full reference)

LM du Plessis *The Courts, the Legal Profession and the Legal Process in a future South Africa* (1989) unpublished paper presented at a conference on *A New Jurisprudence for a Future South Africa* hosted by the Centre for Human Rights Studies at the University of Pretoria, 26-10-1990 (copy on file with author).

D Banisar *Whistleblowing: International Standards and Developments* (2006) unpublished paper prepared for the *First International Conference on Corruption and Transparency* at Mexico City, 23-03-2006 – 25-03-2006 (available at www.corrupcion.unam.mx/documentos/investigaciones/banisar_paper.pdf).

Examples:

Footnotes:

(abridged reference)

Du Plessis *Courts, Legal Profession and Legal Process*.

Banisar *Whistleblowing: International Standards and Developments*.

3 7 Journal articles

- When you refer to a journal article, your first reference should contain the following information:
 - Initial(s) and surname(s) of author(s) - where there are two authors, do not write “and”; rather use an ampersand (“&”);
 - If there are more than two authors, the initials and surnames of all the authors, separated by commas and an ampersand (“&”) before the last initial and surname, should appear in the first citation;
 - Title of article in double quotation marks (not italics);
 - Year of publication in brackets;
 - Volume number, but not the issue number;
 - The recognised abbreviation of the journal name in italics; and

[Note: In the bibliography, you use the journal’s full title.]

- First page of article followed by page(s) to which you refer. Do not use “at” between the first and cited page numbers.
- If an article is published in instalments, the specific instalment to which reference is made should be identified in the same way as the volume number of a book. The Roman numeral follows directly after the title of the article, inside the quotation marks. It is not necessary to identify the instalment in an abridged reference to an article.

Example:

Footnote:

(full reference)

C Albertyn & B Goldblatt “Facing the Challenge of Transformation: Difficulties in the Development of an Indigenous Jurisprudence of Equality” (1998) 14 *SAJHR* 248 254.

- Subsequent references should contain the following information:
 - Surname(s) of author(s) – where there is more than one author, do not write “and”; rather use an ampersand (“&”);
 - Where there are more than two authors, only the first author's surname, followed by “et al” is cited with an abridged title. “et al” should not be italicised;
 - Year of publication in brackets;
 - The recognised abbreviation of the journal name in italics;
 - Page(s) to which you refer; and
 - Where there are more than two authors, only the first author, followed by “et al” is cited with an abridged title. “et al” is not italicised.
- The initials, title of article, volume number and first page are therefore omitted from subsequent references.

Example (abridged reference):

Footnote:

(abridged reference)

Albertyn & Goldblatt (1998) *SAJHR* 254.

Examples:

An electronic journal article

Footnote:

(full reference)

N Kornet “Contracting in China: Comparative Observations on Freedom of Contract, Contract Formation, Battle of Forms and Standard Form Contracts” (2010) 14 *Electronic Journal of Comparative Law* 1 3-4 <<http://www.ejcl.org/141/art141-1.pdf>> (accessed 07-12-2010).

[Note the page number references in this example. Since a pdf has page numbers just like a printed version, we use these. When the digital page numbers differ from those “printed” on the pdf, use the “printed” numbers. Also note their location relative to other items in the reference. In this example, it is shown that the journal article starts on page 1 and 3-4 are referred to.]

Footnote:

(abridged reference)

Kornet *Electronic Journal of Comparative Law* 4.

[**Note:** If we had the journal’s abbreviation, we would it here instead of its full title.]

3 8 Reviews and case comments (in a journal)

- Reviews and case comments as far as possible follow the conventions applying to articles.
- The first reference to a review or case comment should contain the full title under which it originally appeared. Thereafter an abridged reference is used.

Case comments

Footnotes:

(full reference)

LM du Plessis & M Olivier “*Ngqumba v Staatspresident, Damons NO v Staatspresident, Jooste v Staatspresident* 1988 4 SA 224 (A)” (1989) 4 *SA Public Law* 134 136-137

(abridged reference)

Du Plessis & Olivier (1989) *SA Public Law* 136-137.

Book review

Footnotes:

(full reference)

T Roux “*Constitutional Property Law* by A J van der Walt” (2007) 18 *Stell LR* 207 208.

(abridged reference)

Roux (2007) *Stell LR* 208.

3 9 Articles in printed media

- Articles in printed media, such as newspaper and magazine articles, are treated the same as journal articles except that the name of the newspaper or magazine is not abbreviated.

Example:

Footnote:

(full reference)

LM du Plessis “SA Howe – Grammofone of Politieke Kanaalgrawers?” *Rapport* (18-05-1986) 23 28.

Example:

Footnote:

(abridged reference)

Du Plessis *Rapport* (18-05-1986) 23.

3 10 Reports

- Reports, such as reports from governmental organisations or companies, are treated the same as books. If the author is not named, use the organisation’s name.

Example:

Footnote:

(full reference)

Legal Resource Centre, Iranti-org & Gender Dynamix *Report on the Civil, Political and Socio-economic rights of transgender and*

intersex persons in South Africa under the African Charter on Human and Peoples Rights in response to the second combined periodic report of the government of South Africa and the initial report under the Protocol to the African Charter on the Rights of Women in Africa (2016) 1 8.

Example:

Footnote:

(abridged reference)

Legal Resource Centre, Iranti-org & Gender Dynamix *Report* (2016) 17-18.

3 11 Case law

- The name of the case must be in italics and is cited in the main text. Further particulars are set out in the footnote.
- Where a case is referred to in the main text, through a quotation or by a principle or fact from the case, but not cited, the full case name and law report reference is cited in the footnote.
- It is permissible to use an abbreviated version of the case name in the main text, e.g. “*Grootboom* case”. However, abbreviated case names are *not* used in footnotes where full case names must be provided when a case is referenced. Footnote references directly

following a full reference must only mention the paragraph.

Example (paragraph reference directly following a full reference):

Footnotes:

¹ *Government of the Republic of South Africa v Grootboom* 2001

1 SA 46 (CC) para 96.

² Para 112.

³ Paras 115-116.

- Do not refer to more than one set of law reports for any particular case. Choose a reference and be consistent.
- No brackets are placed around the volume number of the law report.
- Always refer to the reported versions of cases. It is only if the case is not reported that you may refer to the internet reference of the case.
- **Unreported judgments** should be cited as follows:
 - the name of the case;
 - a reference to the jurisdiction abbreviated in the language in which the contribution is written;
 - the date on which the judgment was given (in the form dd-mm-yyyy); and
 - the case number.
- Where a case is referred to in the main text through a quotation or by a principle or fact from the case, but not cited, the full reference and law report reference are

cited in the footnote.

Examples:

Reported cases:

Main text:

Government of the Republic of South Africa v Grootboom
("Grootboom").¹

[**Note:** neither the brackets, nor the quotation marks are in italics.]

Footnote:

2001 1 SA 46 (CC) para 96.

Unreported cases:

Footnote:

Waks v Jacobs en die Stadsraad van Carletonville TPD 30-10-1989 case no 5971/89.

Judgments only available electronically

Footnotes:

Strydom v Liebenberg [2007] JOL 20689 (SCA).

Esau v Minister van Veiligheid en Sekuriteit (100/2008) 2009
ZANCHC 24 (4 May 2009) SAFLII

<<http://www.saflii.org/za/cases/ZANCHC/2009/24.html>>

(accessed 10-12-2010).

**Or, when a case is not specifically mentioned in the main text,
but only referred to in a quotation or by a principle or fact
from the case:**

Footnote:

Government of the Republic of South Africa v Grootboom 2001 1

- Punctuation marks and brackets should be omitted except in post-1946 references where the jurisdiction reference in capital letters should be placed in round brackets.
- After the first full reference to a case an abridged reference can be used in the main text or footnotes. The abridged reference must contain the name or names of the party or parties and the relevant page or paragraph reference.
- Designations such as “and Another/Others” or “en ’n Ander/Andere” should be omitted, but not “NO” or “NNO”. Where, however, “NNO” is preceded by “and Another/Others” or “en ’n Ander/Andere”, the latter designations are also retained.
- Words like “on” or “at” preceding a page reference are unnecessary. Only the relevant page number(s) should be mentioned. Where paragraphs are also numbered, e.g. A, B, C, etc. (as in the SA Law Reports), paragraph references should preferably be included.

