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Faculty of Law

Writing Guide
2025

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Preface

"Improving your legal writing has more to do with letting go of preconceptions about academic writing than with adding more concepts to it."

The purpose of this guide is to help you develop the ability to assess your work critically. You should be able to determine whether your writing has achieved its objectives, which should be to write effectively in a clear, concise, and coherent manner. By referring to the principles in the sections below and by following the suggestions, 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 [Legal Writing blog](#), which is operated under the auspices of the Law Faculty of Stellenbosch University ("Faculty") and is primarily aimed at improving your legal writing skills.

Almost all students consistently make the same "mistakes", which is evidence of a systemic misunderstanding 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 its principles 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.

We encourage you to summarise parts of the guide in a manner that will ensure the effective application thereof in assignments. Misconceptions you may have had about legal writing will become clearer to you 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.

The Writing Guide is periodically updated, so please ensure that you have accessed the latest version. The English version of the guide is updated first, so there may be some discrepancies between the English version and Afrikaans version. Accordingly, it is good practice to check the latest English version first.

Acknowledgements

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Reynard Hulme, Dr Karin Cattell, Prof Theo Broodryk, Piet Kotzé, Prof Marius de Waal, Prof Jacques du Plessis, Prof Sadulla Karjiker, Prof Sandy Liebenberg, Chantelle Hough Louw, Adv Gregory Solik, Dr Shanelle van der Berg, and Dr Susann Louw.

Outcomes

Developing writing skills alongside substantive law is integral to the LLB programme, which ensures that students acquire both generic and discipline-specific writing competencies.

Essential writing skills for law students

Students are expected to demonstrate foundational writing skills such as:

1. Understanding and answering questions

- Read and interpret instructions carefully.
- Identify question types and expectations.
- Analyse key terms and relate questions to relevant legal topics.
- Conduct research using textbooks, library resources, and expert assistance.

2. Drafting Introductions and Conclusions

- **Introductions:** Highlight the topic or argument, provide context, explain the paper's value, and outline its structure concisely.
- **Conclusions:** Summarise key points without repetition, reflect on implications, avoid clichés, and refrain from introducing new material.

3. Writing in Plain Language

- Use clear, concise language, avoiding abstract or complex terms.
- Write as though speaking but maintain professionalism.
- Keep sentences between 15 to 20 words and ensure there is proper word order.

4. Planning and Structuring Assignments

- Prioritise thorough planning to ensure quality.
- Develop a logical flow using headings and subheadings for clarity.
- Build arguments systematically in paragraphs.

5. Ensuring Logical Flow and Coherence

- Maintain a clear sequence from introduction to conclusion.
- Connect sections and paragraphs logically and introduce key concepts early.
- Conclude sections by explaining their relevance to the broader argument.

6. Adhering to Academic Legal Writing Principles

- Write for diverse audiences in a clear and accessible manner.

- Avoid vague terms, unnecessary metaphors, and unclear concepts.
- Use precise language to support the clarity and strength of arguments.

7. Developing Arguments

- Conduct thorough research and distinguish between sources and the relevance of information.
- Create a structured argument with sound premises leading to logical conclusions.
- Justify the topic's importance and conclude with convincing summaries.
- Proofread multiple times, incorporate feedback, and manage references accurately.

8. Referencing

- Understand various referencing styles (e.g., Harvard, APA, *Stellenbosch Law Review*).
- Follow the provided guidelines to ensure accuracy and consistency.

9. Drafting Professional Correspondence

- **Emails:** Adapt formality based on the recipient. Use clear subject lines, error-free language, and appropriate salutations and closings.

This structured development ensures students acquire the skills that are essential for effective legal writing, which align with academic and professional standards.



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Chapter 1:

Legal writing principles

1.1 Accurate writing

1.2 Language is imprecise

1.3 Criticism of your work

Chapter 1: Legal writing principles

"Regardless of the context, the aim of legal writing is to communicate content as simply and concisely as possible."

1.1 Good academic writing is accurate writing

Many students seem to think that using archaic, vague, or pompous language is good legal writing. While it may seem that wordy phrases, such as "the most fundamental cornerstone of our democracy" or "an interpretation consistent with basic human justice", add conviction to an argument they do not. Instead of contributing to useful insight, these phrases 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.

Later on, the guide elaborates on the necessary differences in your choice of language required for the target audience or readers (namely, lecturers and fellow students in the context of the Faculty and clients and judges in a professional context). 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 in three ways:

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

1.1.1 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 readers in understanding a new idea by relating it to something with which they are 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 careful reasoning, which necessitates accuracy. Exaggeration is detrimental to it.

If you find yourself habitually using certain metaphors, ask yourself if the use of metaphorical language conveys the intended meaning more accurately than a simple description would.

Consider the examples (in bold) below:

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

The effectiveness of this metaphorical statement may vary depending on the author’s intended meaning. 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 is a place where one *can* arrive), 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 (namely, it 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 imposed on 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, if 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.

| *Ensure the effectiveness of metaphorical language before including it in your writing.*

112 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, the criteria –namely, why you are, for instance, calling something positive/negative – 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 criteria 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 straightforward. 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 would need to be explained.

| *Therefore, whenever you assert that something is good, bad, right, wrong, positive, or negative, ask yourself why you are making that assertion.*

113 Vague or unnecessary concepts

Vague language obscures your argument. Unnecessary words, which are 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. This is especially important in the context of legal

writing. There is usually a large volume of sources (including case law, journal articles, and chapters of textbooks) that are *related* to your topic. However, much of this content may not be *relevant* to the argument you are making. The distinction between these two concepts is extremely important as you approach both legal research and legal writing.

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

- Does the use of metaphorical language convey the intended meaning more accurately than a simple description?
- Every critical analysis requires a criterion.
- Delete vague or unnecessary words.
- 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.
- Is what you have written the most accurate way of formulating the legal question, applicable legal principles, argument, and conclusion?

1 2 Language is imprecise (misconceptions about legal writing)

The preface to this guide refers to "mistakes" 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 misconceptions regarding the nature of legal writing, namely:

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

1 2 1 *A correct answer always exists*

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 is 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"**.

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". However, 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:

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

1 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 supporting claims can never "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, etc. 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 and 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.

1 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.

1 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 is 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, thus, 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.

Taking note of this point is an important step in improving your legal writing and, in turn, your assignments. Letting go of the desire to have the "correct answer" or be "on the right track" regarding an assignment will help you at the beginning of your legal writing journey. It will allow you to focus more on the content of your argument than whether you are correct or incorrect, which is a misconception about legal writing in general, as discussed above.

Recap: Substantiate your interpretation

- Can you justify, in terms of legally relevant principles, why your conclusion should be preferred over other possible conclusions?

13 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 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 prevent you from making 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 the 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 use) constructive criticism as a tool to improve the quality of your work.

Recap: Use criticism to improve your writing

- There is more to preparing legal assignments than merely presenting a collection of paraphrased sources.
- Criticism of your writing is not criticism of you.



Chapter 2:

Developing an argument

[2.1 Overview](#)

[2.2 Collecting information](#)

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Chapter 2: Developing an argument

"For an argument to succeed, you must be mindful of certain general principles of interpretation."

2.1 Overview of the stages of an assignment

Unless you are an expert in the field, it is unlikely that you will have enough prior knowledge to start planning the argument central to your assignment before doing some research.

Remember: Do not limit your research but only collect information that is relevant to your topic.

Step 1: Collecting information

This requires you to **read the assignment's instructions 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 compile a document with all the relevant information and ideas as you become aware of them. In other words, **do not start editing prematurely**. If the assignment limits you to six pages, the document containing your notes 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 no particular order or structure, a collection of information that you feel can be used to adequately elaborate on themes within your topic.

*During this step, **you should aim to** do background reading and narrow or broaden your search accordingly so that you can assimilate the information as effectively as possible.*

Step 2: Assimilating the information

Start **planning the form that your argument will take** and **move** the information around to the appropriate place. It is especially important to create a proper framework or structure for your assignment. This does not mean that you should "cut and paste" from the different legal sources. At this stage, you should 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). Piecing together information may be a slow process. However, you should find 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.

At this stage, you should identify the argument(s) you intend to make; where you intend to make these argument(s); and what information you will be using in support of these argument(s).

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 so in one attempt. As you read through and edit your assignment, the precision will increase. You are also likely to arrive at new insights that may improve the quality of your paper, if incorporated correctly. It is also recommended that you try to spread out these stages of the assignment. Allowing a day or two to pass, while engaged in the editing stage, will most probably allow for a fresh perspective.

Once you have edited your paper thoroughly, you will have a **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 can convert your first draft into the final version of your assignment.

Remember to record a brief description of your sources (such as the name of the author, the year of publication, and the page number) while collecting information.

2.2 Step 1: Collecting information

2.2.1 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, which 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 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, which 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 are tasked with relating it to your argument. This is not the reader's responsibility.
- 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 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 purposes of the assignment. The relevance of a particular answer depends on the question that has been asked.

2.2.2 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 number of legal resources at your disposal. Assistance in this regard is available at the Stellenbosch University Library.

Discuss your queries with the [Faculty's librarians](#), Mr Pieter du Plessis, pdupless@sun.ac.za, and Ms Sanda Nyoka, lusandan@sun.ac.za.

Due to widespread misunderstanding, we would like to 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 include nearly 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.

2 3 Step 2: Assimilating the information

Once you have collected a substantial amount of relevant information, do **not** start by trying to finalise your introduction or conclusion. However, it is helpful to create an initial outline in the introduction to guide you in planning and putting together your argument.

2 3 1 *The argument*

2 3 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 the premise 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 premise needs to be examined more closely or is 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" they were 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

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.¹*
- 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.*

on – in a separate argument, of course – what constitutes “the most time”. The possibilities are endless.

2.3.1.2 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 entitled “Introduction to Constitutional Law and Statutory Interpretation”.

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 premise you require to reach 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 where it serves as the conclusion.
- Provide an argument for both your interpretation of the applicable legal principle and the application of that principle to the facts.

¹ 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 premise and conclusion is based on only the meaning of words or phrases in the premise and conclusion – the conclusion is implicitly part of the premise of the argument.

- 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.

2 3 1 3 Common mistakes

- Applying the Constitution

The Bill of Rights is written in exceptionally vague language. The result is that certain 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 frequently, 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 refer 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 of its duty to consider justice, 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 a premise. You must answer the question posed 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. Remember, your research/legal question sets the parameters in which your discussions must be structured.

