UNIVERSITY OF CAPE TOWN

FACULTY OF LAW

RESEARCH, WRITING, STYLE AND REFERENCING GUIDE: 2017

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SECTION 1: THE RESEARCH AND WRITING PROCESS

INTRODUCTION

All law courses require the writing of assignments and essays. In the Law Faculty assignments are usually shorter papers, while essays are longer. The format of either may be 'essay-type' or 'problem-type'. You may also be asked to summarise cases.

The topics are usually available about three weeks before the due date, in the Course Materials Room. This means that you will have sufficient time to plan, research, write a draft and then produce your paper.

Sometimes the topic will include a reading list, but sometimes it will not, which means that you will have to do research on the topic yourself. Make full use of the library resources, the Internet and any other relevant sources.

GENERAL REQUIREMENTS

An assignment or essay in the Law Faculty should have the following characteristics:

(1) It must posit a point of view and provide the arguments and evidence necessary to support or defend that position.
(2) It must have an introduction and a conclusion.
(3) It should demonstrate accurate knowledge of the relevant area(s) of law and pertinent secondary literature.
(4) It should have a well-organised and logical argument or discussion.
(5) It should demonstrate the ability to organise an answer, ie it should be a coherent piece of writing, set out in full sentences.
(6) It should demonstrate the ability to analyse the concepts concerned together with the facts presented.
(7) It is essential that the writing communicates clearly, ie grammar and spelling must be correct and language must be concise.
(8) It must have full references in footnotes — you must acknowledge your sources fully by means of footnotes. (Please note that other methods of referencing, eg the Harvard method, are not acceptable for legal writing.) *See section 2 for further details*.
(9) It must have a bibliography.

There are different types or 'genres' of legal writing. On the one hand, writing about law may take the form of general descriptions and/or evaluations of aspects or areas of law. This type of legal writing differs little from academic writing in other disciplines in the Humanities and Social Sciences (eg History, Philosophy, Politics, Psychology). Although it is important to remember that each discipline may have its own conventional sources of evidence and style of 'correct' writing and referencing, legal writing of this type follows the normal academic practice of stating and defending a thesis.

On the other hand, legal writing may take a form that is specific to the work of lawyers: the provision of written advice about the legal solution to a particular problem. This type of legal writing is characterised by its specific and disciplined focus on the precise problem and the legal principles and sources that are relevant to its solution. The principle is that a lawyer is not free to digress and to pursue knowledge for its own sake, but must confine herself only to what is relevant — anything more would waste the client's money and/or the lawyer's time (and income). Legal writing of this kind takes the form of an attempt to identify the legal issues raised by the problem and to resolve these by finding and then applying relevant legal rules. The style of this type of legal writing therefore takes the form of a search for a solution rather than the defence of a proposed

thesis, but it should be obvious that both forms of legal writing require the formulation and defence of a point of view, and require logical arguments based on credible evidence (in other words, *not* mere emotional reactions or political ideologies or slogans) drawn from critical reading of the researched material.

Finally, legal writing may sometimes amount to a combination of these two types, as where one is required to assess or evaluate the manner in which the law resolves a particular type of problem.

STEPS IN THE RESEARCH AND WRITING PROCESS

It is strongly recommended that you adopt the following six-stage approach to reading for and writing your assignments or essays.

Prepare a preliminary plan
Gather research material
Plan the essay structure
Write a first draft
Revise the draft and produce a final version
Check the final version

Prepare a preliminary plan

(1) Consider and analyse the topic. Pay special attention to the genre or type of legal research and writing that this topic requires of you - see above. Analysis of the topic includes looking for the instruction word(s), as well as identifying the keyword(s) or central concept of the topic.

Action word	**What it requires**
account for	Provide reasons for something or show causes.
analyse	Find and describe the main ideas, show how they are related and why they are important.
compare	Show both the similarities and differences, emphasising similarities.
contrast	Show differences by setting differing points in opposition to each other.
criticise	Give your judgement or opinion about something, supporting it with a reasoned argument. Remember that criticise in the academic sense does not necessarily mean to find fault.
demonstrate	Show by reasoned argument why a particular opinion, judgment or assertion is true.
discuss	This action word *is* vague, but it is actually an opportunity for you to respond creatively to the question. Generally, what is required is a thorough exploration of the area/topic through argument and reflection, showing your understanding of the subject matter.
evaluate	Discuss the advantages and disadvantages of a position, or the merits of an argument. Your own point of view is an essential part of this process.
identify	List and describe.

You must follow instructions carefully and answer the question (ie do not stray off the topic or deal with only part thereof).

(2) It is important that you start with at least a basic understanding of the topic. The written work required of you will to a certain extent require of you to draw upon knowledge that you have already gained through study of the subject. But you will also be required to broaden and deepen your knowledge, and to increase your understanding. This is an ongoing process — the topic should become clearer as you read and think about it and write the several drafts of your essay — but you need to form some understanding of your topic right at the outset in order to know where to start your research.

(3) A preliminary plan, based on your present knowledge and research, should be prepared. This plan will be a provisional outline of the work in which its constituent parts are set out in a coherent and logical way.

(4) The plan should also assist you with identifying the particular questions that you may not be able to answer until you conduct more research, reading and thinking.

(5) Ask yourself the following questions: Who are my readers and what do they need to know? What position am I going to argue in favour of? What arguments am I going to use to support my position?

(6) Allocate your time to thinking, planning, research, writing, revising and rewriting.

(7) Prepare a preliminary outline of the structure of your argument(s).

Gather research material

(1) Start by reading about your topic in a general way. The leading textbooks on the subject (if available) will provide a good description of the current state of the law, as well as references to primary and secondary literature. Remember that the type or genre of legal writing your essay or assignment requires will affect the focus of your research and the nature of the sources you will consult.

(2) Compile your own list of sources, particularly if there is no textbook on the subject.

Primary sources: legislation; case law (these are authoritative).

Secondary sources: Compile a wide bibliography of secondary sources — books, periodical literature (these also have authority, but cannot override legislation and case law).

Reference books: Be prepared to consult reference books — bibliographical texts, dictionaries, encyclopaedias, etc (these have no authority, but serve to assist the research process).

South African as well as foreign resources may be used. Remember the latter may have a different status in South Africa.

(3) Hard copy or electronic versions of sources?