Examples (full and abridged references):

Full references:	<p><u>Main text:</u> <i>Government of the Republic of South Africa v Grootboom</i> (“<i>Grootboom</i>”)¹</p> <p>Footnote: ¹ 2001 1 SA 46 (CC) para 96.</p>
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Abridged	<u>Main text:</u> In <i>Grootboom</i> ¹ the court held that ...
Reference:	<u>Footnote:</u> ¹ Para 96.
Full reference:	<u>Main text:</u> <i>POPCRU obo Maseko v Department of Correctional Services</i> (“ <i>POPCRU</i> ”) ¹
	<u>Footnote:</u> ¹ 2011 2 BLLR 450 (AH) para 37.
Abridged	<u>Main text:</u> In <i>POPCRU</i> ¹ the court held that ...
Reference:	<u>Footnote:</u> ¹ Para 37.
Full reference:	<u>Main text:</u> <i>Dadoo Ltd v Krugersdorp Municipal Council</i> (“ <i>Dadoo</i> ”) ¹
	<u>Footnote:</u> ¹ 1920 A 530 544.
Abridged	<u>Main text:</u> In <i>Dadoo</i> ¹ the court held that ...
Reference:	<u>Footnote:</u> ¹ 543F-544B.

3 12 Legislation

- The first reference to legislation contains the name, number and year in the main text. Thereafter, only the name is used.
- Legislation need not be referenced in footnotes. Only where the specific section referred to is not mentioned in the main text is it footnoted as follows:

Example:

Main text: The Interpretation Act 33 of 1957 (“Interpretation Act”) deals with...

- Legislation need not be referenced in footnotes. Only where the specific section referred to is not mentioned in the main text is it footnoted as follows:

Example:

Main text: The Interpretation Act 33 of 1957 (“Interpretation Act”) provides an important distinction...

Footnote: ¹ S12 of the Interpretation Act.

[Note: There is no space between S and 12.]

3 11 1 *The Constitution*

- It is important to note that the Constitution is no longer cited as Act 108 of 1996. The official title of the Constitution is: **Constitution of the Republic of South Africa, 1996.**

Example:

Main text: Section 9 of the Constitution of the Republic of South Africa, 1996 (“Constitution”) provides that...

3 11 2 *Bills and draft legislation*

- References to subordinate legislation should preferably also identify the *Government Gazette* in which it appears.

Examples:

Footnotes:

Proc R138 in GG 8331 of 06-08-1982.

(for proclamations)

GN R 3 in GG 7356 of 02-01-1981.

(For regulations; government notice).

Note:

References to Bills must include the bill number for the final version or the *Government Gazette* information for draft versions.

Examples:

Footnotes:

The Sectional Titles Schemes Management Bill B20-2010.

The Sectional Titles Schemes Management Bill (draft) in GN R1447 GG 32666 of 30-10-2009. (for Bills)

Old authorities: Accepted usages should be followed whenever possible. Where no fixed conventions exist, older authorities are to be cited like any modern book.

3 13 Internet sources

- Referencing electronic sources is only permitted where the source is only available electronically.
- When you refer to an internet site, you generally need to provide the following information in your first reference:
 - Initials and surname(s) of the author(s) or editor(s) or the name of the institutional author, editor or compiler.If no author, “Anonymous” should be used.

- Title of document referred to in double quotation marks;
- Date of electronic publication or latest update of website;
- Title of website, in italics;
- <URL address> in brackets (< >) which should lead directly to the cited document or text. Remember to remove the hyperlink from the text of the article;
- The date on which you last accessed the website in brackets (accessed dd-mm-yyyy).

Examples:

Websites

Footnote:

(full reference)

P de Vos "Fifa World Cup: Bad for Human Rights?" (29-01-2010)

Constitutionally Speaking

<<http://constitutionallyspeaking.co.za/fifa-world-cup-bad-for-human-rights/>> (accessed 07-12-2010).

Media / Video

Footnote:

(full reference)

E McArdle "FutureEd 2: A Major Conference explores how Legal Education will change amidst Rapid Globalization (Video)" (02-12-2010) *Harvard Law School* <<http://www.law.harvard.edu/news/spotlight/classroom/futureed-conference.html>> (accessed 07-12-2010).

- Subsequent references should contain the following information:
 - Surname of the author or editor. If no author, “Anonymous” should be used;
 - Full title of document in double quotation marks;
 - Title of website in italics.
- Note that if none of the information required for subsequent references is available, the full citation must be used for that specific source, including the URL.

Examples:

Footnotes:

(abridged reference)

De Vos “Fifa World Cup: Bad for Human Rights?” *Constitutionally Speaking*.

McArdle “FutureEd 2: A Major Conference explores how Legal Education will change amidst Rapid Globalization (Video)” Harvard Law School.

- When referencing international sources, you are advised to consult your lecturer for the referencing guidelines to be followed, for example, OSCOLA 2006 (Oxford Standard for Citation and Legal Authorities) which is followed in International Law 341. An electronic version is available at: www.law.ox.ac.uk/oscola.

3 14 Bibliography

- All the sources to which you refer must be

comprehensively described in a bibliography at the end of the assignment. Do not include sources in your bibliography which you do not refer to in your text. The purpose of the bibliography is to provide your reader with a list of sources you used. The exact place in the source to which you referred is not important here, but you refer to the source in its entirety. The information provided in a bibliography generally includes:

- the surname(s) of the author(s)/editor(s) of the work;
 - the first author/editor's surname is cited first, followed by his initial;
 - the full title of the article/book;
 - date of publication in brackets;
 - the volume number of the relevant law journal;
 - the full title of the journal – **not abbreviated as in the footnotes**;
 - the publisher (of a book or edited collection);
 - the page range of the relevant article or book chapter (edited collection) – that is the first to the last page (for example, 120-134).
- Order items per type under headings and alphabetically per first author's surname within headings.

[Note that only the first author's surname is written after her initial(s).]

<u>Examples of entries in a bibliography format:</u>

Books:

Currie I & J de Waal *The Bill of Rights Handbook* 5 ed (2005), Cape Town: Juta & Co Ltd.

Klaaren J (ed) *A Delicate Balance: The Place of the Judiciary in a Constitutional Democracy* (2006), Cape Town: SiberInk.

Chapters in edited collections:

Tushnet M “Comparative Constitutional Law” in A Reimann & R Zimmerman (eds) *The Oxford Handbook of Comparative Law* (2006) 1225 -1258, Oxford: Oxford University Press.

Loose-leaf publications:

Roux T “Democracy” in S Woolman, T Roux & M Bishop (eds) *Constitutional Law of South Africa* 2 ed (RS 1 2009) 10-3 – 10-22.

Theses or dissertations:

Scott S *Unjust Enrichment by Transfer in South African Law: Unjust Factors or Absence of Legal Ground?* DPhil thesis Oxford University (2005).

Official publications:

RSA *First Report of the Constitutional Committee of the President's Council* PC 3/1982.

Bills and draft legislation:

[**Note:** In the examples here, the words on the left (e.g. “Proclamations”) are merely indicative of the type of document the original is (e.g. a bill). These words and the colons preceding them should not be included in a bibliography.]

Proclamations:

Proc R138 in GG 8331 of 06-08-1982.

Regulations:

GN R 3 in GG 7356 of 02-01-1981.

Bills:

The Sectional Titles Schemes Bill (draft) in GN R1447 GG 32666 of 30-10-2009.

Unpublished sources:

Du Plessis LM *The Courts, the Legal Profession and the Legal Process in a Future South Africa* (1989) unpublished paper presented at a conference on *A New Jurisprudence for a Future South Africa* hosted by the Centre for Human Rights Studies at the University of Pretoria, 26-10-1990 (copy on file with author).

Banisar D *Whistleblowing: International Standards and Developments* (2006) unpublished paper prepared for the *First International Conference on Corruption and Transparency* at Mexico City, 23 to 25-03-2006 (available at www.corrupcion.unam.mx/documentos/investigaciones/banisar_paper.pdf).

Journal articles:

Albertyn C & B Goldblatt "Facing the Challenge of Transformation: Difficulties in the Development of an Indigenous Jurisprudence of Equality" (1998) 14 *South African Journal of Human Rights* 248-264.

[**Note:** When referring to a journal, only available online, you may do so in the following way.]

Kornet N “Contracting in China: Comparative Observations on Freedom of Contract, Contract Formation, Battle of Forms and Standard Form Contracts” (2010) 14 *Electronic Journal of Comparative Law* <<http://www.ejcl.org/141/art141-1.pdf>>.

Printed media:

Du Plessis LM “SA Howe – Grammofone of Politieke Kanaalgrawers?” *Rapport* (18-05-1986) 23 28.

Reports:

Legal Resource Centre, Iranti-org & Gender Dynamix *Report on the Civil, Political and Socio-economic rights of transgender and intersex persons in South Africa under the African Charter on Human and Peoples Rights in response to the second combined periodic report of the government of South Africa and the initial report under the Protocol to the African Charter on the Rights of Women in Africa* (2016) 1 56 (available at: http://lrc.org.za/art_external/pdf/2016%2004%20ACHPR-Transgender-and-Intersex-Shadow-Report.pdf).