- 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, 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 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 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.

2.3.2 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** (content) as well as **the legal context** within which your discussion takes place – that is, the importance of answering the legal question at hand. The introduction should not only introduce the research problem and context in which the discussion will take place but also provide motivation as to why the problem is worth researching. You must sketch the problem to your reader in a clear manner.

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 costs:

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

The above states the obvious. 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 premise. Giving a detailed account of your premises and conclusions in the introduction will be premature.

Remember, your conclusion should not come as a surprise to the reader, it should mirror your introduction. Your introduction should provide your thesis statement or research hypothesis. (In other words, the main aim or assertion of your paper.) It should then state, briefly, how your assignment will reach or prove such an aim or assertion. (That is, what is your methodology? Methodology refers to the method you will use to answer your research question; for example, are you a critical analysis or a comparative analysis will be used to unpack the research question.)

Although your introduction does not require a comprehensive breakdown of your argument, it should provide the reader with the main arguments you will present. It should show how these arguments link together and, thus, assist you in proving your thesis statement or hypothesis. Your introduction should provide the reader with a "roadmap" of your assignment, which familiarises them with the structure your assignment will take.

2.3.3 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. **Therefore, no new information should be presented to the reader in your conclusion.** The conclusion of the assignment should rather provide a brief and to-the-point "summary" of the arguments you have made and how they support your hypothesis.

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.

2.3.4 General comments on the body of the assignment

Approach your sentences and paragraphs in a strategic manner. Make sure that you write your sentences in clear and simple language to assist you in connecting all your ideas. Start each paragraph with an introductory sentence, where you map out what can be expected. End each paragraph with a concluding sentence, which highlights the main idea or argument that was presented in that paragraph.

Remember that one idea should be conveyed in every sentence, and each paragraph should contain one argument. Also, make sure your sentences connect effectively, as to avoid throwing random sentences into a paragraph.

2.4 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. Make sure to eliminate wordiness, as this can complicate your writing. Remember, at this stage, to ensure that you have complied with the rules provided in Chapter 1. Thus, there should be no unnecessary use of metaphorical language or addition of vague and unnecessary concepts in your work. Eventually, your assignment will constitute the information that you consider to be the *most* relevant to your topic. If, at this stage, you remain unsure about your assignment, make an appointment with your lecturer or a writing consultant, depending on the nature of your uncertainties.

Checklist

Step 1

- 1 Read the instructions carefully and identify the question/issue to be addressed.
- 2 Use the legal resources at your disposal.
- 3 Create a document to make notes.
- 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, and be 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

- 1 Once you have collected as much information as possible, plan 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 Move around pieces of information in a manner appropriate to the flow of your argument. In other words, start positioning information to support the premises needed for your conclusions.
- 4 Write an introduction explaining the topic and its legal context. The introduction must state why the issue is worth discussing.
- 5 Write a conclusion that briefly summarises the various premises and conclusions used in your argument.

Step 3

- 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 comprised of the information that you consider to be the most relevant to your topic.
- 3 Make an appointment with your lecturer or a writing consultant, depending on the nature of your uncertainties.



Chapter 3:

Language and style



3.1 Language aid

3.2 General writing principles

3.3 Specific issues

Chapter 3: Language and style

"The smaller the words, the larger the audience."²

3 1 Language aid in the Faculty

Consult the guide whenever you are uncertain about the correct language usage, style, or referencing in assignments 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](#).

While the [SU Language Guide](#) can be used as a supplementary resource on language usage, the Writing Guide is considered the Faculty's official style guide and takes precedence. Thus, should you encounter any discrepancies between the two, follow the Writing Guide.

3 2 General writing principles

3 2 1 Plan your time

Postponing until the last minute is not a good idea. Give yourself enough time to **(a) prepare, (b) write the paper**, and **(c) revise** afterwards. Also, allocate time to consult with a writing consultant.

3 2 2 Prepare

When you prepare for the assignment, you must understand what is expected of you by 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 you do not. Or try to explain the subject as concisely and simply as possible to

² Law Society of South Africa (L.E.A.D) Practice Manual *Business Writing Skills* (2011) 8.

a friend. By this stage, you should have a fair understanding of your subject. Only now are you ready to write.

3 2 3 Be (aware and involved) in class

The planning and preparatory phases above can only be successful if you attend classes, pay attention, and ask questions. An engaged student does not shy away from asking questions. If you are too scared, embarrassed, or lazy to ask questions, you will remain uninformed. However, if you have writing-related questions that you need to discuss before or after class, schedule an appointment with a writing consultant.

3 2 4 Read as much as possible

The better you can read, the better you will be able to write. Like writing, reading also improves with practice. Eliminate distractions so that you can concentrate while you are reading.

3 2 5 Beware of spelling and typing errors

Spelling and typing errors are frowned upon in academia and the legal profession. An assignment with spelling and typing errors immediately creates a bad impression. (Refer to the list of common spelling and typing errors below). These errors can also make it difficult for your lecturer to understand what you are trying to say, which will reflect on your marks.

3 2 6 Use a spellchecker and other spelling guides

The use of a spellchecker is not negotiable. However, remember that while a spellchecker may identify some words as correct, they might be incorrect in a certain context. This especially relates to homophones (words that have similar sounds). Some examples include allowed/aloud, aural/oral, bare/bear, band/banned, board/bored, deviser/devisor, principal/principle, stationery/stationary, whether/weather, whose/who's, etc.

When in doubt, consult a dictionary or thesaurus. While this list is not exhaustive, some reference sources to consult include: [Oxford English Dictionary](#); [PharosOnline](#); [Hiemstra & Gonin's trilingual legal dictionary](#); and [Law terminology/Isigama somthetho/Regsterterminologie](#).

3 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 these to appear clever or to artificially extend the word length of an assignment, you are only fooling yourself and not the lecturer.

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

*"More than a century ago, the legendary Cambridge University professor Arthur Quiller-Couche encouraged his students to write in a clear style without inflated language. He liked plain English, he said, which he summarized as the difference between 'He was conveyed to his place of residence in an intoxicated condition' and 'He was carried home drunk'."*³

Adobe, a media software company, released an [in-house legal writing guide](#) to help lawyers create simpler, more user-friendly documents. You can use the "Guidelines for Writing Clearly", but remember to adhere to the *Writing Guide's* spelling, style, and referencing conventions.

3 2 8 Use concrete words and phrases

To improve the clarity, factuality, and comprehensibility of your writing, use concrete words and phrases rather than abstract words or phrases. This will help avoid ambiguities and vague statements, which will simplify the task of the reader. For example,

The impact of the sentence, "*The majority of the voters...*", could be improved by replacing "majority" with a concrete fact, such as "*70% of the voters*".

"*The documentation concerned...*" gains impact if you refer to concrete and specific documents. For example; "*The client file and the [email] correspondence*".

Remember

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

³ M Cutts *Oxford Guide to Plain English* 5ed (2020) ix <https://research-ebsco-com.ez.sun.ac.za/c/2kr3y4/search/details/pig35yd6mb?db=nlebk>.

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!

3 2 9 *Maintain the correct register*

When writing, aim for a 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”), and 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, avoid emotional expressions and unnecessary descriptions such as “hugely painful” or “terribly traumatic”.

Write in the third person – or make the statement without referring to yourself or somebody else – except where you are asked for your opinion on the issue. **This means that your assignment should not include any first-person pronouns.** For example, you should not write “In the following essay, *I* will discuss...” or “In *my* opinion, the judge erred in their application of the legislation to the facts of this case”. The use of first-person pronouns will negatively affect the outcome of your assignment in terms of style, tone, and register.

3 2 10 *Build healthy sentences*

Good sentence construction forms the basis of good legal writing. To master this skill, you should remember the following:

- While it is important to vary sentence length, try to keep your sentences as short as possible. When writing longer sentences, use punctuation marks to simplify the reading process.⁴ Shorter sentences are quicker and easier to read.
- A sentence should consist of a subject and a predicate – otherwise, it is not a sentence. Thus, 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 possible, use single verbs instead of verbal phrases. For example,

“The trade union leaders **have reached the decision** that ...” (verbal phrase)

“The trade union leaders **have decided** that ...” (verb)

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

- Where possible, choose the simplest word with the fewest syllables if you have a choice between words that, in your context, have similar meanings (synonyms).
- 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 subsequent sentence. This is called cohesion. Without cohesion, your reader will be unable to understand your argument because your sentences will appear loose and unrelated to each other.

3 2 11 *Structure good paragraphs*

The purpose of paragraphs is to offer your writing to your reader in a “consumable” format (“bite-sized”). 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.
- For exceptional emphasis, a paragraph could 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.**

Examples of connecting words

- Condition:
on condition that; if; unless; provided that
- Time:
first; previously; 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; by way of illustration; with reference to
- Additional facts/information:
besides this; and; as well; also; further

3 2 12 Use active verbs rather than passive verbs

The active use of verbs enlivens your writing and makes it precise, which facilitates the task of your reader.

Example	
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.

3 2 13 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)?
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, did I answer the question posed by the assignment, 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 on one another logically and meaningfully)?
6	Did I keep to the prescribed word count?

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

3 3 Specific language and style issues

3 3 1 Punctuation marks

3 3 1 1 Dash and hyphen

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

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

- Dashes should be used sparingly. Where possible use commas instead. Too many dashes and, thus, too many explanations or emphases hinder the flow of the text, which impairs the paper's readability.
- As indicated above, the hyphen is short, and it is used without spaces on either side. It is used to join words and to separate the syllables of a single word.
- If your computer hyphenates words automatically at the end of a line, ensure that the hyphen appears after the word division. It is incorrect if it appears at the beginning of the next line.

3 3 1 2 Full stops

- Remember to end each sentence with a full stop. (Including footnotes.) 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.

See the chapter on [referencing](#) for further information on the use of abbreviations in footnotes.

3 3 1 3 Commas

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

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.

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.

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 had access to the murder weapon, was guilty of homicide.

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

The Bill of Rights, is a chapter of the Constitution. (incorrect)

The Bill of Rights is a chapter of the Constitution. (correct)

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

3.3.1.4 Colon

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

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 relevant sections below.]