- UCT has extensive collections of both electronic and hard copy primary and secondary sources, and either may be consulted.
- Efficient use of both versions of legal research sources will result in better research: each has its distinctive advantages and disadvantages. Beware, however, of general internet searches. There are some very useful internet sites (usually official government sites or semi-official sites maintained by universities or professional associations) containing primary legal materials, but there is also a great deal of quasi-information of dubious authenticity on the internet.
- Except when material has not been published in hard copy your reference to a source must always cite the hard copy source, ie the book, printed journal or law report or collection of statutes containing the source you used. Official and commercial electronic versions of these

materials (eg Jutastat, Butterworths on Line, and Lexis) always provide this information. (*See Section 2*.)

(4) Make notes of relevant information and ideas:

- Devise a methodical note-taking system for yourself. For example, you could start by making short notes that summarise the content of what you are reading; later you can go back to photocopy or transcribe longer passages.
- The aim is to record your *understanding* of the source material, not only to produce a summary.
- Make notes that are based on understanding, summarising, extracting and reinterpreting key ideas and concepts in the material with a view to finding a use for them within the structure of your preliminary plan.
- Make notes in such a way that you can distinguish between those sections that are direct quotations and those sections that you are paraphrasing.
- Remember to note the relevant publication details of *everything* you read: author, title, edition, place and date of publication, page and volume numbers. Ensure that these details are accurate from the start; otherwise you will waste time redoing research and re-checking sources.
- Photocopy or download material *selectively*.
- Store the information you collect — cards/loose sheets/note-book.

Your own notes, plans, etc are very important to ensure that:

- you do not 'drown' in a mass of facts
- you can focus on important points
- you can construct and present a clear argument
- you avoid plagiarism (using the words of another writer as if they were your own without acknowledging them) because you do not have the exact words in front of you, or in your mind. (See the note on plagiarism hereinafter.)

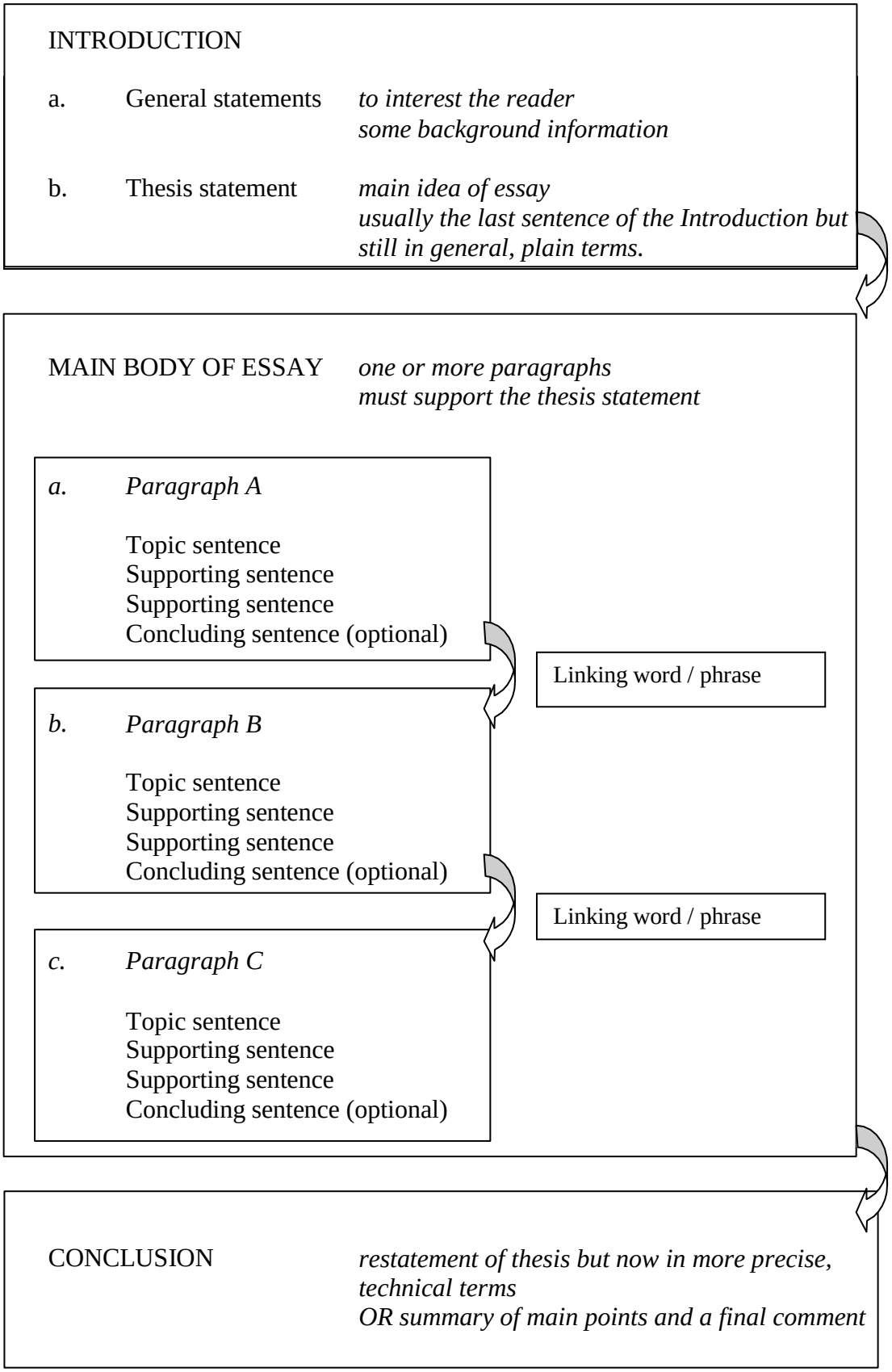
Plan the essay structure

Planning what you will say and where you will say it are probably the most important parts of producing an assignment or essay. It is essential that you develop a line of argument - this transforms your writing from a jumbled mass of information into a clear, logical and coherent paper. Assignments or essays that are not properly planned will never be more than mediocre.

(1) You must now decide how you are going to present your thesis and supporting argument and/or your solution to the legal problem. You will almost always want to revise and alter your preliminary plan, since it is more than likely that your understanding of the issue evolved while you did your research. Even if you decide to adhere to your preliminary plan you will still have to decide which information or evidence belongs with which issue or argument.

(2) Draw up an outline of the main parts of your essay (see below) and assign every point you intend to make, and all evidence or information you intend to use, to one of these elements.

OVERVIEW OF ESSAY STRUCTURE



Write a first draft

Many students choose to leave out this stage of the process, claiming lack of time. If you are organised and plan properly, there is always time for a draft version; which is an essential part of the process.