Cases:

Government of the Republic of South Africa v Grootboom 2001 1 SA 46 (CC).

[**Note:** Cases are sequenced alphabetically. When you have cases from foreign jurisdictions, it is advisable to split them by the relevant jurisdictions. For example, simply have a heading such

as “South Africa”, “Canada” or “United States of America” under “Cases:.”.]

Legislation:

Criminal Procedure Act 51 of 1977.

Constitution:

Constitution of the Republic of South Africa, 1996.

Interim Constitution of the Republic of South Africa, Act 200 of 1993.

Internet:

De Vos P “Fifa World Cup: Bad for Human Rights?” (29-01-2010) *Constitutionally Speaking*

<<http://constitutionallyspeaking.co.za/fifa-world-cup-bad-for-human-rights/>>.

McArdle E “FutureEd 2: A Major Conference explores how Legal Education will change amidst Rapid Globalization (Video)” (2010) *Harvard Law School*

<<http://www.law.harvard.edu/news/spotlight/classroom/futureed-conference.html>>.

SPECIFIC OUTCOMES

In each year of the undergraduate LLB-programme, writing-intensive courses are identified in which specific attention is paid to the development of writing skills in addition to the substantive law under discussion. In each of these courses, very specific aims are set regarding writing skills and each year builds on the skills developed in the previous year(s). These aims are taught specifically – in other words, there are specific sessions in these courses during which these writing skills are handled with the students – these sessions can take place either in the form of main lectures, or in smaller groups such as tutorial sessions. However, such teaching is not separate from the substantive law under discussion in the module – it happens simultaneously. An important benefit of this approach is that the students not only develop generic writing skills, but develop specific writing skills within the academic discourse of our environment – they therefore do not only learn to write, but to write in law. In the identification of writing-intensive courses, close attention is paid to the alignment of specific writing skills and the content of the relevant courses. In this regard, for example, courses with procedural content could be well-suited to the development of more practical forms of writing, such as heads of argument. On the other hand, final-year electives can be used to demonstrate high-level academic research and writing skills.

There are, however, certain basic writing skills that each student should possess at the end of their first year of undergraduate studies at the Faculty. These skills constitute the foundation for the further development of more specialised writing and research skills in the

writing-intensive courses referred to above. Accordingly, **at the end of their first year, students should be able to:**

1 Read, understand and answer a question

- This implies:
 - Reading and understanding the instructions.
 - Distinguishing between various types of questions and understanding what is expected from them in different types of questions.
 - Analysing the question by focusing on key words.
 - Following the guidelines / instructions in answering the question.
 - Relating the question to the specific area of substantive law that is applicable.
 - Doing research by giving consideration to the relevant section of the textbook and expanding the research from there. Visiting the law librarian and seeking assistance if need be.

2 Draft proper introductions and conclusions

- In relation to the introduction, this implies:
 - Explaining the importance of the introduction, specifically in relation to the logical flow and coherence of the paper.
 - Identifying or raise the topic in the first few sentences, providing essential context and indicating the particular focus of the paper.

- Convincing the reader of the value of the paper.
- Properly setting out the structure or organisation of the paper.
- Keeping it short and to the point.
- In relation to the conclusion, this includes:
 - Providing a final perspective on the topic.
 - Refraining from using (or abusing) clichés like “finally”, “in conclusion”, “to summarise” or “in the final analysis” to start the conclusion.
 - Summarising the key points without merely listing, rephrasing or reiterating them.
 - Reflecting on the significance and implications of the argument.
 - Refraining from introducing new ideas or material in the conclusion.

3 Write in plain language

- This implies:
 - Writing the same way as talking, thus avoiding abstract words and phrases where possible, using the active form rather than the passive form and substituting difficult words with words that are easier to understand (synonyms).
 - Keeping sentences short and to the point by cutting out redundant words and phrases and breaking up long, complicated sentences into shorter, simpler ones without artificially shortening words and phrases.

- Keeping in mind that the average length of a sentence is approximately 15-20 words.
- Ensuring good word order by using the subject and verb in close proximity of each other.
- Using plain and clear language that implies the absence of uncertainty and ambiguity about what has been communicated.

4 Conduct proper planning and set out a proper structure

- This implies:
 - Being aware that the quality of attention paid to the initial planning will be clear from the final version of the written communication since planning influences the quality of other aspects of the assignment, such as argument, structure and flow.
 - Structuring the assignment so that it follow logically from the planning so that the assignment as a whole makes sense, flows logically and is coherent.
 - Using headings to identify the sections of the assignment (introduction, body and conclusion) to allow them to flow coherently.
 - Formulating an argument, developing, and building it in successive paragraphs.
 - Being proficient at managing time.

5 Ensure a logical flow and coherence

- This implies:
 - That students demonstrate an awareness of how planning to write an introduction, conclusion, and connecting different sections of the written communication are all essential for logical flow and coherence and that they can effectively apply this.
 - Moving in a logical order/sequence from one topic to another so that the line of thought and argument are clear and accessible.
 - Introducing the argument in the introduction and then building on it in the sections that follow.
 - Connecting the ideas and steps in the argument by explaining, at the end of each section, how that section fits into the argument. It should also be clear how what happens in the next section logically follows and how it connects with the concepts in the previous section.
 - Introducing the most important concept of a paragraph in its first sentence and, likewise, introducing the important concept under a heading in its first paragraph.

6 Adhere to the principles of academic legal writing

- This implies:
 - Demonstrating the ability to write for different audiences.
 - Ensuring that the information relayed is useable and accessible.
 - That the quality of the writing and the merit of the argument are directly proportionate to the intelligibility of the writing.
 - Being able to write in simple (plain) language, write concisely, provide only relevant information, be audience-directed and in a way so that the gist of the argument is clear.
 - As far as possible avoiding metaphoric language, the unchecked use of relative terms (e.g. “rich” or “cold”) and vague or unnecessary concepts.

7 Develop an argument

- This implies:
 - Collecting information (conducting research), assimilating information and editing.
 - Demonstrating the ability to distinguish between the different legal sources, where to locate it and how to utilise it.
 - Distinguishing between relevant and irrelevant information.

- Read instructions carefully. Understanding that the question will enable you to identify the relevance of information.
- Recording the sources (and page numbers!) while collecting information to prevent frustration when compiling references.
- Creating a structure for your answer.
- Identifying the argument(s) and the information to be used in support thereof.
- The ability to distinguish between the meaning of and difference between a proposition, a premise, a conclusion and an argument.
- Ensuring that the premises combine to produce a conclusion that is logically sound.
- Positioning the information in an order that supports the premises and that logically leads to the conclusion(s).
- Using your introduction to explain the topic and its legal context and to answer the question of why the issue is worth discussing (justify it).
- Writing a conclusion that briefly summarises the various premises and conclusions used in your argument to convince your reader that your conclusion is both sound and correct (it can be correctly, but, for example, based on incorrect ideas).
- Proofreading your assignment multiple times and making any necessary changes.

- Ensuring that all aspects of your argument have been sufficiently developed to support any initial conclusion(s) and your final conclusion(s).
- Spreading the editing stage over a few days to allow for new insights and a fresh perspective.
- Paying attention to referencing, grammar and the precise formulation of sentences.
- Obtaining input or feedback from a writing consultant, a tutor or a lecturer.

8 Reference

- This implies:
 - Appreciating that there are different referencing methods (e.g. Harvard, Stellenbosch Law Review, etc.).
 - Understanding what the purpose of referencing is.
 - Properly utilising the referencing guidelines contained in this Guide, which guidelines are based on those contained in the Stellenbosch Law Review.

9 Draft proper letters

- This implies demonstrating the following:
 - The formality of an e-mail depends on how well you know the person and what the nature of your relationship is.

- Formal emails are shorter and less formal than formal letters.
- You are required to proofread your email before you send it to ensure that it is error free, that it does not offend and that the meaning is clear.
- The subject line is a necessary part of the email, is short and concise, gives a clear indication of the aim of the message and often contains a reference or file number.
- No full stop or other punctuation is used in the greeting or the ending.
- The title of the person is written with a capital letter and is used with the surname. Only use the name and surname, without a title, if you don't know the gender of the person to whom you are writing.
- You should, generally, use "Dear" not "Greetings" or "Hi".
- You should, generally, NOT enquire about the health of the person to whom you are writing.
- You should start by giving the reason for writing to the specific person.
- You should end the letter using "Regards" in formal situations or when you do not know the person to whom you are writing. If you know the person, use "Kind regards"- NOT "Bye".
- You should end the email by giving your name and surname in the first email. The reader can

then either address you by your first name or by your title and surname in the reply.