Before a list

The three stages of an assignment include:

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

- Use in numeric time indication. For example,

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

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

3 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 dots. For example,

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

3 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. For example,

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 3 1 8 Quotations and italics

- Use quotations sparingly and, preferably, only as a striking example.
- Try to keep your quotation as brief as possible without sacrificing the authoritativeness of the statement.
- If you cannot reword or rephrase the original idea without losing the essence or significance thereof, use a quotation.
- Quotations should correspond exactly to the original version. For example, if the original makes use of capital letters, your quotation should also include these.
- 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.
- Remember, that if you use quotations too often, they will lose their impact. Also note, the overuse of quotations negatively affects the reader's impression of your work.
- Overuse of quotations can appear lazy or, worse, imply that you do not understand the work yourself.

Examples of quotations containing a 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)]".⁹

Footnote:

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

- 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. (See Chapter 4 for more information on separate quotations.)
- Note that long quotes should be used even more sparingly than shorter quotations. This is because long quotes can usually be paraphrased more easily than shorter phrases or statements.
- A good example of where a separate quotation adds to your argument is when you are discussing a specific piece of legislation, and you quote the section you are referring to in order for the reader to understand your argument.
- Check quotations for accuracy and ensure that all references follow the style requirements.
- If you quote an excerpt that contains a quote, the double quotation ("...") used in the original should be replaced by single quotation marks. For 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

- If you make changes or additions to a quotation, those changes or additions should be placed in square brackets. For example: "[o]f significance are the following comments in 1986 TSAR 232 by Van der Walt who states ..."
- 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.
- Remember that quotation marks at the end of a quotation should be placed after the last punctuation mark (full stop, comma, etc.).

3.3.2 Numerals

- According to the *Stellenbosch Law Review* guidelines, numbers below should be written out in words (for example, one, two). Numbers of 20 and more should be written 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 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", as 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 must always be expressed as numerals.
- Do not use numerals at the beginning of a sentence. Write out the number or rephrase the sentence.

3.3.3 Prepositions

- A fixed preposition group consists of a combination of two or more words and includes at least two prepositions. The words in these groups, as well as the order in which they are used, may not be altered. For example,

in answer to
by means of
with reference to
on the basis of
with regard to (not with regards to)⁶
in respect of
in connection with
as a result of

- If you wish to keep your sentences concise and clear, you may replace these preposition groups with one word. For example,

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; regarding
in respect of – about
in order to – to

3 3 4 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 a verb, and present a complete thought.
- Take care to be consistent with your use of tenses in an assignment. For 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."

⁶ "Regards" is used when sending greetings to someone; for example, "Give my regards to your parents."

3 3 5 Adjectives

- While some descriptive adjectives can be used in academic writing, avoid the use of overly emotive adjectives (as noted in the section on [register](#)).
- Adjectives can be used to compare people or things. The different forms of adjectives used are known as the 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).
- 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).

Do not merge the two forms of the comparative or superlative degrees. For example, it is incorrect to use “the most largest”.

3 3 6 Choose the most suitable word

3 3 6 1 Archaic words and style

- Avoid the use of archaic (old-fashioned) and exaggerated formal words and style. For example,

Afore	before
Amongst	among; between; during; throughout
Heretofore	until now
Hereof	about, in this regard; of this
Whosoever	everyone who
Whichever	everyone that
Whilst	although; during; while
Whereupon	consequently

- Use modern language as far as possible. (Refer to the section on [register](#) for further clarification).

3 3 6 2 Tautology

- Good writing implies short, concise sentences without clutter.
- Eliminate the repetition of words with similar meanings (tautology) to ensure that your writing is clear and unambiguous. For example,

“The basic fundamental principles upon which the law is founded ...”

In this context, the word "basic" is similar to "fundamental". Additionally, "principle" refers to "fundamental" or "foundation". The sentence could thus be shortened and clarified as follows:

"The principles upon which the law is founded ..."

3.3.7 Spelling

Words are codes used to convey or receive information. Languages, therefore, have spelling rules and guidelines 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 a legal practitioner – to spell correctly.

The good news regarding spelling is that there are no grey areas. A word's spelling is either correct or incorrect.

Please ensure that your proofing tools (spellchecker) are set up in Microsoft Word and set to English (South Africa/UK).⁷ You can download the [Afrikaans spellchecker for Microsoft Word](#). Further spelling and grammar assistance is available on the Faculty's Legal Writing blog under the heading [Resources](#). Some frequently misspelt words include:

Correct	Incorrect
accommodate	Accommodate
adolescence	addolescence/adolesence
aggression	agresion
argumentative	argumentitive
analyse	analise
apparently	apparrently/apparantly
appealable	appealeble
appellant	appelant
commission	comission/commision
committee	comittee/commitee
definitely	defnitley or definately
delegate	deligate
disappear	dissappear
discretion	discesion
graffiti	graffitti/grafiti

⁷ Please note that English (South Africa) in Microsoft Word will not always identify all Americanised spelling, such as analyze (incorrect) versus analyse (correct); organization versus organisation.


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

3.3.8 General

- Avoid expressions like “the learned judge”, “respectfully” and “with respect”.
- Gender-neutral language is encouraged. This can be promoted by using the plural (“they”) or by avoiding the 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”. Do not use “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. For example,

... 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 ...



Chapter 4:

Presentation

[4.1 Layout](#)

[4.2 Headings, numbers, bullets](#)

[4.3 Quotations](#)

[4.4 Decoration](#)



Chapter 4: Presentation

The specifications below regarding layout and style apply to any assignment that you are required to complete at the Faculty.

4.1 Layout

- To enhance readability and create a cohesive and professional appearance, it is important to adhere to the established conventions for page layout, including alignment, spacing, and margins.

Margins	2.54 cm (1 inch) all around ("Normal" setting in MS Word)
Line spacing	1.5 lines Main text
Text alignment	Justified
Paragraph spacing	Blank lines before and after headings
Page numbers	Insert before you start writing

- Additionally, the formatting of the text, headings, and footnotes should be consistent.

	Level	Numbering	Description	Other notes	Indentation
First heading	Level 1 heading	1	Arial, 12, bold	Sentence case	None
Second heading	Level 2 heading	1 1	Arial, 12	Sentence case	None
Third heading	Level 3 heading	1 1 1	Arial, 12, italics	Sentence case	None
Subsequent headings	Level 4 and further	1 1 1 1	Arial 12, italics, bold	Sentence case	None
Main text	Normal	-	Arial 12	Sentence case	First line, 0.5 cm
Separate quotations	Block quote	-	Arial, 11	Line spacing: "Exactly" at 16 pt	Left indent 0.5
Footnotes	-	(automatic)	Arial, 10	Line spacing: "Exactly" at 16 pt	None or hanging indent, if required by lecturer

4.2 Headings, numbers, and bullets

- It is important to make use of headings, subheadings, and numbering in your paper, as this makes it easier for the reader to follow your writing.
- Do not write headings completely in capital letters.
- Capitalise the first letter of the first word only, except if it is necessary to capitalise additional words (for example, surnames or place names).

Incorrect: THE PROMISE OF REFORM

The Promise of Reform

The promise of reform in south africa

Correct: The promise of reform

The promise of reform in South Africa

- Do not underline headings.
- Insert a full blank line before and after headings.
- Do not indent headings but align these with the left margin.
- Number headings consecutively. However, do not use automatic numbering for headings.
- Use a tab stop to separate numbers from headings.
- When you divide your paper into numbered units or paragraphs, the following style should be used (but omit full stops between numerals):

1 Level 1 heading

1.1 Level 2 heading

1.1.1 Level 3 heading

1.1.2 Level 3 heading

1.1.2.1 Level 4 heading

1.1.2.2 Level 4 heading

1.2 Level 2 heading

2 Level 1 heading

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

- Use the following styles as sparingly as possible: 1) (1) (i) (ii) (I) (III) (a) (d), etc. However, if it is essential to use one of these styles, lower case Roman numerals are preferable.
- Bullets may be used to separate entries in non-numbered lists.


4.3 Quotations

- 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.
- Note the difference between smart quotes ("...") and straight quotes ("..."). Use smart quotation marks consistently throughout the document.
- Refer to the [section](#) in Chapter 5 for more information on the use of quotations.

4.4 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.)

NB: *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.*



Chapter 5:

Referencing guidelines

[5.1 Introduction](#)

[5.2 Primary sources](#)

[5.3 Secondary sources](#)

[5.4 Referencing in action](#)

[5.5 Quick reference guide](#)



Chapter 5: Referencing guidelines

"The Faculty's referencing style is based on the Stellenbosch Law Review guidelines."

5 1 Introduction

5 1 1 Purpose of referencing

The purpose of referencing is twofold:

- i to acknowledge the intellectual property rights of others and, therefore, to avoid being accused of committing plagiarism (see [Chapter 7](#) for more information); and
- ii 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 distinguishes 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, or tutorial, that you complete at the Faculty.

5 1 2 How to reference

While there are different referencing styles, the Faculty uses a footnote referencing system, which is based on the [Stellenbosch Law Review](#) guidelines. As the name implies, the system uses footnotes, thus only some citations are given in the main text.

Remember that the in-text references used in legal writing will look different from the in-text format of, for example, Harvard or APA.

The Constitution, legislation, and case names will usually be mentioned in the main text since these comprise the framework of sources on which you will build your argument. Secondary sources and, where applicable, the specific details of the primary sources (such as section numbers, case citations, or paragraph numbers) must be listed in the footnotes.

5 1 2 1 Footnotes

A footnote is a superscript number that corresponds with a (small) notation at the bottom of the page. Footnotes appear at the end of each page (footnotes) of the manuscript and not at the end of the manuscript (endnotes). Footnotes (both in the main

text and at the bottom of the page) are consecutively numbered by way of automatic numbering.

Important notes on footnotes

- The footnote number must always appear after the last punctuation or quotation mark.
- All footnotes should begin with a capital letter and end with a full stop.
- Footnote numbers must not be italicised.
- Footnote entries must be justified.
- The first reference to a source in the footnotes will always be the full reference, for example:

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

- For subsequent citations, use the abridged form of the footnote, which is a shortened version of the full reference; for example:

² Schwikkard & Van der Merwe *Principles* 211.

- If the same source, and only that source, is referred to in two or more 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. For example,

²³ M Hogg *Obligations* 2 ed (2006) 207.

²⁴ 209.

²⁵ 135.