- Your aim here is to fill in the outline provided by your plan, bearing in mind what is said below about each part of your essay or assignment. Remember that writing is evolutionary — get your ideas, thoughts and understanding onto paper under the general headings of your plan. Using your outline as a guide, start writing. Do not postpone this until everything you want to say is clear in your mind, otherwise you run the risk of contracting 'writer's block'. You can refine your writing later.
- Aim to express your ideas as clearly and simply as possible. Use plain language and simple sentence structures. Good legal writing is concise and to the point. Long, rambling sentences are confusing and usually obscure the arguments contained in them.
- *Order* your information and arguments logically. Do this in every sentence, paragraph, chapter, whole essay or assignment. Everything must fit together coherently so that it is clear to the reader what you think and why you think so.
- *Substantiate* every assertion and argument you make. When you claim that a particular fact exists (eg that a particular legal rule or principle exists) you *must* provide evidence of its existence (eg by citing a case or statute that created that rule or principle); when you put forward an argument, you *must* show why your argument should be accepted (eg by showing that it is more logical or has better consequences than its rival). Remember that legal writing is not poetry; it is meant to convince the reader of your point of view, not merely express what you feel or think. Therefore, unsubstantiated assertions and arguments are *worthless* in legal writing.
- Leave space for additions and corrections.
- Comply with style and presentation requirements. (*See Section 2.)*
- Ensure that all statements you make and all the arguments you advance are clearly expressed and supported by correctly cited authorities.
- At the end of the first draft, you should start to draw tentative conclusions. If you have difficulty doing so, this may indicate a need for further research.
- Your essay or assignment must have a *structure* that consists of the following elements:

Essay-type assignments

Generally, an essay-type assignment should have three main parts: an introduction, a body and a conclusion.

Introduction

The introduction should **identify the main topic to be discussed** and **indicate how the argument will progress**. It should prepare the reader for the body of the essay. In an academic essay, the writer **defines a problem or states a thesis and indicates how it will be treated in the essay**. Exactly what is included in an introduction will vary according to the writer's purpose and the topic.

Common weaknesses of introductions include:

- The introduction is vague and unconnected to the topic or to the following paragraphs, giving no indication of what the reader is to expect in the body of the essay.
- The introduction is banal (ie commonplace, trivial or flat) and states the obvious.
- The introduction fails to state a thesis.

Since the introduction is meant to introduce the argument of the writer, it is difficult to finalise before writing the essay. The introduction, therefore, should almost always be rewritten as part of the final revision of the essay.

Body of the Assignment or Essay

The body should contain the arguments you put forward in support of your answer to the question posed in the topic. It should be set out in a series of linked paragraphs. **Each paragraph should deal with a single concept or idea** and should follow logically from the preceding paragraph. Use information in a structured way to support your arguments, rather than haphazardly writing down information from a variety of sources — which is what will happen if you have not properly planned your essay.

Normally the main body of your essay should be organised under a few major headings, with sub-headings if necessary. These sections must follow a logical order. Headings and sub-headings are a desirable aid to a well-ordered piece of writing, provided that they are an indicator of the structure of the underlying argument. Do not over-use them. The length of the essay and the type of the essay should also determine the extent to which you use headings and sub-headings.

Conclusion

The conclusion should draw together the main points made and concisely state your viewpoint in answer to the topic. Obviously your final viewpoint should follow logically from the arguments made in the body of the assignment or essay. In the same way, if you state in the introduction that you are going to write about x, y and z, then make sure that you actually have addressed all three. **Above all, be explicit** — do not expect the reader to read between the lines.

The purpose of the conclusion is to draw together the threads of the argument and make a final concluding statement on the topic. There is usually a link between the introduction and the conclusion: the former introduces the topic to be discussed or outlines the argument, and the latter indicates that it has been done. **The conclusion should not contain new information**, ie information that has not been discussed in the body of the essay. Sometimes the conclusion is a restatement of the introduction, in different words. The essay then has a feeling of unity and completeness. In an essay that involves discussion, the proposition or thesis stated in the introduction is accepted or rejected in the conclusion.

Problem-type assignments

This type of assignment takes a slightly different format, but still has the three main parts mentioned above.

In the *introduction* you should identify the area of law involved and what the specific legal issue is.

The *body* of the writing contains a full discussion of the relevant legal rules and principles, which is carefully constructed in a logical and coherent manner. If case law is relevant, use it intelligently. Do not provide a shopping list of cases with short summaries of the facts, and then state 'Therefore ...' Use the relevant point from the case(s) to 'tell the story' and to show how the case(s) support(s) (or reject) the existence of a particular rule or principle relevant to the issues raised by the problem. Remember that it is only the *ratio* that binds, but that the relevance and scope of the *ratio* can only be determined by noting the context in which it was formulated.

At the same time, or following the discussion of the law, apply the law carefully and properly to the facts before you, arguing where appropriate for a particular point of view, and taking care to be able to justify your argument in light of the authority from cases or statutes. Be sure to indicate clearly

whether the law on a particular question is clear and settled or is in need of interpretation and development. Clearly distinguish between opinions (your own or others') about how the law should be interpreted and settled rules and principles, as well as between views about what the law should be and statements concerning what the law is.

In the *conclusion* you should state the appropriate advice for the client or the appropriate solution to the problem under consideration. Note that there is very seldom only one right answer to a problem question. This is because much depends on how the argument is constructed and on how the law is interpreted. In real life situations, like in a court, each matter has two sides to it and the outcome of the case depends on which side can convince the court that its version is the better version. In a problem-type essay, the conclusion should summarise your conclusions regarding the legal rights and duties of the parties.

Revise the draft and produce a final version

(1) Revision is vital for effective writing. You may be very tempted to submit the first draft, but this is *very* unwise. Re-read the text of your assignment actively and critically. Revision improves quality and quality improves marks. Sometimes several drafts are needed.
(2) Ensure that you give yourself sufficient time to revise your written work. You may find it useful to do this after a few days' break.
(3) Ask yourself whether the essay adequately responds to the problem posed. Has the research material been critically evaluated? Are the reasons for preferring one line of argument to another adequately articulated? Have the components of your argument been organised in a coherent manner? Is the logic of your thinking clear?
(4) Check style, spelling, grammar and punctuation. (*See Section 2 below.)*
(5) Check for consistency in spelling, capitalisation, hyphenation of words, abbreviations, contractions, method of citation, numbering of headings and sub-headings. (*See Section 2.)*
(6) Check presentation and layout. (*See Section 2.)*
(7) It is always useful to ask someone else to read and comment on your work.
(8) Check that you have not exceeded the word limit. Learning to work within limitations is part of the legal skills you are expected to acquire. Assignments or essays that exceed the word limit may not be marked, and will almost always earn lower marks. On the other hand, an assignment that is well below the word allowance probably does not address all aspects of the topic adequately and thus cannot earn a good mark.