- You should mention the name of the company and your position in the first paragraph or after your name at the end of the letter depending on whether the email is written on a form with a letterhead.
- Do not thank someone if “thank you” is not applicable.
- Requesting action is done politely, using words like “would” or “could”.
- Faxes:
 - The format of a fax is similar to a semi-formal letter.
 - A full postal address is not necessary.
 - Pages are numbered so that it is clear if one page did not go through.
 - Give enough relevant information in the subject line, but keep it concise and to the point.

GUIDELINES FOR WRITING LEGAL OPINIONS⁸

Basic format

Legal practitioners are often required to write legal opinions to address a variety of legal problems. A legal opinion must, therefore, provide a clear and unambiguous answer to such a problem.

The purpose of a legal opinion is not to interpret the law in a one-sided manner to provide an opinion that would suit your client's case. Instead, the purpose of a legal opinion is to analyse a legal problem or issue and to provide a substantiated solution to the legal problem or issue. The solution should enable your client to make an informed decision based on reasoned options, if any. Consequently, if the client's case is not viable, the client should be advised of this in the legal opinion. In addition, if there is something that can be done to improve your client's prospects of success, a good legal opinion will also spell this out very precisely.

A legal opinion must be structured in a logical manner; it must be written in plain and understandable language; it must contain references to relevant and sufficient authority for statements regarding the law (not academic expositions); and the conclusion(s) (and recommendation(s), where applicable) must be set out clearly and unambiguously.

⁸ These guidelines were prepared by Adv Marius de Waal, Prof Jacques du Plessis, Prof Sadulla Karjiker, Prof Sandy Liebenberg and Ms Chantelle Hough Louw.

An opinion must not contain any mistakes of law or any grammatical or spelling mistakes.

REMEMBER: Adhere to the basic principles of writing. Each sentence must contain one idea and sentences must follow each other logically, and must be short and to the point. Each paragraph must contain one overarching idea, and paragraphs must follow each other logically. Quotations may be useful to set out a legal principle, but should not be used to “pad” an opinion or avoid taking a position. Repetition amongst the various sections should also be eliminated.

There is no set structure for an opinion, but it normally consists of the following parts, set out in numbered paragraphs:

I **Introduction**

The introductory paragraph should briefly indicate who the person (your client) that requested the opinion is, and the problem in respect of which advice is sought.

II **Statement of facts**

The introduction is followed by a further paragraph setting out the facts upon which the legal opinion is provided. If the facts are brief, they may even be included in the exposition of the problem in the introductory paragraph.

III **Questions presented (Questions of law)**

This section should introduce the question(s) raised by the client.

IV **Applicable law**

- For each legal issue, identify the applicable legal principles, legislation or court rules. This will include:
 - primary sources; and
 - secondary sources.
- Reconcile contradictory authority if possible: Distinguish on the facts and principles.

V **Application of the law to the facts**

- For each issue that you have outlined above:
 - findings of law (a finding as to the applicability of a rule of law to particular facts) must be applied to the facts, with reference to the relevant authority;
 - it may be convenient also to refer to sources of facts, e.g. a particular document; and
 - you should consider the opposite side's application of the same rule, thus, considering possible weaknesses in your client's case.

VI **Conclusion(s) and recommendation(s)**

Finally, the opinion should contain a conclusion and recommendation(s). This is the most important part of the opinion. It must be brief and concise and must clearly address the problem(s) (or question(s)) on which the advice has been sought and provide the client with the legal position, rights and recourse available. Remember that you should not introduce any new points in your conclusion.

GUIDELINES FOR DRAFTING HEADS OF ARGUMENT⁹

1 The purpose of heads of argument

Never lose sight of the purpose of your heads of argument – to persuade a court.¹⁰ This could be a motion court, trial court or appeal court. The manner in which your heads of argument should be prepared is therefore subject to the circumstances under which the court should be persuaded.¹¹ Long heads of argument do not win cases, regardless of what your client or, even other attorneys, may believe.¹² The court often forms strong views on your heads of argument before reading any of your other documents and before having had an opportunity to have the matter presented to it in person – those views may have a lasting effect on the outcome of your case.¹³

2 The nature of heads of argument

2.1 Heads of argument, and legal writing in general, should always be “clear, succinct, and without unnecessary elaboration”¹⁴ especially so since many great pieces of

* These guidelines should be read in conjunction with P van Blerk *Legal Drafting: Civil Procedure* 2 ed (2015) ch 15.

⁹ These guidelines were prepared by Adv Gregory Solik, Prof Sandy Liebenberg, Dr Shanelle van der Berg and Ms Chantelle Hough Louw.

¹⁰ P van Blerk *Legal Drafting: Civil Procedure* 2 ed (2015) 106.

¹¹ 106.

¹² LTC Harms “Heads of Argument in Courts of Appeal” *The Advocate* (12-2009) 22.

¹³ 20.

¹⁴ 21.

writing, and legal argument, are highly organised, complicated and difficult.

2 2 Always omit needless words and avoid pretentious language.

2 3 Write sentences in the active rather than passive voice and, as a rule, keep sentences short and to the point. For example, when you “submit” something, use “we submit” and avoid “it is submitted that”.¹⁵

2 4 Begin each paragraph with a topic sentence and ensure that your paragraphs are ordered within each section/subsection so that your argument flows well.¹⁶ Subparagraphs can be useful in ordering your thoughts. However, a word of caution: do not go further than three levels of sub-paragraphs. A good way to do this is to use literary devices such as the following (there are others and these are merely used to introduce you to the ideas we present here):¹⁷

- pointing words – words like this, that, these, and those;
- echo links – words or phrases that are consistently used in order to convey the same idea; and

¹⁵ Exception: use the passive voice when you do not know the actor or when the result is more important than who did it).

¹⁶ See W Strunk Jr *The Elements of Style* (2009) 16.

¹⁷ These tips come from B Garner *Legal Writing in Plain English* 2 ed (2013) 83.

- explicit connectives – words whose chief purpose is to supply transitions such as also, further, therefore, yet.

- 2 5 A final word of caution, worry less about correct legal phrases in your heads of argument, and more about writing simply, clearly and accurately. For example, when referring to parties, call them by their proper names: the “Company”, the “Bank”, or use abbreviated forms of the real names such as, the “President”. Avoid using legal pronouns, such as Appellant, and do not humanise your client (Mr XYZ) while simultaneously neutralising your opponent (the Defendant).¹⁸ When referring to your client (for example Mr XYZ) in his personal capacity, your opponent should also be addressed in his or her personal capacity – the aim is to be consistent when referring to the parties.
- 2 7 It is also very important to stress that you should refer to parties in a way that shows respect for their dignity and personhood – for example refer to Mrs XYZ as opposed to using first names.

¹⁸ In this regard, a distinction should be drawn between civil law and public law matters. In human rights litigation, the Applicants’ circumstances will be set out in detail, as the idea is to humanise them in order to show the impact of, for example, government policy on their human rights, dignity, etcetera. In such cases, it will not be possible to similarly humanise the government, for example the “City”. Exceptions therefore exist where you will humanise your client while simultaneously neutralising your opponent.

3 The structure of heads of argument

3 1 Table of contents

The table of contents should appear on a separate page, with page numbers.

3 2 Background / Identification of the material facts

"[G]rasp your nettles firmly. No matter how unfavourable the facts are, they will hurt you more if the court first learns them from your opponent. To gloss over a nasty portion of the record is not only somewhat less than fair to the Court, it is definitely harmful to the case."¹⁹ [Emphasis added.]

3 2 1 Do not underestimate the importance of this section. Set out the material facts chronologically, thoughtfully and persuasively. Keep related material together.

3 2 2 When drafting your heads of argument, it is a good idea to follow the FIRAC (**F**acts, **I**ssue, **R**ule of law, **A**pplication, and **C**onclusion) model, which is taught at law schools across South Africa. This will enable you to construct your argument simply, freshly and clearly before moving on to matters that are more complicated.

3 2 3 Remember that you may have a record as well as affidavits to draw on.²⁰ Use cross-references effectively. Summarise, do

¹⁹ F Weiner quoted in A Scalia & B Garner *Making your case: The art of persuading judges* (2008) 21.

²⁰ Answering Affidavit para 59; admitted in Replying Affidavit para 26.

not over-particularise. If the Applicant seeks final interdicts on motion, insofar as there are factual disputes, he can then succeed only on the basis of facts that are common cause or as stated by the Respondents.²¹ If you are involved in a trial, you may want to refer to facts that have been conceded under cross-examination. If you are on appeal, use the court *a quo's* judgment if the facts were accurately summarised.