- However, the first reference on a new page must be the abridged reference and not only the reference to the page, section, or paragraph.
- Page references should, if possible, only be provided in the footnotes.
- References in the text may be followed by the words "above" and "below", but not *supra* or *infra*.
- In footnotes, the abridged titles of [books](#), [journals](#), and [cases](#) must not be followed by "above" or *supra*.
- Use semicolons to separate multiple references in a footnote. For example,

²³ F Veriava & A Skelton "The Right to Basic Education: A Comparative Study of the United States, India and Brazil" (2019) 35 *SAJHR* 1 3; L Arendse "Slowly but Surely: The Substantive Approach to the Right to Basic Education of the South African Courts Post-

Juma Masjid" (2020) 20 AHRLJ 285 287, 310-311; A Skelton "How Far will Courts Go in Ensuring the Right to Basic Education?" (2012) 27 SAPL 393 396.

- If you refer to multiple references in a footnote, you cannot only cite the page, section, or paragraph number in the subsequent footnotes because the reader will not know which source you are referring to.

Abbreviations

- Use abbreviations as far as possible in the footnotes.

However, do not use abbreviations such as op cit, loc cit, ibid, and idem and "p" or "pp" for "page" or "pages".

- The following abbreviations are used:

article	art	paragraph	para
articles	arts	paragraphs	paras
chapter	ch	proclamation	proc
chapters	chs	regulation	reg
clause	cl	regulations	regs
clauses	cls	revision service	RS
editor; edition	ed	schedule	sch
footnote; note	n	schedules	sch
footnotes; notes	nn	section	s
<i>Government Gazette</i>	GG	sections	ss
government notice	GN	subsection	subs
number	no	subsections	subs
numbers	nos	volume	vol
original service	OS	volumes	vols

- 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.

Judge	J
Judge of Appeal	JA
Chief Justice	CJ
Deputy Chief Justice	DCJ
Judge President	JP
Deputy Judge President	DJP

Acting Judge	AJ
Acting Judge of Appeal	AJA
President	P

- For 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."⁸

- Do not use abbreviated forms in the main text, except if a proper name is used repeatedly. (See the example below on how to define a longer source title or reference for subsequent references.) The abbreviated form (or, in some instances, acronym) should be consistently referred to thereafter.

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. TAC has often stated that ...

5 1 2 2 Quotations

- Use quotations sparingly, and preferably only to make striking example.
- Keep your quotation as brief as possible without sacrificing the authoritativeness of the statement.
- To avoid the overuse of quotations, consider whether you can re-word or paraphrase the statement. If you cannot do so without losing the essence or significance of the statement, use a quotation. If you can, rather rephrase.

Remember, if you use quotations too often, they will lose their impact. Also note, the overuse of quotations negatively affects the reader's impression of your work. Overuse of quotations can appear lazy, or worse that you do not understand the work yourself.

- Quotations should correspond exactly to the original version. For example, if the original makes use of capital letters, your quotation should also include these.

⁸ J Burchell *Principles of Criminal Law* 4 ed (2013) 138.

- However, if additions or omissions are necessary, changes and additions should be placed in square brackets and omissions should be indicated by an ellipse (...).
- Quotations should not start with an ellipse but may end with one. Upper- and lower-case letters may be adapted with the aid of square brackets. For example,
Section 28(2) of the Constitution provides that "[a] child's best interests are of paramount importance in every matter concerning the child ..."
- 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. For example,

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*.⁹"

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

or

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)]".⁹

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

- 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. (See the examples above and below.)
- Long quotes should be used even more sparingly than shorter quotations. This is because long phrases can usually be paraphrased more easily than shorter phrases or statements.
- Yet, a separate quotation can add to your argument when you are discussing a specific piece of legislation, and you quote the section you are referring to in order for the reader to understand your argument.
- Ensure that quotations have been checked for accuracy and that references comply with the style requirements.

- Double quotation marks ("...") are used for quotations; however, single quotation marks ('...') should be used if the text you intend to quote contains a quotation. For 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

- Quotations are not italicised, 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.

5 1 2 3 Bibliography

The purpose of the bibliography is to provide your reader with a comprehensive list of the sources you used. (Refer to the section on [compiling a bibliography](#) below for more information.)

5 1 2 4 Referencing various sources

The sections below provide examples of references for different sources. While the guide aims to give examples of a variety of sources, it is not possible for the guide to include all possible variations of sources that you could use. If you make use of a source that does not appear to fit under any of the listed categories, use the category that is most suited for that source, and provide as much information as is available to acknowledge the source properly.

If you have any difficulties in determining what category of source would be most appropriate, you may make an appointment with a [writing consultant](#) to discuss the source in question.

5.2 Referencing primary sources

5.2.1 The Constitution

- The official reference for the Constitution is:

Constitution of the Republic of South Africa, 1996.

It is important to note that the Constitution is no longer cited as Act 108 of 1996.

Main text

- The South African Constitution is a uniquely authoritative source. Consequently, it is preferable to refer to the Constitution in the main text, and not in the footnotes alongside other sources.

First reference:

Section 9 of the Constitution of the Republic of South Africa, 1996 ("Constitution") provides that ...

Subsequent references:

According to section 12 of the Constitution, every person ...

Footnotes

- If you refer to a constitutional principle or right in the main text, without expressly mentioning the section number, you will provide the reference to the Constitution in a footnote.
- The first reference will contain the Constitution's full title, as well as the section number. Subsequent references will contain the section number and the Constitution's shortened title.

First reference:

¹ S 9 of the Constitution of the Republic of South Africa, 1996 ("Constitution").

Abridged reference:

² S 9 of the Constitution.

Bibliography

- The full reference is provided in the bibliography.

Constitutions:

Constitution of the Republic of South Africa, 1996.

5 2 2 *The Interim Constitution*

- The Interim Constitution is not cited in the same way as the Constitution.

Main text

Section 8 of the Interim Constitution of the Republic of South Africa, Act 200 of 1993 ("Interim Constitution") provides that ...

Footnotes

First reference:

¹ S 8 of the Interim Constitution of the Republic of South Africa, Act 200 of 1993 ("Interim Constitution").

Abridged reference

² S 8 of the Interim Constitution.

Bibliography

- While the Interim Constitution is not cited in the same way as the Constitution, it is also listed under the "Constitutions" heading in the bibliography.

Constitutions:

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

5 2 3 *Legislation*

5 2 3 1 Statutes (acts)

- Legislation should not be italicised, and no punctuation marks should be used.
- The full reference provides the name, act number, and year.

act name | act number | of | year

Main text

- The first reference contains the full reference in the main text and, thereafter, only the name, or the abridged form, is cited.

First reference:

Section 9 of the Interpretation Act 33 of 1957 ("Interpretation Act") deals with ...
The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("PEPUDA") deals with

Subsequent references:

According to section 9 of the Interpretation Act ...
According to section 9 of PEPUDA ...

- It is not necessary to provide a footnote if the reference in the main text provides all the required information.

Footnotes

- Legislation is referenced in footnotes when the specific section referred to is not mentioned in the main text.

Main text:

The Interpretation Act 33 of 1957 ("Interpretation Act") provides an important distinction ...¹

Accompanying footnote:

¹ S 12.

- Provide a footnote if the main text alludes to, but does not specifically mention, an act.
- If the same source is referenced in immediately consecutive footnotes, only the section number needs to be provided.

First reference:

¹ S 9 of the National Credit Act 34 of 2005 ("NCA").

Abridged footnote:

² S 11 of the NCA.
³ Ss 12 and 13.

Bibliography

Legislation:

National Credit Act 34 of 2005.

5 2 3 2 Bills and draft legislation

- References to Bills must include the bill number.

bill name | bill number | -yyyy

Main text

In 2013, the Women's Empowerment and Gender Equality Bill was introduced to parliament ...¹

¹ Women's Empowerment and Gender Equality Bill B50B-2013.

Footnotes

² Cl 17(5) of the Public Procurement Bill B18-2023.

Bibliography

Bills and draft legislation:

Public Procurement Bill B18-2023.

- For draft bills, include the *Government Gazette* information.

draft bill name | (draft) | in | government notice number | GG | number | of | dd-mm-yyyy

Footnotes

² Cl 2 of the Sectional Titles Schemes Management Bill (draft) in GN R1447 GG 32666 of 30-10-2009.

Bibliography

Bills and draft legislation:

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

5 2 3 3 Proclamations and regulations

- For proclamations and regulations, include the *Government Gazette* information.
- Regulations:

title (if available) | GN | R | number | in | GG | number | of | dd-mm-yyyy

Footnotes

² Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations GN R2721 in GG 47452 of 04-11-2022 (the "2022 PPPFA regulations").

³ Reg 11 of the 2022 PPPFA regulations.

Bibliography

Bills and draft legislation:

Preferential Procurement Regulations GN R2721 in GG 47452 of 04-11-2022.

- Proclamations:

title (if available) | Proc | R | number | in | GG | number | of | dd-mm-yyyy

Footnotes

² Proc R138 in GG 8331 of 06-08-1982.

Bibliography

Bills and draft legislation:

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

5 2 4 Case law

5 2 4 1 Reported cases

- Cases should be cited according to the conventions applicable to the jurisdictions from which they originate.
- Punctuation marks and brackets should be omitted in all South African cases, except in post-1946 references where the jurisdiction reference (in capital letters) should be placed in round brackets.

- Note that Supreme Court of Appeal decisions are abbreviated (SCA) or (HHA), whereas decisions of the former Appellate Division are abbreviated (A).⁹
- The case reference includes the following elements:
 - Case name (applicants or claimants versus respondents or defendants).
 - Case citation: year | volume | law report | first page of report | (court).

case name (full) | year | volume | law report | first page of report | (court)

Main text

- Provide the full case name, in italics, in the text.
- Provide the case citation (year, volume, law report, page number, and court) in an accompanying footnote.
- You can use an abridged version of the case name in the main text (see example below).

Main text:

In *Government of the Republic of South Africa v Grootboom* ("Grootboom"),¹ it was confirmed that the Constitution entrenches both civil and political rights.

Accompanying footnote:

¹ 2001 1 SA 46 (CC) para 22.

- Omit designations such as "and Another/Others" (or "en 'n Ander/Andere"), but do not omit "NO" or "NNO".
- However, retain "and Another/Others" (or "en 'n Ander/Andere") when these designations precede "NNO".
- Do not refer to more than one set of law reports for any particular case.¹⁰ Choose a reference and be consistent.