Check the final version — proofread

(1) Read the final version, carefully checking for errors, omissions and inconsistencies. Check that footnotes are correctly numbered, that pages are numbered and in the correct order, that words or lines have not been omitted or repeated, that punctuation or footnote numbers are not missing, etc.
(2) Remember to keep all your original notes and earlier drafts of your assignment. These may prove invaluable if information seems to be missing from your final version, or if material is deleted from your computer.
(3) Remember that you can be severely penalised for failing to acknowledge your sources, and that technical errors, such as incorrect or incomplete references, missing pages or words etc. will all cost you marks. You are expected to produce technically *flawless* work.

SUMMARISING A CASE

Being able to summarise a case is an important skill that you will rely on throughout your legal career. It is especially valuable while you are studying. Summaries are essential when you revise for tests and exams, since you will NEVER have enough time to read through the law report again during exam preparation, and also provide you with a way to force yourself to analyse, and therefore to understand, the cases you have to read. These guidelines are intended to provide a framework to help you develop this skill. The guidelines are merely *guidelines*; as you develop your legal skills, you may wish to adapt them to suit your own style.

Some tips before you start

(1) Cases will figure prominently in your reading for two main reasons. First, under the doctrine of precedent they are a source of law: depending on the status of the courts involved, a subsequent court either *must* follow the earlier court's determination of the rule that must be applied to a particular issue ('binding precedent'), or *may* do so (eg where the subsequent court has a higher status than the prior court, or where the two cases concern different, though related, issues – 'persuasive precedent'.) Secondly, careful study of the sources and methods of reasoning employed by judges should show you what is expected of you when it comes to answering the typical 'problem-type' question in exams where, in essence, you are expected to emulate the reasoning process of judges. More generally, you should see what is involved in determining the appropriate law, and in applying legal rules.

(2) Your reading and summary of a case must therefore be directed at isolating the legal *issue* decided in a case, identifying the *rule* applied by the court to resolve that issue, grasping the *reasoning* that led the court to that formulation (ie the identification and use of sources of law), and understanding how the court *applied* the rule to the facts - how it resolved the legal issue.

(3) Before you start to read the case, ensure that you are familiar with the area of law with which the case is dealing. This will give you an idea of what you should be looking for when you are reading. Many cases deal with multiple issues, of which only one might be relevant to your course. It may be necessary to point out briefly which issues were dealt with, and then to note the issue covered in your summary. Read your class notes or a textbook so you have some background before you start to read the case.

(4) Read the case through once before starting to summarise. This will make it easier for you to pick out the relevant areas of the case. It may be useful to underline or highlight as you go.

(5) The headnote of the case is also useful, as it will give you a brief outline of the issues. However, do not rely on the headnote alone for your summary. Headnotes are prepared by the editors of the law reports and may contain errors. Also, reading the whole case will help you to understand the issues in context and how the judge reached the final decision.

(6) Be as *brief* as possible. Remember that the purpose of a case summary is to enable you to remind yourself quickly of what was decided in a particular case.

(7) Identify the court that decided the case, and note whether it was a full bench decision or one by a single judge. Where there is more than one judgment, note the names of the judges who wrote them, and how many other judges concurred with them. Note whether a particular judgment is a majority or a minority judgment. This is important because of the way in which South Africa's system of precedent works, and can be very helpful when you are writing an essay or studying for an exam.
(8) Use a Legal dictionary or Latin dictionary to look up any terms you do not understand.
(9) Any case can be broken down into the following components:

(1) The facts.
(2) The question of law and answer thereto.
(3) The reasoning employed by the court, which leads to this answer.
(4) The outcome: the application of the law to the facts and the court's order.

This is also the most sensible framework to use for structuring your summary.

The facts

Many disputes that reach the courts involve both disagreements between the parties about 'what really happened' _ the facts — and about the legal rights and duties that flow from these events — the law. The case you have to summarise may therefore contain both the court's resolution of factual disputes, and its decision regarding a legal dispute. Your summary should concentrate on the latter.

From the point of view of a reader aiming to establish what a case tells us about the law — ie from your perspective — the facts of the case are important only because they give rise to the legal question that the court seeks to answer, and in this way determine the occasion and scope of the future application of the rule formulated by the court. This indicates the extent to which your summary should delve into the facts: limit yourself to mentioning the ***salient* facts**, ie those facts that are essential to showing what the legal issue in that case is and how it arose. In writing your summary always bear in mind that, from a lawyer's perspective: 'Decided cases ... are of value not for the facts but for the principles that they lay down.' (Centlivres JA in *R v Wells* 1949 (3) SA 83 (AD) at 87-8.)

The course of events that lead up to a case being heard in court can often be complex and stretch over a long period of time. Make sure you identify the parties to the dispute and that you are aware of the basic set of facts that gave rise to the dispute. It is often useful to draw a diagram laying out a complex set of facts and then summarise from this. It is important to try to keep the summary of the facts as short as possible. You should aim to state the facts in a few sentences. There is no need to give all the personal details of the parties or the whole history of events leading up to the court proceedings – only give what is relevant to the legal question at hand. You will often have to read the whole case before you know which facts are relevant. The value of exercising discipline by extracting *only the relevant* facts, and not writing down everything you come across, is that this enables you to determine precisely to which issues the legal rule or principle formulated in this case applies to, and thus to know what the scope of the relevant legal rule or principle is. In other words, you must establish for which fact-pattern this case constitutes a precedent.

It should be useful to ask yourself questions such as:

(1) Would the presence or absence of this fact make a difference to either party's success in this case?
(2) Does this fact matter with regard to the point of law in question?
(3) Why do these facts present a problem?
(4) Did the judge bring the facts into her reasoning?
(5) What happened that led one party to institute legal proceedings against the other?

The court may be asked to decide factual disputes between the parties on questions such as 'What happened here?' or 'Did X occur before Y?' Your summary can usually ignore this. What is relevant from your point of view are the facts as established by the court, since it is these that determine the question of law identified and answered by the court. However, it is important to notice (and note) when a court decides the dispute between the parties on the basis of its determination of such a factual dispute, rather than on the basis of its answer to the legal question.

When this happens the answer to the legal question is a merely an *obiter dictum* (see below). For these reasons you must always determine whether a particular issue in dispute between the parties raises a question of fact or a question of law. This is basically a distinction between questions regarding what happened (questions of fact) and questions regarding what legal consequences follow from what happened: what the parties are legally obliged and entitled to (questions of law).