3 2 4 Regardless, facts and a powerful presentation of those facts, make for winning heads of argument. Know your case and then present it with common sense; it is the best thing you can do besides always writing simply, freshly and clearly.

3 2 5 When referring to facts, always remember to provide the source of such facts, particularly in appeals; for example, volume number, page number, paragraph or line numbers, etcetera.²²

3 3 Legal framework

3 3 1 Set out the applicable legal framework. If this includes a statute, you can quote the main provision, but use your discretion. Think of this section as the engine room. Your whole argument is going to hinge on its construction. Thus,

²¹ The factual background has been set out comprehensively in the Answering Affidavit from paragraph 44. Meaning facts not in dispute.

²² Van Blerk *Legal Drafting* 108.

engage with its terms and so forth. How you frame this section will determine the arguments you can later put forth – thus think ahead, plan well and write accordingly.

- 3 3 2 Remember to weave quotations deftly into your heads of argument. But please, no lengthy quotations from the record or authorities (thus, the papers that are before the court).²³ Formal quotations cited as documentary evidence are introduced by a colon, enclosed in quotation marks and must appear as a separate paragraph with the first and subsequent lines of text left indented. In-text quotations are preceded by a comma and enclosed in quotation marks. Quotations should always correspond exactly to the original version.
- 3 3 3 Reference according to the Faculty's Writing Guide. However, in practice there are different referencing styles, but remember that consistency and appropriateness are the guiding (and overarching) rules.
- 3 4 Argument / analysis

"Every argument is refuted in one of these ways: either one or more of its assumptions are not granted; or if the assumptions are granted it is denied that a conclusion follows from them; or the form of argument is shown to be fallacious, or a strong argument is met by one equally strong or stronger."²⁴

²³ 107.

²⁴ Cicero quoted in Scalia & Garner *Making your case* 16.

3 4 1 Heads of argument are about argument.²⁵ You must use the powers of reasoning to persuade the judge, and keep emotional appeals to a minimum. Reducing emotional appeals does not mean ignoring the lived realities your client faces or the impact of particular rules and interpretations on your client's life, but *thinking* emotionally is not thinking at all, it is feeling – which has its merits, but is only useful to you if you can turn those realities into a legal argument. In the words of Karl Klare:

“It is often quite difficult from within a particular legal culture to appreciate its uniqueness and contingency or to bring to bear on legal problems alternative conceptions of convincingness. Thus, participants in a legal culture are often unaware or only partially attentive to its power to shape their ideas and reactions to legal problems. Human practices, including legal practices, are situated. They can occur only in the context and through the medium of culturally available symbols and understandings (the 'cultural code'). The collectively created structures of meaning and recognition in and through which we have experience orient our perceptions, thoughts and feelings, and shape our imagination and beliefs. Although these meaning systems are contingent products of human action, they will, in the absence of critical selfreflection and/or transformative experience, appear to be natural and fixed.”²⁶

3 4 2 Know your opponent's case and deal with their arguments. Never over-state your own. Rather, “proceed methodically to show the merits of your case and the defects of your

²⁵ To learn more about argument, see JP Trachtman *The Tools of Argument, How the Best Lawyers Think, Argue and Win* (2013).

²⁶ K Klare “Legal Culture and Transformative Constitutionalism” (1998) 14 *SAJHR* 146 167.

opponent's – and let the abject weakness of the latter speak for itself".²⁷

3 4 3 Master the relative weight of precedents.²⁸ As you know, some cases are authoritative, and others merely persuasive. Know the difference and apply your attention accordingly. In determining this, ask questions such as: What was the *ratio* of the decision? Who wrote it – was it a Chief Justice, and has it been followed (has the *ratio* been followed, not just the order given)? If you rely on a dissent (minority judgment), has the dissent found support?

3 5 Conclusion

The final part of the heads should contain the remedies sought by your client. Do not forget to include costs and further and/or alternative relief. It is important to connect this part to the previous to form a logical whole and to show the presiding officer(s) that the relief you seek logically follows the parts and arguments you have presented before it.

3 6 Authorities

3 6 1 Cite authorities in alphabetical order. Books, journal articles, legislation, etcetera should also be cited alphabetically. In this regard, see page 59 of the Writing Guide.

²⁷ 13.

²⁸ 23.

3 6 2 Keep books, journal articles and cases separate.

3 6 3 References must be complete, in the correct format and consistent.

4 Conclusion

From the guidelines above it is evident that heads of argument could be framed in different ways depending on the type of matter you are dealing with, that is, motion, trial, or appeal. Longer heads of argument may be acceptable in certain circumstances such as for courts of first instance. However, the absence of a judgment and the fact that the court may not have had an opportunity to consider the matter should not serve as justification to construct unnecessarily lengthy heads of argument. In fact, long and tedious heads of argument may have the opposite effect as that intended – the judge may be reluctant to read them and may indeed not read it with the same care as were it shorter!²⁹ To keep your heads of argument as brief as possible, proofread, and proofread again; identify paragraphs, sentences, or words that can be omitted without sacrificing the intended goal of your heads of argument.³⁰ You should also read the sources we have referred to in this document (see table of authorities) as those offer valuable advice regarding specific types of matters which to repeat

²⁹ Van Blerk *Legal Drafting* 124

³⁰ 124.

here would be redundant as we here seek to offer general advice applicable to most situations.

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PLAGIARISM GUIDELINES IN RESPECT OF WRITTEN ASSIGNMENTS / ESSAYS / RESEARCH PAPERS AND TUTORIALS COMPLETED UNDER THE AUSPICES OF THE FACULTY OF LAW

1 Introduction and purpose

During the course of your studies at the Faculty of Law (the “Faculty”), you will be exposed to the intellectual work, products or expressions of others. In an attempt to assist you to eliminate plagiarism³¹ and to promote academic integrity, the Faculty has compiled the guidelines below. The purpose of the guidelines is to assist you to identify and deal scrupulously with sources and to guide you in how to avoid plagiarism.

These guidelines should be read together with the SU Policy on Plagiarism (in support of academic integrity) (Senate: 1 December 2016) (“SU Policy on Plagiarism”) and its annexures and related documentation available at <http://www0.sun.ac.za/research/policies-and-guidelines.html>.

³¹ “The use of the ideas or material of others without acknowledgement, or the re-use of one’s own previously evaluated or published material without acknowledgement (self-plagiarism).”

2 **Avoiding plagiarism: General guidelines and examples**³²

Plagiarism constitutes the misappropriation and misrepresentation of the ideas, work and words of someone else by passing it off as your own. It furthermore includes the inappropriate re-use of your own work, which was previously presented, marked or published, without proper referencing and transparent indication and justification explaining such use. This is referred to as self-plagiarism or text recycling. Therefore, to avoid committing plagiarism you can use these rules of thumb:

- if it is not your own ideas(s), cite;
- if it is not your own words, quote and cite;
- if it is your own, previously presented, marked or published work, cite and explain use; and
- if in doubt, cite.

In other words, you should properly and correctly reference or acknowledge a source when you:

- (1) summarise or paraphrase idea(s) or words which originated from someone else, whether that is in the form of books, journals, statutes, judgments, websites, academic research (such as theses and dissertations), reports, case studies, class notes, course materials, PowerPoint slides and other

³² Anonymous “Plagiarism 101” (2014) *Plagiarism.org*
<<http://www.plagiarism.org>> (accessed 06-04-2015).

audio-visual learning materials, recordings of lectures, podcasts, statistics, newspapers, magazines, songs, movies, etcetera;

- (2) use verbatim words / sentences from the abovementioned sources – in addition to acknowledging your sources in this instance, you also need to place double quotation marks around the verbatim words or sentence(s) in the text where they appear;
- (3) use verbatim portions from your own, previously presented, marked or published work. You are furthermore not allowed to use the content of any essay / research paper of any previous, current or future year of study without the prior consent of your lecturer;
- (4) incorporate diagrams, illustrations, charts, pictures, etc. which originate from another source into your written work;

The Faculty considers the examples referred to below to amount to plagiarism:

A. Verbatim copying without quoting and referencing

This occurs where words or sentences are copied verbatim (that is, exactly as they appear in the original source(s)) without inserting quotation marks and referencing the source(s) and submitting it as one's own work. In this regard, also refer to paragraph 11 of the SU

Policy on Plagiarism (the plagiarism declaration) that must be signed prior to submitting a written assignment / essay / research paper. It states that “the reproduction of text without quotation marks (even when the source is cited) is plagiarism”.

Example (failing to quote):

Excerpt from original source:

Upon attaining majority, the former minor may ratify a contract he or she initially concluded without the requisite assistance, with the result that the contract becomes fully enforceable with retroactive effect.