Footnotes

- There are no accepted abridged versions of footnotes for case law references.

⁹ For more information on court abbreviations, refer to D Kleyn, F Viljoen, E Zitzke & P Madi Beginner's Guide for Law Students 5 ed (2018) 101-102.

¹⁰ Law reports can be defined as "the publications in which the decisions of the courts are recorded." Most often, these publications are "private publications" where the "publisher makes the reports more attractive and more useful" by summarising the key facts of the case, the key arguments made as well as the key laws focused on in the case

- If there are subsequent references to a case, the full case name and case citation must be provided in the footnotes if the case name is not mentioned in the main text.
- Footnote references directly following a full reference only need to mention the relevant paragraph or page number.
- 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, eg A, B, C, etc (as in the SA Law Reports), paragraph references should preferably be included.

First reference:

¹ *Government of the Republic of South Africa v Grootboom* 2001 1 SA 46 (CC) para 22.

Subsequent footnote:

² *Government of the Republic of South Africa v Grootboom* 2001 1 SA 46 (CC) para 96.

³ Para 112.

Bibliography

Cases:

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

- 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. Advisable platforms to find the reported versions would be Jutastat and LexisNexis. Where the case is available on more than one platform, use the same platform consistently.

NB: *SAFLII versions of judgements are not the reported versions thereof, although SAFLII may provide the available reported citations as alternatives to their own citation. It is your responsibility to ensure that you use the reported version of the judgment, with correct page and paragraph references, based on the reported version, rather than the SAFLII version*

5 2 4 2 Unreported cases

- Unreported judgments should be cited as follows: the name of the case; a reference to the jurisdiction (court division) 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.

case name (full) | court division | judgment date: dd-mm-yyyy | case no xxxx/yy

Footnotes

- As with reported cases, always give the full citation, unless the case name is mentioned in the main text.

First reference:

¹ *Waks v Jacobs en die Stadsraad van Carletonville* TPD 30-10-1989 case no 5971/89.

Subsequent footnote:

² *Waks v Jacobs en die Stadsraad van Carletonville* TPD 30-10-1989 case no 5971/89.

Bibliography

Cases:

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

5 2 4 3 Judgments only available electronically

- Where a judgment is only accessible electronically and appears in a well-known source, which reports judgments, it is cited (as far as possible) in accordance with the guidelines above.

case name (full) | yyyy | electronic source citation | (court abbreviation)

Footnotes

- As with reported cases, always give the full citation, unless the case name is mentioned in the main text.

First and subsequent references:

¹ *Strydom v Liebenberg* 2007 JOL 20689 (SCA).

Bibliography

Cases:

Strydom v Liebenberg 2007 JOL 20689 (SCA).

- Other judgments only available electronically must be cited in the format generally used for [electronic material](#) and must include the date of the judgment and the relevant court.

case name (full) | (case number xxx/yyyy) | electronic source citation | judgment date: dd-mm-yyyy | website name | <URL> | (accessed dd-mm-yyyy)

Footnotes

- As with reported cases, always give the full citation, unless the case name is mentioned in the main text.

First and subsequent references:

¹ *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).

Bibliography

Cases:

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).

5 2 5 International sources

- The *Stellenbosch Law Review* does not provide guidelines for citing international sources.
- Thus, when referencing international sources, you are advised to consult [OSCOLA 2012](#) (Oxford Standard for Citation of Legal Authorities).
- International sources vary widely and include both primary and secondary sources. (Secondary sources are referenced according to the conventions in this guide. Refer to the section on secondary sources below to guide you.)

5 2 5 1 Foreign legislation

act name | year

Statute of Frauds 1677.

Anti-Drug Abuse Act 1988.

Anti-Discrimination Act 1977.

5 2 5 2 Treaties

- Treaties are international agreements between two or more states, and are given different names (for example, conventions, covenants, exchange of notes).
- They are typically referenced in the same way as legislation.
- Refer to the full title, adoption date, and, if applicable, the date it was signed or came into force, and, if available, the identifying information (serial number, UNTS, or document number).

full title | date of adoption | signed/came into force date | identifying information

Main text

- You may abbreviate the title of the international document for subsequent use in your main text, but you may not use the abbreviation in your footnotes. Footnotes should always contain the full reference to the document together with the paragraph or article number that you are referring to.

Main text:

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations UNGA Res 2625 (XXV) (24 October 1970) UN Doc No A/RES/25/2625 ("Friendly Relations Declaration").

UN Committee on the Rights of the Child General Comment 7: "Implementing Child Rights in Early Childhood" (2005) CRC/C/GC/7/Rev.1, 2006 ("General Comment 7").

Subsequent references:

In article 7 of the Friendly Relations Declaration, ...

According to General Comment 7, ...

Footnotes

- Footnotes should always contain the full reference to the document together with the paragraph or article number that you are referring to.

¹ Art 7 of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the

United Nations UNGA Res 2625 (XXV) (24 October 1970) UN Doc No A/RES/25/2625.

² Para 10 of UN Committee on the Rights of the Child General Comment 7: "Implementing Child Rights in Early Childhood" (2005) CRC/C/GC/7/Rev.1, 2006.

Bibliography

International documents (conventions, treaties, etc.):

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations UNGA Res 2625 (XXV) (24 October 1970) UN Doc No A/RES/25/2625.

UN Committee on the Rights of the Child General Comment 7: "Implementing Child Rights in Early Childhood" (2005) CRC/C/GC/7/Rev.1, 2006.

5 2 5 3 Foreign case law

- When using OSCOLA to reference foreign case law, be consistent in the way in which you approach case law from different jurisdictions.
- When citing foreign cases, omit all full stops and commas or cite them exactly as is, but never use "local" methods.

Harrow London Borough Council v Qazi [2004] 1 AC 983 (HL)

United States v Carolene Products 304 US 144 (1938)

Horn & Hardart Co v Pillsbury Co (1989) 888 F 2d 8 (2d Cir)

Whiting v Diver Plumbing & Heating Ltd [1992] 1 NZLR 560 569

5 3 Referencing secondary sources

5 3 1 Books

5 3 1 1 Print books

Footnote

initial | author surname | *book title (full)* | edition (if not first) | (year) | cited page(s).

- The full title is cited where it is referred to for the first time.

- If there are two authors, the names of both authors, linked by an ampersand (&), should appear in the first and subsequent citations.
- If there are more than two authors, the names of all the authors, separated by commas and an ampersand before the last name, should appear in the first citation.

One author

F Venter *Legal Research: Purpose, Planning and Publication* (2018) 20.

Two authors

PJ Schwikkard & SE van der Merwe *Principles of Evidence* 4 ed (2016) 211.

Multiple authors

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

D Kleyn, F Viljoen, E Zitzke & P Madi *Beginner's Guide for Law Students* 5 ed (2018) 51.

Abridged footnote

author surname | *book title (abridged)* | cited page(s).

- For multiple authors, only the name of the first author, followed by "et al" (not italicised) should appear in subsequent citations.
- Where the same source, and only that source, is referred to in two or more 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.

One author

¹⁴ Venter *Legal Research* 20.

¹⁵ 21.

Two authors

Schwikkard & van der Merwe *Principles* 211.

Multiple authors

Redlich et al *Understanding Constitutional Law* 78.

Kleyn et al *Beginner's Guide for Law Students* 51.

Bibliography

author surname | initial | *book title (full)* | edition (if not first) | (year), | place of publication: | publisher.

- Arrange references alphabetically according to the first author's surname.

Books:

Kleyn D, Viljoen F, Zitzke E & Madi P *Beginner's Guide for Law Students* 5 ed (2018), Cape Town: Juta & Co Ltd.

Redlich N, Attanasio J & Goldstein JK *Understanding Constitutional Law* 3 ed (2005), Newark, NJ: LexisNexis.

Schwikkard PJ & Van der Merwe SJ *Principles of Evidence* 4 ed (2016), Cape Town: Juta & Co Ltd.

Venter F *Legal Research: Purpose, Planning and Publication* (2018), Claremont: Juta and Company Pty Ltd.

5 3 1 2 Electronic books (e-books)

Footnote

initial | author surname | *book title (full)* | edition (if not first) | (e-book) | (year) | cited page(s) | <URL> | (accessed).

M Clark & J Phelan *Debating rhetorical narratology: On the synthetic, mimetic, and thematic aspects of narrative* (e-book) (2020) 20-32
<<https://doi.org/10.26818/9780814214282>> (accessed 02-02-2025).

Abridged footnote

author surname | *book title (abridged)* | cited page(s).

Clark & Phelan *Debating rhetorical narratology* 20-32.

Bibliography

author surname | initial | *book title (full)* | edition (if not first) | (e-book) | (year), | <URL> | (accessed).

Clark M & Phelan J *Debating rhetorical narratology: On the synthetic, mimetic, and thematic aspects of narrative* (e-book) (2020), <<https://doi.org/10.26818/9780814214282>> (accessed 02-02-2025).

5.3.2 Chapters in edited collections (chapters in books)¹¹

Footnote

initial | chapter author surname | "title of chapter (full)" | in | editor(s) (ed/s) | *book title (full)* | edition (if not first) | (year) | first page of chapter | cited pages.

M Tushnet "Comparative Constitutional Law" in A Reimann & R Zimmerman (eds) *The Oxford Handbook of Comparative Law* (2006) 1225-1230.

Abridged footnote

chapter author surname | "title of chapter (abridged)" | in | *book title (abridged)* | cited pages.

Tushnet "Comparative Constitutional Law" in *Handbook of Comparative Law* 1229-1230.

Bibliography

chapter author surname | initial | "title of chapter (full)" | in | editor(s) (ed/s) | *book title (full)* | edition (if not first) | (year) | first-last page of chapter | place of publication: | publisher.

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.

¹¹ An edited collection is a book that is divided into chapters, each of which is written by a different author or group of authors.

5 3 3 Loose-leaf publications¹²

5 3 3 1 Loose-leaf publication with section author

- If a particular section of a loose-leaf publication is attributed to a specific author or authors, the following information should be provided.
- Provide the year of publication of the current update service of the loose-leaf, not the particular section or chapter, preceded by the abbreviations "OS" for original service or "RS" for revised service with service number (where indicated) in brackets

initial | section author surname | "section title (full)" | in | editor(s) (ed/s) | *publication title (full)* | edition (if not first) | (RS/OS number year) | cited pages.