The question of law

Under the doctrine of precedent, the aspect of a judgment that is capable of binding subsequent courts faced with the same issue is the court's decision on the principle or rule of law that must be employed to resolve the issue between the parties. The most important aim of a case summary is therefore to identify the legal question that the court sought to answer and the answer it gave thereto. The answer that the court gives to this question of law is termed the *ratio decidendi*. As it is the *ratio* of the case that will form the rule or principle for which the case is a precedent, it is important that your summary is clear on what constitutes the legal question in the case and the *ratio*.

(1) Black's Law Dictionary defines a *ratio decidendi* as 'the principle or rule of law on which a court's decision is founded.'
(2) The *ratio* should be distinguished from *obiter dictum* (plural *obiter dicta*), which Black's defines as 'a comment made in the course of delivering a judicial opinion but one that is unnecessary to the decision in the case and therefore not precedential.' However, do take note of *obiter dicta*, especially in judgments of the Constitutional Court (CC) and the Supreme Court of Appeal (SCA), since these often indicate the likely direction of the future development of the law.
(3) The basic test for identifying the *ratio* of a case is the following:
    [T]he reasons given in the judgment, properly interpreted, do constitute the *ratio decidendi*, originating or following a legal rule, provided (a) that they do not appear from the judgment itself to have been merely subsidiary reasons for following the main principle... (b) that they were not merely a course of reasoning on the facts... and (c) (which may cover (a)) that they were necessary for the decision, not in the sense that it could not have been reached along other lines, but in the sense that along the lines actually followed in the judgment the result would have been different but for the reasons — Schreiner JA in *Pretoria City Council v Levinson* 1949 (3) SA 305 (AD) at 317.

Although the question of law will often relate to or be based on the facts of the case, it can be distinguished from a purely factual enquiry (see the example given in the last paragraph of the previous section), in that this question focuses on what the consequences the law attaches to the events that brought the parties to court - on what legal rights, duties and remedies flow from the facts found by the court. Always bear in mind the statement of Centlivres JA quoted in the previous section. Although it may be difficult to do so, it is essential to separate out the legal and factual questions. In addition to following the steps suggested by Schreiner JA above, it may be useful to ask yourself questions such as:

(1) What is the concise rule of law to applied here to decide which party 'wins'?
(2) Which question of law must be decided in order to reach an outcome on the facts as found by the court?

Here are three further important points to bear in mind, especially, but not only, because you will encounter cases in which judges disagree with each other:

'[T]he *ratio decidendi* of a case, as opposed to the actual decision in the narrow sense, is binding. It is its abstract *ratio* which is added to the body of law which a Judge must apply.' (Coetzee J in *Trade Fairs and Promotions (Pty) Ltd v Thomson and Another* 1984 (4) SA 177 (W) at 185). That

is, although the outcome of a particular case — which party won and what remedy was awarded — is important, this must be distinguished from the legal question and *ratio*, which concern not the outcome, but the (abstract) rule or principle that leads to that outcome. It is crucial to bear this in mind, since there are cases in which judges may agree on the outcome, but disagree as to the *ratio* for that outcome, and vice versa. In such cases, your summary should indicate these differences, as it is agreement or disagreement on the *ratio* that counts under the doctrine of precedent.

Where there is disagreement among judges deciding a particular case as to the *ratio*, it is the view of the majority that constitutes the precedent. However, be sure to include the findings of both the minority and majority in your summary: it is essential to note such disagreement, as well as (briefly) the approach adopted in dissenting minority judgments. The latter may sometimes be preferred in later cases, especially where issues arise that are analogous rather than identical to the earlier case. It is also important for further reasons:

Different judges may interpret the same set of facts, or the same question, differently, and where this is so, each approach may influence future legal development with regard to the specific issue or question it addresses. This is particularly true of CC and SCA judgments, where individual judges may deliberately seek to deal with a particular legal issue or argument they consider to be of general importance to the law's development.

There is not always one 'right answer' to a particular legal problem. Many of the cases you will read are prescribed precisely because they concern controversial and unclear legal issues, and areas in which the law is still developing. Different judges may reach the same decision but through different reasoning.

The *ratio* of a case — the rule or principle applied by the court — must also be distinguished from the reasoning employed by the judges to arrive at that principle. Although the legal reasoning of the judges is, as explained below, important, it does not form part of the *ratio*, as individual judges can, and sometimes do, come to the same conclusion as to the answer that must be given to the legal question in a case despite following different paths to arrive at that answer. That is, judges may concur in the *ratio*, but for different reasons. Where this happens, concentrate on the concurring judgment that was supported by the largest number of judges, but also note the reasoning employed by those who gave separate concurring judgments. The latter may well specifically deal with matters raised in later cases, and so exert a strong influence on the future of the law. It may, of course also deal with exactly the questions you may be asked in a test or exam.

The reasoning

This refers to the reasons given in the judgment for the *ratio*, ie for the answer given to the legal question. It consists of the identification, interpretation, evaluation and discussion of sources of law, mainly legislation and previous cases, in order to answer that question. It is important to understand the reasoning of the court as you may be asked to comment on, discuss or criticise it in an essay or exam. Also, later cases may build on or dispute the court's reasoning, or apply it by analogy to a different legal issue. In addition, an understanding of the reasoning of a case is likely to aid your understanding of the point of law in question. The reasons for the judgment (majority and minority or dissenting) may be useful in mounting arguments in similar fact-situations that you may be required to discuss or resolve in essays and examinations.

Understanding the reasoning of the court is therefore crucial. In your summary do not note only the *ratio* and outcome of the case, but be sure to include a brief account of the reasoning used by the court (or a particular judge, where there is more than one judgment) to reach the decision on the question of law. In this section of your summary you need to look at the reasons why the court came to the conclusion on the law that it used to answer this question, and how it reached this

conclusion. Where there is disagreement among the judges, you should make a point of trying to identify how and why the reasoning in the majority and dissenting judgments differs.

It may be useful to work through the case section by section. As you work through each section of the case ask yourself how the judge moved from one point to the next. This will help you to understand the overall reasoning of the court. Once you have worked through a section, try to establish how the judge created the link to the next section. Once you understand each section it will be easier to summarise the logic of the case in its entirety.

It may be necessary to understand the court's use of authorities (eg cases, statutes, Roman Dutch and contemporary writers) and persuasive sources of law, and how these impacted on the outcome. In each section note the authorities relied upon and try to summarise the reason the court looked at these sources, what importance it attached to them and the conclusion drawn from them. There is no need to quote the actual sources.