[J Heaton *The South African Law of Persons* 3 ed (2008) 98.]

Student paper (incorrect):

When a minor reaches majority in South Africa, that is 18 years of age, he or she may ratify a contract he or she initially concluded without the requisite assistance, with the result that the contract becomes fully enforceable with retroactive effect.

or

When a minor reaches majority in South Africa, that is 18 years of age, he or she may ratify a contract he or she initially concluded without the requisite assistance, with the result that the contract becomes fully enforceable with retroactive effect ¹.

Footnote:

¹ J Heaton *The South African Law of Persons* 3 ed (2008) 98.

[note that even if the highlighted text is footnoted, it is still incorrectly referenced without quotation marks.]

Correct:

When a minor reaches majority in South Africa, that is 18 years of age, he or she “may ratify a contract he or she initially concluded without the requisite assistance, with the result that the contract becomes fully enforceable with retroactive effect”.¹

Footnote:

¹ J Heaton *The South African Law of Persons* 3 ed (2008) 98.

B. Sources translated from English to Afrikaans or *vice versa*

A verbatim translation of words / sentences from English to Afrikaans (or *vice versa*) without referencing the source and submitting it as one's own work constitutes plagiarism. Similarly, when translating words or sentences and making only a few changes to the text (for example, by replacing the translated words with synonyms) or sentence construction without referencing the source, it still constitutes plagiarism.

Example:

English source:

Parties must adhere to a minimum threshold of mutual respect in which the unreasonable and one-sided promotion of one's own interest at the expense of the other infringes the principle of good

faith to such a degree as to outweigh the public interest in the sanctity of contracts.

[R Zimmermann "Good Faith and Equity" in R Zimmerman & D Visser (eds) *Southern Cross: Civil and Common Law in South Africa* (1996) 259 259-260.]

Translated to Afrikaans (incorrect):

Partye moet 'n minimum drumpel van wedersydse respek nakom waar die onredelike en eensydige bevordering van een party se eie belang ten koste van die ander, die beginsel van goedertrou in so 'n mate skend dat dit swaarder weeg as die openbare belang in die onskendbaarheid van kontrakte.

Note:

The act of plagiarism in this example does not lie in the fact that you translated the paragraph verbatim from English to Afrikaans, but rather the fact that you did not properly reference your source in the translated, Afrikaans, version and indicate that it is your own translation. Although translated, it is still not your idea and the source must still be acknowledged.

Translated to Afrikaans (correct):

Partye moet 'n minimum drumpel van wedersydse respek nakom waar die onredelike en eensydige bevordering van een party se eie belang ten koste van die ander, die beginsel van goedertrou in so 'n mate skend dat dit swaarder weeg as die openbare belang in die onskendbaarheid van kontrakte.² [eie vertaling]

Footnote:

² R Zimmermann “Good Faith and Equity” in R Zimmerman & D Visser (eds) *Southern Cross: Civil and Common Law in South Africa* (1996) 259 259-260. [Note, in the Afrikaans footnote the reference to *eds* would obviously read *reds*.]

C. Paraphrasing

When you restate the content of a source(s) (that is, paraphrase), without acknowledging the source(s), it is considered plagiarism as it still conveys the same meaning even if in another form.

Example: Paraphrasing from a single source:

Excerpt from original source:

Even if the defence of disciplinary chastisement were effectively to disappear the defence of mistaken belief that moderate corporal chastisement for educational purposes is allowed (that is, putative disciplinary chastisement), being a defence excluding fault in the form of knowledge of unlawfulness, might still be available in principle.

[JM Burchell *Principles of Criminal Law* 4 ed (2013) 202.]

Student paper (incorrect):

Although the defence of disciplinary chastisement might disappear, the misguided belief that reasonable physical punishment used for

educational purposes is permitted, this being a defence not including liability in the form of knowledge of unlawfulness, might still exist in principle.

Correct:

Although the defence of disciplinary chastisement might disappear, the misguided belief that reasonable physical punishment used for educational purposes is permitted, this being a defence not including liability in the form of knowledge of unlawfulness, might still exist in principle.¹

Footnote:

¹ JM Burchell *Principles of Criminal Law* 4 ed (2013) 202.

Note: From a writing style perspective this is not a good example of paraphrasing as it merely amounts to what is often called “find and replace”. That is where a few changes are made to the original text, for example, to the sentence structure, by deleting or inserting a word or two or by replacing words with synonyms. However, even if the text is paraphrased appropriately, in essence, it still conveys the same idea as in the original source and the source should therefore be cited. This would definitely be a case of where in doubt, you must rather cite.

Example: Paraphrasing from multiple sources:

Source 1:

If the minimum wage is set at a moderate level then it does not cause significant employment losses, while keeping low-paid workers out of poverty.

[J Rutkowski *The Minimum Wage: Curse or Cure?* unpublished paper presented at the Human Development Economics Europe and Central Asia Region: The World Bank, 01-07-2003 (copy on file with author).]

Source 2:

Thus, we can conclude that increasing the minimum wage is a useful tool in providing income redistribution to those living and working in poverty and in relieving some of society's growing inequality, but that, on its own it is limited.

[C Schenk "From Poverty Wages to a Living Wage" in J Anderson (ed) *The Social Justice Series* (2001) 1 1.]

Student paper (incorrect):

It could therefore be argued that the outcome, if minimum wage is set at a moderate level, would not result in employment losses but instead result in income redistribution to people living and working in poverty.

Note:

The act of plagiarism in the above example is using the text from the two sources, highlighted in grey, verbatim and not acknowledging the sources of the verbatim phrases (e.g. inserting quotation marks and

footnotes). This form of plagiarism is often referred to as “patchwork” or “remix”.

Correct:

If reasonable minimum wage levels are set, one could argue that the outcome would not result in employment losses, but instead lead to redistribution of income to poverty-stricken people.⁷

Footnotes:

⁷ J Rutkowski *The Minimum Wage: Curse or Cure?* Unpublished paper presented at the Human Development Economics Europe and Central Asia Region: The World Bank, 01-07-2003 (copy on file with author); C Schenk “From Poverty Wages to a Living Wage” in J Anderson (ed) *The Social Justice Series* (2001) 1 1.

Note:

This is an example where the content of the sources was paraphrased appropriately. However, the sources must still be acknowledged **despite** it being paraphrased. The best paraphrasing attempt still does not make you the owner of the idea and it must always be referenced.

D. Providing false / non-existent references

This could include, *inter alia*, footnotes that contain false or non-existent references, for example, URL's of websites, authors, sources, page numbers, and etcetera and constitute acts of plagiarism.

E. Using the written assignments / essays / research papers or tutorials answers of another student(s)

Using a fellow student's (or students') written assignment(s) / essay(s) / research paper(s), tutorial answer(s) or any part thereof, of any prior or current year of study, with or without the student's (or students') consent and presenting it as your own work constitutes plagiarism. This occurs, for example, when a group assignment / essay / research paper is submitted under the false pretence that it is your own work. Collaborating on the group assignment / essay / research paper in itself is not an act of plagiarism but the fact that you submit the group's work or any individual group member's work under your own name and, more importantly, as your own work / ideas amounts to plagiarism. Similarly, using a fellow student's (or students') assignment / essay / research paper / tutorial answer, or any part thereof, of any prior or current year of study, with or without the student's (or students') consent and presenting it as your own work also constitutes plagiarism.

Note: Be careful with *how* you share your work with fellow students so that you do not enable them to pass it off as their own. E.g., do not share your work in an electronic format.

3 Recommendations and techniques on how to avoid plagiarism

- 3 1 Planning your assignment / research paper is the first step to avoid plagiarism. By planning ahead you know that you will be using sources other than your own ideas and can therefore

already start to plan how you will incorporate these sources into your assignment / essay / research paper.

- 3 2 Take notes while conducting research and record your sources accurately and completely. You could even include notes to identify whether you intend to use a source verbatim or by paraphrasing so that you would remember to insert quotation marks in the case of verbatim use. This is very important!
- 3 3 Do not copy and paste any content from your research directly into your own assignment / essay / research paper. Rather make notes on a separate document and record the source accurately.
- 3 4 Where possible, print your sources so you can refer to it again later, or save them in a folder on your computer using the author and title of the source as a file name.
- 3 5 Read your researched sources repeatedly until you understand them and how you want to use them in your own assignment / essay / research paper. When you then paraphrase or summarise, do so without referring back to the original source but remember to still acknowledge the source(s).
- 3 6 Err on the side of caution - when you are unsure whether an idea in your essay / research paper is your own or originated from a source you have read, rather cite the source.