Footnotes

First footnote:

¹ 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.

Abridged footnotes:

² Roux "Democracy" in *CLOSA* 10–3-10–22.

Bibliography

section author surname | initial | "section title (full)" | in | editor(s) (ed/s) | *publication title (full)* | edition (if not first) | (RS/OS number year) | section first page - section last page.

Loose-leaf publications:

Roux T "Democracy" in S Woolman, T Roux & M Bishop (eds) *Constitutional Law of South Africa* 2 ed (RS 1 2009) 10-3-10-30.

¹² "Looseleaf publications exist in several varieties. The purpose of this ... publication format is to keep it as up to date as possible. The frequency of updates depends on the publisher and the nature of how fast new developments come about in a particular subject" De Paul Rinn Law Library "Looseleaf (or Loose-leaf) Materials" (07-11-2019) De Paul Rinn Law Library <<https://libguides.depaul.edu/c.php?g=253628&p=1690775>> (date accessed 01-12-2020)

5 3 3 2 Loose-leaf publication without section author

author(s) or editor(s) | (ed/s) if applicable | *publication title (full)* | edition (if not first) | (RS/OS number year) | cited pages.

Footnotes

First footnote:

¹ 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

Abridged footnotes:

² Du Toit et al *Commentary on the CPA* 5-35.

Bibliography

section author surname | initial | "section title (full)" | in | editor(s) (ed/s) | *publication title (full)* | edition (if not first) | (RS/OS number year) | section first page - section last page.

Loose-leaf publications:

Du Toit E, De Jager F, Paizes AP, St Q Skeen A & Van der Merwe SE *Commentary on the Criminal Procedure Act* (RS 44 2010) 5-30-5-40.

5 3 4 Theses and dissertations

Footnote

author | *title of thesis/dissertation in full* | degree | university | (year) | cited pages

¹ S Scott *Unjust Enrichment by Transfer in South African Law: Unjust factors or absence of legal ground?* DPhil thesis, Oxford University (2005) 8-9.

Abridged footnote

author | *title of thesis/dissertation in abridged* | cited pages.

² Scott *Unjust Enrichment* 8-9.

Bibliography

author | *title of thesis/dissertation in full* | degree | university | (year) | cited pages.

Theses and dissertations:

Scott S *Unjust Enrichment by Transfer in South African Law: Unjust factors or absence of legal ground?* DPhil thesis, Oxford University (2005).

5.3.5 Official publications and SA Law Reform Commission publications

- An official publication is a source or document that has been issued by an official body to external individuals or entities.
- Official publications and SA Law Reform Commission Reports as far as possible follow the conventions applying to books. If a report has a number, the number should be used instead of the date.
- "Official body" includes state organs, universities, industrial and trade associations, and other similar entities. It is the status of the issuing body that determines whether the document is an official publication, rather than the content of the document.¹³
- Official publications are *not* the same as reports (. Official publications, as a rule of thumb, are published by Government (or an organ of state) whereas a report is published by an NGO such as UNICEF.

Footnote

author/institution name | *title of document (full)* | report/document number if any or year | cited page(s).

First footnote:

¹ RSA *First Report of the Constitutional Committee of the President's Council* PC 3/1982 112-115.

² SA Law Reform Commission ("SALRC) *Domestic Partnerships Project 118 Report* (2006).

Subsequent footnotes:

¹ RSA *First Report of Constitutional Committee* 112-115.

¹³ A Lawson, P Benefield, R Downing & S Woolmer *Guidelines for official publications in local authorities* (2007) 38-39 <<https://www.nfer.ac.uk/publications/online-resources/LApublishing/LApublishing.pdf>> (accessed 11-11-2019).

² SALRC *Domestic Partnerships Report* 14-30.

Bibliography

author/institution name | *title of document (full)* | report/document number if any or
year

Official publications:

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

SA Law Reform Commission *Domestic Partnerships Project 118 Report* (2006).

5.3.6 Unpublished materials

- Unpublished materials are, generally, articles that are in the process of being written. They cannot be entirely trusted and should be avoided as much as possible as they have not yet gone through the rigorous process of peer-review or been subjected to proper academic scrutiny due to their incomplete nature. Sometimes these materials will be part of a conference or presentation.
- Such references should, as far as possible, follow the conventions applying to books and contain an indication of where the relevant materials can be obtained.
- For the type of document, provide an appropriate description based on the document used, such as "paper presented", "working paper prepared", "presentation made".

Footnote

author initial | surname | *title of document (full)* | (year) | unpublished [type of document]
presented at | conference/seminar | on | *name of conference/seminar* | hosted by |
institution name | at the | place, | date | (where to obtain)

¹ 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).

Abridged footnote

author(s) | *title of document (abridged)*.

² Du Plessis *Courts, the Profession and Legal Process*.

Bibliography

Author(s) | *Title of document (full)* | (Year) | Unpublished [type of document]
presented at | conference/seminar/etc. | on | *name of conference/seminar* | hosted by
| Institution name | at the [place], | date | (where to obtain).

Unpublished materials:

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).

5 3 7 Journal articles or essays

5 3 7 1 Print journals

- If possible, use the [recognised abbreviations](#) of journal names in the footnotes.

Footnote

author initial | surname | "title of article (full)" | (year) | volume | *journal name official abbreviation or full name if no abbreviation* | first page of article | cited page(s)

¹ C Albertyn & B Goldblatt "Facing the Challenge of Transformation: Difficulties in the Development of an Indigenous Jurisprudence of Equality" (1998) 14 *SAJHR* 248 254.

Abridged footnote

surname | (year) | *journal name official abbreviation or full name if no abbreviation* | cited page(s)

² Albertyn & Goldblatt (1998) *SAJHR* 254.

Bibliography

- Provide the full name of the journal in the bibliography.

author surname | initial | "title of article (full)" | (year) | volume | *journal name (full)* | first page-last page of article

Law journal articles:

Albertyn C & Goldblatt B "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.

5 3 7 2 Electronic journals (e-journals)

- Electronic journals are cited like print journals with the addition of the URL and the date when the webpage was last accessed.

Footnote

author initial | surname | "title of article (full)" | (year) | volume | *journal name official abbreviation or full name if no abbreviation* | first page of article | cited page(s) | <URL> | (accessed dd-mm-yy)

¹ 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).

Abridged footnote

Author(s) | (year) | *journal name official abbreviation OR full name if no abbreviation* | cited page(s)

¹ Kornet (2010) *Electronic Journal of Comparative Law* 4.

Bibliography

author(s) | "title of article (full)" | (year) | volume | *journal name (full)* | first page-last page of article | <URL> | (accessed dd-mm-yyyy)

Law journal articles:

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* 1-31 <<http://www.ejcl.org/141/art141-1.pdf>> (accessed 07-12-2010).

5.3.8 Reviews & case comments

- Reviews and case comments as far as possible follow the conventions applying to journal articles.

Footnote

author(s) | "title of case comment/book review (full, formatted as in original)" | (year) | volume | *journal name official abbreviation or full name if no abbreviation* | first page | cited page(s)

¹ LM du Plessis & M Olivier "Ngqumba v Staatspresident, Damons NO v Staatspresident, Jooste v Staatspresident 1988 4 SA 224 (A)" (1989) 4 *SAPL* 134 136-137.

Abridged footnote

author(s) | (year) | *journal name official abbreviation OR full name if no abbreviation* | cited page(s)

² Du Plessis & Olivier (1989) *SAPL* 134 136-137.

Bibliography

author(s) | "title of case comment/book review (full, formatted as in original)" | (year) | volume | *journal name official abbreviation or full name if no abbreviation* | first-last page of article

Reviews & case comments:

Du Plessis LM & Olivier M "Ngqumba v Staatspresident, Damons NO v Staatspresident 1988 4 SA 224 (A)" (1989) 4 *SA Public Law* 134-139.

5 3 9 Articles in printed media

- Articles in printed media, such as newspaper and magazine articles, as far as possible follow the conventions applying to journal articles.
- The names of newspapers and popular magazines are not abbreviated.

Footnote

author(s) | "title of article" | *magazine/newspaper title (full)* | date published: dd-mm-yyyy | first page | cited page(s)

¹ LM du Plessis "SA Howe – Grammofone of Politieke Kanaalgrawers?" *Rapport* (18-05-1986) 23 27.

Abridged footnote

author(s) | *magazine/newspaper title (full)* | cited page(s)

² Du Plessis *Rapport* (18-05-1986) 28.

Bibliography

author(s) | "title of article" | *magazine/newspaper title (full)* | date published: dd-mm-yyyy | first page-last page.

Printed media:

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

5 3 10 Electronic sources

- Referencing electronic sources is only permitted where the source is only available electronically. and should be used as sparingly as possible as an internet source is a secondary source.
- Official documents and articles, which are published in print form but also available electronically on, for instance, government websites, HeinOnline, or other databases, are cited according to the appropriate format in the sections above.
- See the relevant sections above for e-books, electronic journals, and judgments only available electronically.
- The first reference to an electronic source should contain the following information:

- Initials and surname(s) of author(s) or editor(s), or the name of the institutional author, editor or compiler; where no author is indicated, insert "Anonymous".
- Full title of the document or text on the particular webpage.
- The date of electronic publication, or the latest update of the website or webpage, or of posting (on a blog, for instance).
- The title of the website where the document appears (in italics), usually the main title indicated on the homepage.
- The URL of the particular webpage to which is referred, in angle brackets "< >"; remove the hyperlink from the text of the article.
- The date when the author last accessed the particular webpage (in the form dd-mm-yyyy).
- Insert the particular page(s) or paragraph number(s) directly before the URL.
- The URL should lead directly to the cited document or text. Therefore, if the document or text does not appear on the homepage of the website itself, merely citing the URL of the homepage is unacceptable.

Footnote

author(s) | "title of document in full" | date of electronic publication dd-mm-yyyy | *title of website* | <URL> | (accessed dd-mm-yyyy)

¹ 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).

² 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).

Abridged footnote

author(s) | "title of document in full" | *title of website*

³ De Vos "Fifa World Cup: Bad for Human Rights?" *Constitutionally Speaking*.

⁴ McArdle "FutureEd 2: A Major Conference explores how Legal Education will change amidst Rapid Globalization (Video)" *Harvard Law School*.