Here, too, you must be selective and disciplined — note only the most important aspects of the judges' reasoning — ie that which led them to adopt the particular *ratio* rather than another. Look in particular at how they deal with precedents (do they choose one over another / distinguish a particular precedent / refuse to follow it or overrule it?), with the views of academic commentators and with Roman and Roman Dutch authorities. Note what type of source is used and whether it is preferred over another. Especially important is the stand the court takes on matters that are controversial or still unsettled. Obviously, all this can only be done if you have some idea of the issues and debates that are prominent in respect of the question the court is trying to resolve, so you should first familiarise yourself with this through reviewing lecture notes, articles and textbooks.

The outcome

Here you must explain how the court applied the answer to the question of law — the *ratio* — to the precise issue between the parties: in whose favour did the court rule? What remedy was granted? Keep this section brief, but note specifically whether the court regarded its answer to the legal question as decisive for the order it made, or whether it would have made this order anyway if it had given a different answer to that question. In the latter event, the decision was 'based on the facts', ie the court disposed of the dispute not on the basis of its answer to the legal question, but rather on the basis of its resolution of the factual disputes between the parties. The answer to the legal question is then, strictly speaking, an *obiter dictum* rather than a *ratio decidendi* and thus has persuasive rather than binding authority. The answer given to the legal question only forms the *ratio* of the case if this answer was decisive to the outcome of the case.

Conclusion

Finally, since your summary is meant to improve your own study and understanding of the law, it is not sufficient to copy someone else's or to quickly read the headnote. Take time to understand the case and to make a careful summary, as this will make revision for exams more efficient and less stressful. Developing your case summary skills will enable you to approach even the most difficult cases with ease, and to acquire the ability to solve legal problems in a 'lawyerly' fashion.

CHECKLIST FOR WRITTEN ASSIGNMENTS AND ESSAYS

Content
* have you identified all the main facts and/or issues?
* have you made relevant points?
* have you shown that you understand the key concepts?
* have you made appropriate use of case law/statutes/concepts?
* have you made adequate use of case law/statutes/concepts?
* have you included your own ideas/opinions and substantiated them?
Structure
* does your introduction set out the key facts and issues?
* have you developed a clear argument/discussion?
* does each paragraph express a separate idea?
* are sentences and paragraphs clearly linked?
* does your conclusion summarise the argument/give a final answer?
Expression and use of language
* are your ideas clearly expressed?
* are your sentences of an appropriate length ie not too long?
* is your grammar correct?
* is your spelling correct?
* is your use of language precise?
Research
* have you used the recommended source material effectively?
* have you used additional relevant research material?
* is your referencing adequate and appropriate?
* is your bibliography correct?
Presentation
* is your work neat and legible?
* have you proof-read your essay?
* have you included a word count and is it appropriate?
* have you included a cover page with the required information?
* have you included the plagiarism declaration?

NOTE ON PLAGIARISM

The Law Faculty has a zero tolerance policy in respect of plagiarism. Plagiarised work is penalised heavily and will in most cases result in a mark of zero awarded for the particular piece. Plagiarism can, in addition, lead to expulsion from the university.

Every assignment, essay, dissertation and thesis in the Law Faculty must be accompanied by a plagiarism declaration, which states that the author/s of the relevant piece understand that plagiarism is not tolerated in the Law Faculty. The declaration must contain a warranty that the piece is the student/s own work and that all reasonable endeavours were employed to provide the necessary references.

There are at least three reasons why you should acknowledge your sources. The first is that if you can support what you say by showing that statute or common law or academic opinion reflects your statement, then your statement will be more authoritative than otherwise. It is thus essential to give the authority for your statements.

The second reason is that it is completely unacceptable in academic writing to pass off someone else's ideas as your own. It amounts to theft and also constitutes an attempt to obtain a qualification under false pretences. For this reason, plagiarism can lead to expulsion.

The third reason is that marks awarded to you are intended to indicate the quality of *your* work. Because work taken from others give no indication of your own abilities no marks can be awarded to you when you do so.

Therefore, every time you use another person's ideas or words in a quote, or paraphrase the words of another or even just use his or her idea(s), you *must*, acknowledge this use by providing a footnote reference. Needless to say, you must always enclose another person's words in quotation marks.

In order to avoid charges of plagiarism, students sometimes write an assignment that is little more than a series of referenced quotations and/or paraphrased renditions of the ideas of others. While not amounting to plagiarism, this is also not acceptable. The object of the exercise of writing assignments is for you to learn to express yourself and your understanding of the law on paper and to demonstrate your abilities. Hence your thoughts, opinions and arguments in writing must appear on the pages, not a string of quotes of what others have said or thought. Essays or assignments of this type frequently receive '0' as a mark and typically fail. You can only get marks for your own work.

Note:

(1) Some ideas are common property (eg 'the sky is blue') and thus need no reference.

(2) Some points of law are 'trite law' (ie well trodden or well established), eg a minor is a person under the age of 18 years. Such a statement of the law needs no reference.

(3) Do not quote from unpublished lecture notes. In other words, if you want to state a point made during lectures, it is not necessary to include a footnote that says 'Property law lecture notes 2014.' The notes you have taken during lectures are your notes, not the lecturer's and thus need no reference. At any rate, this is usually not an acceptable source: statements of law must be substantiated by citation of the pertinent case and/or statute and opinions must be substantiated by your own arguments.

If you follow the recommended approach to researching and writing papers, then acknowledging your sources should be a simple matter of copying the reference from the note you made while reading, and putting it in a footnote.

Your reference must be in a *footnote* and must be accurate. (*See Section 2 below.)* It must be possible for the reader to check that you have stated the law accurately. In other words, you need to give sufficient information in your footnote to enable another person to find the exact place from whence you have drawn your information. When you use case law as your authority, the connection between the case(s) you cite and what you are stating in your writing must be clear to the reader. A particular case may be authority for many different points of law. Do not just insert a case name after a statement and hope that the reader will divine why you are using it as authority. In addition, you must in a footnote give the full citation of the case, ie give the full reference for the particular case, including the paragraph and/or page numbers to which you are referring. (For details, *see Section 2*.)

Example

The following is a direct quotation from an article published in the *South African Law Journal*. We will illustrate some of the different ways in which you could use the passage, or the ideas contained in the passage, in a research report. After every example we provide an explanation as to how plagiarism could be avoided in the particular instance.

> The war between competition-law policy and intellectual-property objectives has been raging in Europe for close on two decades. In mediating between these two bodies of law the European Court of Justice gave birth to the 'exceptional circumstances' requirements. These requirements have matured over time through their evolution in the case law of the European courts. However, because of the balancing exercise involved, there has been a marked reluctance to reduce the analysis to a checklist. As a result, these 'exceptional circumstances' will no doubt continue to evolve in future cases.
> James Brand 'Intellectual property and the abuse of dominant position in South African competition law' (2005) 122(4) *SALJ* 907 at 927.