- 3 7 Refrain from reading a fellow student's (or previous year's student's) assignment / essay / research paper for "inspiration".
- 3 8 Learn how to paraphrase properly.
- 3 9 When you translate a source, remember to reference the source and to add [my translation] after the translated text.
- 3 10 If you are unsure whether to reference a source, ask your lecturer, the lecturer's assistant or a writing consultant.
- 3 11 Use Turnitin. It will identify those sections in your work where you have used sources from elsewhere and you can make sure that you have referenced those sections accurately.

Remember, avoiding plagiarism is not only about ensuring you uphold the ethical standards associated with academic research – doing things properly will make you a better researcher. Accurately citing and utilising varied sources in your research adds substance and authority to your work. Academic research generates new and original ideas. You will only be able to generate those ideas by building on the work of others – the very thing that you have to reference!

Do not be surprised if, by following these guidelines strictly, very little of your research appears to be "original", in that most of your sentences are followed by footnotes. This is perfectly acceptable on undergraduate level. What is being assessed in your written research

is not so much whether you can come up with completely new and original insights, but rather whether you are able to use and combine existing sources to form a compelling, clear and well-substantiated legal argument.

POLICY ON PLAGIARISM (IN SUPPORT OF ACADEMIC INTEGRITY)

Policy governance	
Document reference and version number	
Purpose	Set standards of academic conduct for the use of the work of others and the reuse of one's own published work; promote academic integrity.
Document type	Policy
Commencement date	1 December 2016
Date of next review	2021
Revision history	Revised Policy. Second Version. The original Policy "Stellenbosch University Policy on academic Integrity: The prevention and handling of plagiarism" was approved by SU Council in 2009.
Policy ownership	

Policy Owner³³	Vice-Rector: Research, Innovation and Postgraduate Studies¹ and Vice-Rector: Learning and Teaching
Policy custodian	Senior Directors: Research and Innovation and Learning and Teaching Enhancement
Date of Approval	28 November 2016
Approval by	Stellenbosch University Council
Key words	Academic integrity, plagiarism, self-plagiarism

1. Introduction

The academic activities of a university entail the exposure of academics and students to the ideas, written material and various intellectual and creative products of fellow students, colleagues and other scholars. At the same time, a process of critical evaluation is required to place this information in context and to make new or original inputs or syntheses that address contemporary international and local questions.

The original contribution to work presented by a person as part of an academic activity can only be evaluated if it can be distinguished

³³ The Vice-Rector (Research, Innovation and Postgraduate Studies) will assume responsibility as Policy owner at an institutional level, recognising that this Policy is as relevant to teaching and learning as it is to research.

clearly from the contributions of others or the author's own earlier work. This is done by acknowledgement and referencing. By not following these conventions, the integrity of the academic work at a university is undermined. The representation of work (words, ideas, creations) of other people as the writer's own is plagiarism. The re-use of one's own previously presented or published work, without disclosure or adequate referencing, is now widely viewed as self-plagiarism.

The University must ensure that mechanisms are in place that promote academic integrity and eliminate plagiarism. At the same time, it is important that plagiarism cases be dealt with in a consistent and fair manner. Consequently, it is essential that the University have a policy and procedures in place to intercept these aspects of misconduct and to create a framework within which it is possible for staff and students to write and publish.

This Policy should in particular be read together with the **Procedure for the investigation and management of allegations of plagiarism**, henceforth referred to in this Policy as “the Procedure” in support of the Policy, but not as part of it. Other important documents that should be read together with this Policy include the **Guideline for avoiding plagiarism**, the **Policy for responsible research conduct at Stellenbosch University (SU)**, the **Policy in respect of exploitation of intellectual property**, the **Disciplinary code for students of SU**, the **Disciplinary code for staff of SU**, the **Procedure for the investigation of allegations of breach of research norms and standards**, as well as any other University policies and guidelines that may be applicable.

2. Application of Policy

This Policy applies to the academic activities of the University and by implication, all those involved in these activities.

This Policy is intended for institutional use and does not confer any rights or privileges to a third party.

3. Definitions

In this Policy, the following words will carry the meaning ascribed to them below.

3.1 Academic activity: Any activity that contributes to or is part of the broad academic project of the University. This includes all activities in teaching and learning, research, writing and publishing and community interaction.

3.2 Acknowledgement: Reference indicating the source of previously expressed ideas or published material and the details of the publication.

3.3 Affected area: Any faculty, department or other environment within the University that may need to manage plagiarism.

3.4 Member: Any person permanently employed or under contract to the University, registered students, and any others engaged in academic activities falling under the jurisdiction of the University; joint staff employed by the Western Cape Department of Health and SU and also any person formerly in any of the aforementioned categories, whose work remains associated with the name of SU.

3.5 Plagiarism: The use of the ideas or material of others without acknowledgement, or the re-use of one's own previously evaluated or published material without acknowledgement (self-plagiarism).

3.6 Self-plagiarism: The re-use of one's own previously evaluated or published material without acknowledgement or indication thereof.

4. Purpose of the Policy

The purpose of this Policy is to support the academic integrity of the University and its members and to reinforce the value system of Stellenbosch University as an ethically responsible institution.

5. Practical objectives of the Policy

The practical objectives of this Policy are to define plagiarism and to provide a framework for identifying and avoiding plagiarism and managing instances of alleged plagiarism.

6. Principles of this Policy

6.1 No person(s) participating in the academic activities of the University should commit plagiarism or self-plagiarism.

6.2 Honesty and transparency are two core values that must be upheld when participating in the academic activities of the University.

6.3 All students, staff and affiliates are obligated to act ethically and in the best interests of the University at all times.

6.4 All cases of plagiarism must be handled consistently according to established processes, at either department, faculty or central management level. These processes must comply with both this

Policy and the **Procedure for the investigation and management of allegations of plagiarism.**

7. Determining plagiarism

Plagiarism is a form of wrongdoing, which can have serious consequences for the person concerned. These consequences include suspension or expulsion (in the case of a student) or dismissal from the University (in the case of a member of staff). In addition, criminal or civil legal proceedings could ensue.

Plagiarism covers a broad spectrum of wrongdoing, and for the purposes of deciding at which level of University management an allegation of plagiarism should be dealt with, the gravity of the wrongdoing must be considered by taking into account all the circumstances, including the following factors:

7.1 Blameworthiness (intent or negligence) of the person committing plagiarism: Did the person commit plagiarism knowingly (intentionally), or in circumstances indicating that he/she should reasonably have known of the plagiarism (negligently)? A state of blameworthiness (either intent or negligence) is required to make a finding of plagiarism. To determine intent or negligence, all the circumstances must be taken into account, including but not limited to the following factors:

7.1.1 The extent of the plagiarism: How much of the work presented as part of an academic activity constitutes plagiarism, in relation to the part of the work constituting an

own intellectual contribution? Is the plagiarism contained in the work so extensive that it is not possible to determine or assess own intellectual contribution?

7.1.2 The importance of the academic activity: Did the alleged plagiarism occur in a small assignment, a final thesis, or an article submitted for publication?

7.1.3 Harmfulness of the plagiarism: The extent of harm that the plagiarism has caused or can potentially cause to personal and institutional reputation, taking into account all the circumstances, including the seniority of the person committing the plagiarism, the relevant academic activity and the extent of the plagiarism.

7.1.4 Repeated acts of plagiarism.

It is the responsibility of the Dean of the Faculty or person(s) to whom he/she has delegated the authority (for example Department Chairperson or a 'Plagiarism Advisor(s)') to make an assessment of the gravity of any alleged plagiarism, for the purposes of deciding on the appropriate steps to handle such an allegation.

8. Management of allegations of plagiarism

The management of allegations of plagiarism must be appropriate to both the academic status of the member and the academic setting of the alleged plagiarism. Hence the University's policy approach to plagiarism is based on developing and fostering an awareness of plagiarism and its ramifications, particularly among undergraduate students and in the context of the University's Learning and Teaching

Policy. This means that first-time junior offenders such as first year students will be treated differently to repeat offenders, or students that are more senior.

This does not mean that the University is lenient in its handling of plagiarism; on the contrary, it creates a basis for the firm, consistent and tenable treatment of cases of plagiarism, while acknowledging that ignorance may well be a contributing factor especially when junior students are involved.

The University creates an opportunity for the handling of suspected instances of plagiarism in a decentralised manner. Certain cases will be dealt with at the departmental level, while others will be dealt with at faculty level or referred to the University's central disciplinary committee for either staff or students, as set out in the *Procedure for the investigation and management of allegations of plagiarism*.