Bibliography

author(s) | "title of document in full" | date of electronic publication dd-mm-yyyy | *title of website* | <URL> | (accessed dd-mm-yyyy)

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/>> (accessed 07-12-2010).

McArdle E "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).

5.3.11 Reports, company-issued documents, and information booklets

- 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.
- Examples include: Annual reports of companies, information booklets issued by companies, reports drafted by NGOs, and handbooks issued by organisations such as UNICEF.

Footnote

author | *report title* | (year) | cited page(s)

First footnote:

¹ 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) 8.

Subsequent footnotes:

² LRC, Iranti-org & Gender Dynamix *Report* (2016) 17-18.

- If there is an accepted abbreviation, you may use the company's abbreviated name in subsequent references.

Bibliography

author | *report title* | (year)

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).

5.3.12 Old authorities

- There are fixed conventions for referencing the old authorities. Use the accepted citation forms whenever possible. Where no fixed conventions exist, cite older authorities like any modern book. For example,

De Groot *Inl 3 32 7 De Groot De Jure Belli ac Pacis 2 10 2 1.*

Voet 47 1 2.

Van der Linden *Koopmans Handboek 1 7 2.*

5.4 Referencing in action

5.4.1 How to structure footnotes

Refer to the example below for an illustration of how to use footnotes and abridged footnotes. (Please note placeholder text has been used in the main text.)

Lorem ipsum dolor sit amet, consectetur adipiscing elit.¹ Donec feugiat sem arcu, in laoreet tortor suscipit et.² Sed turpis risus, eleifend tempor nisl ut, feugiat vehicula ante.³ Quisque quis erat efficitur nulla volutpat faucibus.⁴ Nunc ac aliquet augue, et blandit nibh.⁵ Fusce sit amet accumsan erat.⁶ Curabitur euismod venenatis lectus et pellentesque.⁶ Maecenas semper, mauris vel aliquam tristique, tortor metus consectetur neque, sed aliquet mauris urna vel eros. Maecenas lobortis risus nec faucibus feugiat.⁷ Pellentesque ac elementum justo.⁸ Cras gravida eros odio.⁹ Phasellus nec mi ac mauris porttitor semper ac eu turpis ultrices sodales eros id, gravida finibus leo.¹⁰ Integer sagittis diam aliquet ipsum mattis varius:

“In in tellus luctus, tristisque ligula sed, voluptat sem. Aliquam quis eros portitor, efficitur mi ut, accumsan quam. Nunc ut interdum leo. Vestibulum risus urna, efficitur vel sem in, feugiat elementum quam. Lorem ipsum dolor sit amet, consectetur adipiscing elit.”¹¹

Ut lacinia dolor ut augue luctus cursus.¹² Mauris eros lacus, pretium id sollicitudin et, placerat non enim.¹³ Nam pellentesque nulla sed commodo convallis.¹⁴ Nullam nec felis diam.¹⁵ Aliquam eget risus in massa pellentesque euismod.¹⁶ Nullam dolor quam, suscipit eget interdum at, pulvinar vel magna.¹⁷

¹ F Venter *Legal Research: Purpose, Planning and Publication* (2018) 20.

² S 9 of the Constitution of the Republic of South Africa, 1996 (“Constitution”).

³ PJ Schwikkard & SE van der Merwe *Principles of Evidence* 4 ed (2016) 211.

⁴ 212.

⁵ *Government of the Republic of South Africa v Grootboom* 2001 1 SA 46 (CC) para 22.

⁶ Para 24.

⁷ Venter *Legal Research* 20.

⁸ 21.

⁹ C Albertyn & B Goldblatt “Facing the Challenge of Transformation: Difficulties in the Development of an Indigenous Jurisprudence of Equality” (1998) 14 *SAJHR* 248 254.

¹⁰ 250.

¹¹ 254.

¹² 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).

¹³ S Scott *Unjust Enrichment by Transfer in South African Law: Unjust factors or absence of legal ground?* DPhil thesis, Oxford University (2005) 8-9.

¹⁴ Schwikkard & van der Merwe *Principles* 211.

¹⁵ *Government of the Republic of South Africa v Grootboom* 2001 1 SA 46 (CC) para 25.

¹⁶ De Vos “Fifa World Cup: Bad for Human Rights?” *Constitutionally Speaking*.

¹⁷ Scott *Unjust Enrichment* 8-9.

5.4.2 Compiling a bibliography

All the sources in the main text and footnotes must be described in a bibliography at the end of the assignment. However, do not include sources in your bibliography that do not appear in the text.

In the bibliography, refer to the source in its entirety. Do not include the exact place in the source to which you referred (such as the specific section, paragraph, or page).

Structure the bibliography as follows:

- Use headings to arrange sources according to the type of source.

- Provide an index of cases (organised alphabetically and by country).
- Provide an index of legislation (organised alphabetically and by country).
- For sources with authors, arrange references alphabetically according to the first author's surname.
- When citing multiple works of one author, list these in chronological order.
- When citing multiple works of one author published in the *same* year, list these alphabetically according to the title.

Bibliography

Books:

Kleyn D, Viljoen F, Zitzke E & Madi P *Beginner's Guide for Law Students* 5 ed (2018), Cape Town: Juta & Co Ltd.

Redlich N, Attanasio J & Goldstein JK *Understanding Constitutional Law* 3 ed (2005), Newark, NJ: LexisNexis.

Schwikkard PJ & Van der Merwe SJ *Principles of Evidence* 4 ed (2016), Cape Town: Juta & Co Ltd.

Venter F *Legal Research: Purpose, Planning and Publication* (2018), Claremont: Juta and Company Pty Ltd.

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) 10-3-10-30.

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.

SA Law Reform Commission *Domestic Partnerships Project 118 Report* (2006).

Bills, draft legislation, proclamations, regulations and other documents published in the Government Gazette:

Public Procurement Bill B18–2023.

Sectional Titles Schemes Management 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).

Journal articles:

Albertyn C & Goldblatt B “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.

Printed media:

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

Reports, company-issued documents, information booklets and similar documents:

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).

Index of cases:

South Africa

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

United Kingdom

Alphabetical list of cases.

Index of legislation:

South Africa

Interpretation Act 33 of 1957.

National Credit Act 34 of 2005.

United Kingdom

Alphabetical list of legislation.

Constitutions:

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/>> (accessed 07-12-2010).

International documents (conventions, treaties):

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations UNGA Res 2625 (XXV) (24 October 1970) UN Doc No A/RES/25/2625.

UN Committee on the Rights of the Child General Comment 7: “Implementing Child Rights in Early Childhood” (2005) CRC/C/GC/7/Rev.1, 2006.

5.5 Quick reference guide

The quick guide provides a quick overview of how to reference certain sources, but it does not replace the detailed explanations, context, and guidance found in this chapter.

Primary sources	
Legislation	
	act name act number of year
First reference	Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("PEPUDA").
Subsequent references	PEPUDA
Bibliography	Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.
Case law	
	case name (full) year volume law report first page of report (court)
First reference	<i>MEC for Education: Kwazulu Natal v Pillay</i> 2008 2 SA 474 (CC) para 112.
Subsequent references	<i>MEC for Education: Kwazulu Natal v Pillay</i> 2008 2 SA 474 (CC) para 112.
Bibliography	<i>MEC for Education: Kwazulu Natal v Pillay</i> 2008 2 SA 474 (CC).
Draft legislation	
	draft bill name (draft) in government notice number GG number of dd-mm-yyyy
First reference	Sectional Titles Schemes Management Bill (draft) in GN R1447 GG 32666 of 30-10-2009.
Bibliography	Sectional Titles Schemes Management Bill (draft) in GN R1447 GG 32666 of 30-10-2009.
Secondary sources	
Books	
	initial author surname book title (full) edition (if not first) (year) cited page(s)
First reference	D Kleyn, F Viljoen, E Zitzke & P Madi <i>Beginner's Guide for Law Students</i> 5 ed (2018) 51.
Subsequent references	Kleyn et al <i>Beginner's Guide for Law Students</i> 51.
Bibliography	Kleyn D, Viljoen F, Zitzke E & Madi P <i>Beginner's Guide for Law Students</i> 5 ed (2018), Cape Town: Juta & Co Ltd.
Chapters in books	
	initial chapter author surname "title of chapter (full)" in editor(s) (ed/s) book title (full) edition (if not first) (year) first page of chapter cited pages
First reference	M Tushnet "Comparative Constitutional Law" in A Reimann & R Zimmerman (eds) <i>The Oxford Handbook of Comparative Law</i> (2006) 1225 1229-1230.
Subsequent references	Tushnet "Comparative Constitutional Law" <i>Handbook of Comparative Law</i> 1229-1230.
Bibliography	Tushnet M "Comparative Constitutional Law" in A Reimann & R Zimmerman (eds) <i>The Oxford Handbook of Comparative Law</i> (2006) 1225 1229-1230.

Theses and dissertations	
	author title of thesis/dissertation in full degree university (year) cited pages
First reference	S Scott <i>Unjust Enrichment by Transfer in South African Law: Unjust factors or absence of legal ground?</i> DPhil thesis, Oxford University (2005) 8-9.
Subsequent references	Scott <i>Unjust Enrichment</i> 8-9.
Bibliography	Scott S <i>Unjust Enrichment by Transfer in South African Law: Unjust factors or absence of legal ground?</i> DPhil thesis, Oxford University (2005).
Journals	
	author initial surname "title of article (full)" (year) volume journal name official abbreviation or full name if no abbreviation first page of article cited page(s)
First reference	C Albertyn & B Goldblatt "Facing the Challenge of Transformation: Difficulties in the Development of an Indigenous Jurisprudence of Equality" (1998) 14 <i>SAJHR</i> 248 254.
Subsequent references	Albertyn & Goldblatt (1998) <i>SAJHR</i> 254.
Bibliography	Albertyn C & Goldblatt B "Facing the Challenge of Transformation: Difficulties in the Development of an Indigenous Jurisprudence of Equality" (1998) 14 <i>South African Journal of Human Rights</i> 248-264.
Website	
	author(s) "title of document in full" date of electronic publication dd-mm-yyyy title of website <URL> (accessed dd-mm-yyyy)
First reference	P de Vos "Fifa World Cup: Bad for Human Rights?" (29-01-2010) <i>Constitutionally Speaking</i> < http://constitutionallyspeaking.co.za/fifa-world-cup-bad-for-human-rights/ > (accessed 07-12-2010).
Subsequent references	De Vos "Fifa World Cup: Bad for Human Rights?" <i>Constitutionally Speaking</i> .
Bibliography	De Vos P "Fifa World Cup: Bad for Human Rights?" (29-01-2010) <i>Constitutionally Speaking</i> < http://constitutionallyspeaking.co.za/fifa-world-cup-bad-for-human-rights/ > (accessed 07-12-2010).
Official publications and SA Law Reform Commission publications	
	author/institution name title of document (full) report/document number if any or year cited page(s)
First reference	SA Law Reform Commission <i>Domestic Partnerships Project</i> 118 Report (2006).
Subsequent references	SA Law Reform Commission <i>Domestic Partnerships Report</i> 14-30.
Bibliography	SA Law Reform Commission <i>Domestic Partnerships Project</i> 118 Report (2006).