Now suppose you were to write:

Example 1:

For **close on two decades,** a war has been raging in Europe between **competition-law policy and intellectual property objectives. The European Court of Justice gave birth to the 'exceptional circumstances' requirements** to mediate **these two bodies of law. Through their evolution in the case law of the European courts,** the requirements of 'exceptional circumstances' eventually matured. **Because of the balancing exercise involved, there has,** however**, been a marked reluctance to reduce the analysis to a checklist. As a result, these 'exceptional circumstances' will continue to evolve in future cases.**

In the above example, to avoid being accused of plagiarism, you would need to place quotation marks around the words in bold, and include a citation stating your source by inserting a footnote/number after closing the quotation marks. Where you quoted or copied words directly from someone else's work, as a rule you **MUST** use quotation marks and give a citation.

Example 2:

Competition law policy and the objectives of intellectual property have been at odds in Europe for almost two decades. The European Court of Justice introduced the 'exceptional circumstances' requirements to mediate clashes in this part of the law. The requirements have become more sophisticated because of their development in the European cases. However, courts have been reluctant to reduce the requirements to a checklist, precisely because a balancing exercise is always

involved. This holds that the requirements of ‘exceptional circumstances will continue to develop in the future.

In this example what has happened is that, as opposed to copying parts of the passage as in example 1, the passage has been paraphrased. In this instance, to avoid being accused of plagiarising, you would need to cite the source of the information used, albeit that the words used would be your own. Again, insert a footnote/endnote after the two sentences.

Example 3:

In Europe the increasing realization over the last twenty years has been that competition and intellectual property often pursue different ends. The European Court of Justice introduced the doctrine of ‘exceptional circumstances’ in an attempt to reconcile such competing objectives. The doctrine has undergone considerable development through the jurisprudence of the European courts, which is reluctant to reduce ‘exceptional circumstances’ to a checklist. This reluctance seems to be founded on the realisation that where competition and intellectual property clash, a balancing exercise is always required.

This example also requires you to cite the source, despite it bearing little resemblance to the original and using different words. Despite the use of different words and expressing the idea differently, the idea expressed is still the same idea as that of the author in the original quotation.

Example 4:

The policies from which competition law is derived often compete with the objectives that intellectual property law pursues. The doctrine of ‘exceptional circumstances’ is a helpful tool in attempting reconciliation between the two. However, adjudication in this context should never be reduced to an enquiry that asks only whether there has been compliance with a pre-determined checklist of ‘exceptional circumstances’ that developed out of earlier cases. A balancing exercise is required in all cases to ensure that the doctrine retains its dynamic nature.

This example, though not quoting from or paraphrasing the original passage, would require you to provide a citation as a way to show that you have arrived at your conclusion by building on the ideas obtained from the original passage.

SECTION 2: STYLE AND REFERENCING

GENERAL PRINCIPLES OF STYLE

(1) Structurally, the most prominent positions in a unit of writing — a sentence, a paragraph, an entire book — are the beginning and the end. Readers will remember what they read first and what they read last. Concentrate on how you begin and end each sentence, paragraph, essay, etc.

(2) Remember that a sentence must contain a subject and a verb — otherwise, it is *not* a sentence. Use short and simple sentences — but not in excess, as a succession of short sentences can be as irritating to the reader as one long and rambling sentence. Ensure that there is a 'link' between each and every successive sentence:

Examples of linking words:

1. *Addition*: and; also; too; besides; furthermore; in addition
2. *Cause*: because; consequently; seeing that; since
3. *Result*: therefore; thus; hence; consequently; accordingly; as a consequence; as a result
4. *Contrast*: nevertheless; however; but; yet; on the other hand; although
5. *Time sequence*: to begin with; firstly; in the first place; as soon as; subsequently
6. *Similarity*: likewise; similarly; in the same way
7. *Condition*: provided that; if; on condition that; unless
8. *Examples*: for example; for instance; in the case of; with regard to
9. *Summary*: to sum up; to summarise; in short; in brief; briefly
10. *Conclusion*: in conclusion; finally; in closing

Example:
'The defendant argued in mitigation that he had been under the influence of drugs at the time of the offence. The judge sentenced him to ten years in prison.'
There needs to be a linking word to clarify whether the judge passed sentence <u>because of</u> the mitigating circumstances, or <u>in spite of</u> them.
If the former meaning is intended:
'The defendant argued in mitigation that he had been under the influence of drugs at the time of the offence. **Therefore**, the judge sentenced him to ten years in prison.'
If the latter meaning is intended:
'The defendant argued in mitigation that he had been under the influence of drugs at the time of the offence. **Nevertheless**, the judge sentenced him to ten years in prison.'

(3) Constructing paragraphs

- A paragraph marks the full development of a single point or idea, and a new paragraph should indicate the introduction of a new point or idea.
- A paragraph develops a unit of thought. Therefore, build each paragraph around a topic sentence. The first sentence should be supported by the sentences that follow it.
- If you make two separate points in one paragraph, divide it.
- If you include something extraneous to the idea you are developing, delete it.
- Ensure that paragraphs are linked. That is, make sure that it is clear to the reader how the point made in a paragraph is connected to the point made in the previous and the succeeding paragraphs. Use 'linking words' — see above.

> *Example:*
> The defendant argued in mitigation that he had been under the influence of drugs at the time of the offence. Therefore, the judge sentenced him to ten years in prison.
> Other reported cases show, **however**, that intoxication by alcohol or drugs may lead to an acquittal. This is not surprising. These cases represent a straightforward application of the trite common law principle that intent is - usually - an element of every crime.

(4) Avoid circumlocution (this is the use of many words where fewer would do) — convey your message as simply and directly as you can:

Write in a direct, positive style, using the active rather than the passive voice. Avoid using phrases such as 'in relation to', 'with regard to', 'as far as the question of…was concerned', 'the fact that' – they can almost always be omitted, or replaced with a single word.

(5) Use plain English — avoid legalese:

Phrases such as 'heretofore referred to' and 'it is submitted that' have no place in general academic writing, including writing about law. They are sometimes used in drafting legal documents or in advocacy, and even then are best avoided. *Always* avoid pompous phrases like the first of these, rather say: 'referred to above' or 'mentioned above/previously'. *Do try* to avoid 'it is submitted that' and 'it is the opinion of the present author that', rather write in the active voice and say: 'in my view' or 'I conclude that'.