9. Roles and Responsibilities

All members of the University are responsible for ensuring that they understand and can fully comply with the requirements of this Policy. The identification of the following roles and responsibilities does not imply exclusive responsibility:

9.1 All members of the University are responsible for ensuring that they understand and can fully comply with the requirements of this Policy at an individual level. A plagiarism declaration that is in line with this Policy (See 11.) must accompany all written work submitted for degree purposes at a post-graduate level. At the discretion of lecturers and supervisors, all substantial work submitted for marking, including assignments and essays should also include a plagiarism declaration.

Notwithstanding this requirement, students who submit work without such a written declaration are in no way absolved from responsibility for plagiarism and from compliance with the requirements of this Policy.

9.2 All those engaged in teaching, including tutors, short-course or diploma presenters, and all post-graduate supervisors, are responsible for establishing mechanisms to create an awareness of plagiarism and to facilitate the detection and consistent reporting of plagiarism.

9.3 Supervisors of Masters theses and Doctoral dissertations are responsible for ensuring that adequate standards and procedures for the avoidance of plagiarism have been met prior to submission of a thesis or dissertation for examination. Notwithstanding this requirement, the primary responsibility for avoidance of plagiarism and for complying with the policy requirements remains with the student or researcher, who will be held accountable should the work involve plagiarism or in any other way fail to meet the required standards of ethical conduct. Theses and dissertations must be submitted to the Turnitin playground module (or other appropriate similarity detection software) prior to submission for examination. The student and supervisor should concur that the Turnitin or similar report is acceptable.

9.4 Departments and Faculties are responsible for creating an awareness of the contents of this Policy as well as the *Procedure for the investigation and management of allegations of plagiarism* and for providing learning opportunities to all students and staff regarding the

avoidance of plagiarism and to keep a record of such activities and attendance thereof.

9.5 Departments and Faculties are responsible for establishing processes for the detection, reporting and investigation of allegations of plagiarism that are compliant with the University's overarching policy and procedures. Such processes could include an internal memo containing the following information: Detail on the appropriate use of Turnitin (or similar similarity-detection software) in a specific environment; the identification of persons in a department who are responsible for receiving allegations of plagiarism; and measures to facilitate further investigation.

9.6 Examiners and moderators who suspect plagiarism in a submitted workpiece are responsible for immediately alerting the departmental chairperson of their suspicions. The allegation must be made in writing to the departmental chairperson and supporting documentation, such as an indication of the plagiarised source or a Turnitin (or similar) report, should be provided.

10. Policy control and governance

10.1 The Policy custodians (Senior Directors: Research and Innovation as well as Learning and Teaching Enhancement) are responsible for the policy's formulation, approval, review, communication, availability and monitoring. The Policy custodians are also responsible for interpretation and guidance in respect of the implementation of the Policy.

10.2 Faculty management is responsible for the implementation of the Policy and specific control in their own areas.

10.3 The management in all affected areas is responsible for the following procedures within their respective areas:

- a. Sensitising and educating both students and staff on avoiding plagiarism.
- b. Managing allegations of plagiarism and breach of copyright in accordance with the *Procedure for the investigation and management of allegations of plagiarism* or the *Procedure for the Investigation of allegations of breach of research norms and standards*, if deemed appropriate. (The latter is used for example if the allegation involves senior researchers or includes additional allegations such as data fabrication or falsification).

11. Plagiarism Declaration (for use by students)

- *I have read and understand the Stellenbosch University Policy on Plagiarism and the definitions of plagiarism and self-plagiarism contained in the Policy [Plagiarism: The use of the ideas or material of others without acknowledgement, or the re-use of one's own previously evaluated or published material without acknowledgement or indication thereof (self-plagiarism or text-recycling)].*
- *I also understand that direct translations are plagiarism.*
- *Accordingly all quotations and contributions from any source whatsoever (including the internet) have been cited fully. I*

understand that the reproduction of text without quotation marks (even when the source is cited) is plagiarism.

- *I declare that the work contained in this assignment is my own work and that I have not previously (in its entirety or in part) submitted it for grading in this module/assignment or another module/assignment.*

12. Supporting documentation

This Policy on **Plagiarism (In Support of Academic Integrity)** is supported by:

Procedure for the investigation and management of allegations of plagiarism
Guideline on the avoidance of plagiarism

13. Related documentation³⁴

Significant related documents include:

Item #	Name	Status	Custodian Division
13.1.	Policy for Responsible Research Conduct at Stellenbosch University	Approved	Division for Research Development

³⁴ These include the most significant related documents and would need to be correlated with other policies and processes to ensure alignment.

13.2.	[SU Framework policy on academic integrity]	Proposed	To be developed
13.3.	Procedure for the investigation and management of allegations of plagiarism	Under development	Division for Research development
13.4.	Procedure for the Investigation of allegations of breach of research norms and standards	Approved	Division for Research development
13.5.	Disciplinary Code for Staff of Stellenbosch University	Approved	Human Resources
13.6.	Disciplinary Code for Students of Stellenbosch University	Approved	Legal services
13.7.	SU Risk Management Committee Regulations	Approved	Risk and Security Services
13.8.	SU Remuneration and Performance Management Policy	Approved	Human Resources

13.9.	SU Policy in Respect of Exploitation of Intellectual Property	Approved	InnovUS
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ABBREVIATIONS OF SOUTH AFRICAN LEGAL SOURCES

1 South African legal sources

AA	Butterworths Arbitration Awards
AD	Appellate Division
All SA LR	All South African Law Reports
ALR	African Law Review
AN	Administrator's Notice
ASIL	American Journal of International Law
ASSAL	Annual Survey of South African Law
BCLR	Butterworths Constitutional Law Reports
BLLR	Butterworths Labour Law Reports
BML	Businessman's Law
BN	Board Notice
BP	Burrell's Patent Law Reports
CILSA	Comparative and International Law Journal of South Africa
CLD	Commercial Law Digest
CON	Consultus
Con Bulletin	Conveyancing Bulletin
DJ	De Jure
DR	De Rebus
EL	Employment Law
GenN	General Notice
GN	Government Notice
ILJ	Industrial Law Journal
ILR	Industrial Law Reports

INS TAX	Insurance and Tax
ITC	Income Tax Cases. The SA Tax Cases Reports
ITR	Income Tax Reporter
JJS	Journal of Juridical Science
JOC	Judgments on Copyright
JOL	Judgments on Line (LN Butterworths)
JSCD	Juta's Supreme Court Digest
LAWSA	Law of South Africa
LLD	Labour Law Digest
LLN & CR	Labour Law News and Court Reports
Mag	Magistrate
MB	Modern Business Law
MBR	Moderne Besigheidsreg
Med Medii	Meditiones Medii
MJHRT	Monitor: Journal of the Human Rights Trust
MN	Municipal Notice
NULSR	Natal University Law And Society Review
PAB	Publication Appeal Board Reports
PH	Prentice Hall Reports
PN	Provincial Notice
Proc	Proclamation
RM	Responsa Meridiana
SAHRLLY	SA Human Rights and Labour Law Yearbook
SAILJ	SA Insurance Law Journal
SAJHR	SA Journal on Human Rights
SALJ	SA Law Journal
SALLR	SA Labour Law Reports

SALR	SA Law Reports
SALT	SA Law Times
SA Merc J	SA Mercantile Law Journal
SAPL	SA Public Law
SAS	SA Journal of Criminal Justice
SASK	SA Tydskrif vir Strafregepleging en Kriminologie
SASV	SA Strafregeverslae
SATC	SA Tax Cases Reports
SATJ	SA Tax Journal
SATR	SA Tax Review
SCD	(Juta's) Supreme Court Digest
Stell LR	Stellenbosch Law Review
TaxPI	Tax Planning
THRHR	Tydskrif vir Hedendaagse Romeins-Hollandse Reg
TM	The Magistrate
TRLJ	Transkei Law Journal
TRW	Tydskrif vir Regswetenskap
TSAR	Tydskrif vir die SA Reg

2 Useful links for finding abbreviation of legal sources

Cardiff Index to Legal Abbreviations	http://www.legalabbrevs.cardiff.ac.uk
Legal Abbreviations	http://www.legal-abbreviations.org

Oxford University Press: List of Abbreviations for legal materials	http://global.oup.com/uk/academic/authors/lawspecific/listofabbreviations/
University of Washington: Bluebook Abbreviations	http://lib.law.washington.edu/cilp/abbrev.html

3 Books in the library on legal abbreviations

- 3 1 D Raistrick *Index to legal citation and abbreviations* 3 ed (2008).
- 3 2 I I Kavass & M Miles Prince (eds) *World dictionary of legal abbreviations* 6 ed (1991).
- 3 3 N M Ferreira & K E Breckon *South African legal abbreviations* (1999).
- 3 4 C Fong & A J Edwards *Australian and New Zealand legal abbreviations* (2008).