Chapter 6:

Drafting legal documents

6.1 Legal opinions

6.2 Heads of argument



Chapter 6: Drafting legal documents

"[Good drafting] is free from all colour, from all emotion, from all rhetoric. It is impersonal, as if the voice, not of any man, but of the law, dealing with the necessary facts."¹¹

6.1 Guidelines for writing legal opinions

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.

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. Eliminate repetition among the various sections.

¹⁴ JG Mackay "Introduction to an Essay on the Art of Legal Composition Commonly Called Drafting," Law Quarterly Review 3 (1887): 290

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.

6 2 Guidelines for drafting heads of argument¹⁵

6 2 1 *The purpose of heads of argument*

Never lose sight of the purpose of your heads of argument – to persuade a court.¹⁶ 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.¹⁷ Long heads of argument do not win cases, regardless of what your client or, even other attorneys, may believe.¹⁸ 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.¹⁹

6 2 2 *The nature of heads of argument*

- 1 Heads of argument, and legal writing in general, should always be “clear, succinct, and without unnecessary elaboration”²⁰ especially so since many great pieces of writing, and legal argument, are highly organised, complicated, and difficult.
- 2 Always omit needless words and avoid pretentious language.
- 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”.²¹
- 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.²² 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

¹⁵ These guidelines should be read in conjunction with P van Blerk Legal Drafting: Civil Procedure 2 ed (2015) ch 15. See, also, A Kok, A Nienaber & F Viljoen Skills Workbook for Law Students 2 ed (2011) 142-148.

¹⁶ P van Blerk Legal Drafting: Civil Procedure 2 ed (2015) 106.

¹⁷ 106.

¹⁸ LTC Harms “Heads of Argument in Courts of Appeal” The Advocate (12-2009) 22.

¹⁹ 20.

²⁰ 21.

²¹ Exception: use the passive voice when you do not know the actor or when the result is more important than who did it).

²² See W Strunk Jr *The Elements of Style* (2009) 16.

literary devices such as the following (there are others and these are merely used to introduce you to the ideas we present here):²³

- 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
 - explicit connectives – words whose chief purpose is to supply transitions such as also, further, therefore, yet.
- 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).²⁴ 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.
- 6 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.

6 2 3 *The structure of heads of argument*

1 Table of contents

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

2 Background / Identification of the material facts

"I grasp 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

²³ These tips come from B Garner *Legal Writing in Plain English* 2 ed (2013) 83.

²⁴ 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, etc. 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.

portion of the record is not only somewhat less than fair to the Court, it is definitely harmful to the case."²⁵ [Emphasis added.]

- 2 1 Do not underestimate the importance of this section. Set out the material facts chronologically, thoughtfully and persuasively. Keep related material together.
- 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.
- 2 3 Remember that you may have a record as well as affidavits to draw on.²⁶ Use cross-references effectively. Summarise, do 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.²⁷ 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.
- 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.
- 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, etc.²⁸
- 3 Legal framework
- 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, engage with its

²⁵ F Weiner quoted in A Scalia & B Garner *Making your case: The art of persuading judges* (2008) 21.

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

²⁷ The factual background has been set out comprehensively in the Answering Affidavit from paragraph 44. Meaning facts not in dispute.

²⁸ Van Blerk *Legal Drafting* 108.

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 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).²⁹ 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 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.

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."³⁰

4 1 Heads of argument are about argument.³¹ 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

²⁹ 107.

³⁰ Cicero quoted in Scalia & Garner *Making your case* 16.

³¹ To learn more about argument, see JP Trachtman *The Tools of Argument, How the Best Lawyers Think, Argue and Win* (2013).

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 self-reflection and/or transformative experience, appear to be natural and fixed."³²

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 opponent's – and let the abject weakness of the latter speak for itself".³³

4 3 Master the relative weight of precedents.³⁴ 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?

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.

6 Authorities

6 1 Cite authorities in alphabetical order. Books, journal articles, legislation, etc. should also be cited alphabetically. In this regard, see Chapter 5 of the Writing Guide.

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

³² Klare "Legal Culture and Transformative Constitutionalism" (1998) 14 *SAJHR* 146 167.

³³ Scalia & Garner *Making your case* 13.

³⁴ 23.

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

NB: *The formatting and layout of the heads of argument differ slightly from the layout set out in Chapter 4 of this guide.*

6 2 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!³⁵ 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.³⁶ 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 here would be redundant as we here seek to offer general advice applicable to most situations.

Authorities

Books:

Garner B *Legal Writing in Plain English* 2 ed (2013), Chicago: University of Chicago Press.
Scalia A & B Garner *Making your case: The art of persuading judges* (2008), Minnesota: Thomson West.
Strunk W *The Elements of Style* (2009), Value Classic Reprints.
Trachtman JP *The Tools of Argument, How the Best Lawyers Think, Argue and Win* (2013), CreateSpace Independent Publishing Platform.
Van Blerk P *Legal Drafting: Civil Procedure* 2 ed (2015), Cape Town: Juta & Co Ltd.

Journal article:

³⁵ Van Blerk Legal Drafting 124.

³⁶ 124.

Klare K "Legal Culture and Transformative Constitutionalism" (1998) 14 *South African Journal of Human Rights* 146.

Article in printed media:

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

Case law:

Plascon-Evans Paints (TVL) Ltd v Van Riebeck Paints (Pty) Ltd 1984 3 SA 623 (A).

National Director of Public Prosecutions v Zuma 2009 2 SA 277 (SCA).

Internet:

Volokh E & Tanford JA "How to write good legal stuff" (2009) *Indiana University Bloomington*

<<http://law.indiana.edu/instruction/tanford/web/reference/how2writegood.pdf>>

(accessed dd-mm-yyyy).



Chapter 7:

Plagiarism guidelines

[7.1 Introduction and purpose](#)

[7.2 General guidelines](#)

[7.3 Recommendations](#)

[7.4 SU policy on plagiarism](#)



Chapter 7: Plagiarism guidelines

"Using the ideas or material of others without acknowledgement."

7.1 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 plagiarism,³⁷ 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://sun.ac.za/english/research-innovation/Research-Development/policies-guidelines>.

7.2 Avoiding plagiarism: General guidelines and examples³⁸

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 idea(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:
- 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

³⁷ "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)."

³⁸ Anonymous "Plagiarism 101" (2014) *Plagiarism.org* <<http://www.plagiarism.org>> (accessed 15-02-2025).

materials, PowerPoint slides and other audio-visual learning materials, recordings of lectures, podcasts, statistics, newspapers, magazines, songs, movies, etc.;

- Use verbatim words or 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;
- 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;
- 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, then, 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, or research paper. It states that "the reproduction of text without quotation marks (even when the source is cited) is plagiarism".

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.

[Source: 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 or 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.

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.

[Source: 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 you did not 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* should be *reds*.]

C. Paraphrasing

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

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.

[Source: 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". However, even if the text is paraphrased appropriately, in essence, it still conveys the same idea as in the original source, which should, therefore, be cited. This would definitely be a case of when 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) 11.

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 or non-existent references

Providing footnotes that contain false or non-existent references (for example, URLs of websites, authors, sources, page numbers, etc.) constitutes plagiarism.

E. Using the written work of other students

Using a fellow student's (or students') written work (for example, assignments, essays, research papers, tutorial answers) 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 *how* you share your work with fellow students so that you do not enable them to pass it off as their own. For example, do not share your work in an electronic format.

7.3 Recommendations and techniques on how to avoid plagiarism

- Planning your assignment/research paper is the first step in avoiding 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.
- 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!
- 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.
- 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.
- 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 consulting the original source but remember to still acknowledge the source(s).
- 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.
- Refrain from reading a fellow student's (or previous year's student's) assignment/essay/research paper for "inspiration".
- Learn how to paraphrase properly.

- When you translate a source, remember to reference the source and to add [my translation] after the translated text.
- If you are unsure whether you need to reference a source, ask your lecturer, the lecturer's assistant, or a writing consultant.
- 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 using 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.

7.4 SU Policy on plagiarism

The SU Plagiarism Policy defines plagiarism as


"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)."

And self-plagiarism is defined as

"The re-use of one's own previously evaluated or published material without acknowledgement or indication thereof."

For more information on the policy and possible repercussions, visit

[Policy on Plagiarism in Support of Academic Integrity](#)



Chapter 8:

Additional resources

[8.1 South African legal sources](#)

[8.2 Useful links](#)

[8.3 Books on legal abbreviations](#)



Chapter 8: Additional resources

"The only kind of writing is rewriting." – Ernest Hemingway

8.1 South African legal sources

If the abbreviation for a specific journal is not on this list, please remember to search for the abbreviated name. (Often it is readily available on a simple search engine such as Google.)

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
TaxPl	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

8 2 Useful links for finding legal abbreviations

Cardiff Index to Legal Abbreviations	https://www.legalabbrevs.cardiff.ac.uk/
Legal Abbreviations	https://www.legal-abbreviations.org/
Oxford University Press: List of Abbreviations for legal materials	https://opil.ouplaw.com/fileasset/MPEPIL%20list%20of%20abbreviations.pdf

8 3 Books in the library on legal abbreviations

- D Raistrick *Index to legal citation and abbreviations* 3 ed (2008).
- II Kavass & M Miles Prince (eds) *World dictionary of legal abbreviations* 6 ed (1991).
- NM Ferreira & KE Breckon *South African legal abbreviations* (1999).
- C Fong & AJ Edwards *Australian and New Zealand legal abbreviations* (2008).