Also avoid phrases such as 'the learned judge' and 'the honourable judge'. Judges should be referred to as Chaskalson CJ, Hlophe JP, or Davis J.

(6) Avoid colloquial terms:

Your writing must be fairly formal.
Do not use expressions such as 'iron out problems' ('resolve problems'); 'put together a proposal' ('draft a proposal'); and so on. *Never* use slang.
Do not use contractions such as 'can't' (for 'cannot') or won't (for 'will not).
Avoid using hackneyed expressions like 'stake-holders', 'role-players'.
Avoid using nouns as verbs, for example, you do not 'access' something, you 'gain access to' something.

(7) Take care when using the first person

A fact is a fact whether you know of its existence or not, and the value of an argument is usually quite independent of the fact that *you* made it. For these reasons, you must avoid using the first

person when making assertions of fact or stating arguments — the fact that *you* are making the statement or assertion of fact is normally irrelevant. Moreover, it is usually perfectly obvious that you think/believe etc whatever you write in your essay — it is not necessary to say so.

However, when it is not obvious that you are expressing an opinion or conclusion (eg, when you state that a certain vague or controversial rule has a particular meaning) or when you are required to give your own opinion, it is best to do so frankly and actively (*see point (5) above*). It is then acceptable to use phrases such as: 'in my opinion/view'; 'I conclude' etc.

Example:
'I think that the Labour Relations Act provides that ...' is incorrect.
'I think that the Labour Relations Act fails to promote fairness in the workplace' should be avoided.

Simply make the statement, and provide support for your thoughts / argument: 'The Labour Relations Act provides that …' (insert footnote number and provide reference) OR 'The Labour Relations Act fails to promote fairness in the workplace, because …'

(8) Take care when using the names of authors in the main body of the text

As explained immediately above, it does not usually matter who states a fact or puts forward a particular argument. For that reason it is often inappropriate to identify an author in the body of the text. However, sometimes the identity of an author does affect the authority of a statement. It matters, for example, when the author is one of the 'old authorities', or is a particularly influential contemporary writer, or if the focus of the essay falls on the opinions of particular writers. When that is the case, you should use the name of the author in the body of the text.

Example:
'Smith states that…' is incorrect if you simply used this source to establish a fact or find a rule. Simply make the statement, and cite Smith in the accompanying footnote.
'Smith argues that…' would seldom be appropriate. Unless it matters that *Smith* said this, write something like 'It has been argued that…' and refer to Smith's article in the accompanying footnote.

(9) Using Latin phrases

The use of certain phrases is acceptable, and often necessary – for example, *nemo iudex in sua causa*, *mutatis mutandis*.
Do not use other phrases when there is an English phrase that will do perfectly well – for example, *per diem* for 'a day'.
Latin words and phrases should be italicised.
Certain words, like 'onus', have become part of the English language, and should not be italicised.

(10) Avoiding sexist language

This can be done in a number of ways:

Example:
'If the student begins writing his essay with an unclear idea of where he is going, he may find it easier to write his introduction after completing the main body of the essay.'

Using double pronouns:
'If the student begins writing the essay with an unclear idea of where she or he is going, it may be easier to write the introduction after completing the main body of the essay.'

Using the plural instead of the singular:
'If students begin writing their essays with an unclear idea of where they are going, they might find it easier to write their introductions after completing the main body of their essays.'

Substituting 'a/an' or 'the' for the pronouns:
'If a student begins writing the essay with an unclear vague idea of where the student is going, it may be easier to write the introduction after completing the main body of the essay.'

Using the passive voice:
'Where writing of the essay is begun with an unclear vague idea of its direction, the student may find it easier to write the introduction after completing the main body of the essay.'

(11) Paraphrasing

The point of paraphrasing is to show that you actually understand the content of what you have read.
Do not paraphrase by merely replacing all the difficult words with synonyms.
Avoid using too many quotations in your essay by paraphrasing intelligently.

Example: Paraphrase the following sub-section of the Corruption Act 94 of 1992

Section 1(1): Any person -
(a) who corruptly gives or offers or agrees to give any benefit of whatever nature which is not legally due, to any person upon whom –
(i) any power has been conferred or who has been charged with any duty by virtue of any employment or the holding of any office or any relationship of agency or any law, or to anyone else, with the intention to influence the person upon whom such power has been conferred or who has been charged with such duty to commit or omit to do any act in relation to such power or duty … shall be guilty of an offence.

Answer:
Section 1(1)(a)(i) states that it is an offence to bribe a person in a position of authority.
OR
Section 1(1)(a)(i) states that it is an offence to give a benefit to a person in authority with the intention of somehow influencing him or her in relation to that authority.

GRAMMAR

1. Be careful with the use of tenses. For example, the past tense is used when referring to legislation (or a common law rule) that has been repealed, while the present tense is used when referring to current statutes and rules, even if enacted long ago.

2. Avoid split infinitives whenever possible.

> *Example:*
> ***'He began to slowly read' should be: 'He began to read slowly'***

3. Final prepositions – try never to end a sentence with a preposition (although there are exceptions, eg it is sometimes necessary to avoid unnatural-sounding sentences. Compare: 'This is the sort of tedious nonsense **with which** I will not put up,' and 'This is the sort of tedious nonsense **up with which** I will not put,').

> *Example:*
> 'There is the person that I will not speak to' should be: 'There is the person to whom I will not speak.'
> An exception:
> 'The matter was referred to the committee to be dealt with.'
> Here it is difficult to avoid the final preposition, unless you rewrite the statement:
> 'The matter was referred to the committee to be resolved.'

4. A singular subject takes a singular verb, and a plural subject takes a plural verb.

> *Example:*
> 'The volume of statutes <u>is</u> missing' NOT: 'The volume of statutes are missing'
> ('volume' is the subject and is singular)

5. Collective nouns are treated as singular if regarded as a whole.

> *Example:*
> 'The jury <u>is</u> deciding', 'the army <u>is</u> based in'.

Collective nouns are treated as plural if composed of a number of units.

> *Example:*
> 'The Zulu <u>live</u> mainly in KwaZulu-Natal', 'the Irish <u>are</u> fond of cabbage'.

6. Participial phrases:

- A participial phrase is often placed at the beginning of a sentence to provide information about the subject.
- The participial phrase must always agree with the subject of the sentence — if this rule is broken, absurdity can result.

> *Example:*
> 'At the age of twelve, he told his son about his past.'
> Strictly speaking, this means that the father was twelve years old.
> Therefore: 'When his son was twelve years old, he told him about his past.'

SPELLING

Be consistent, and when in doubt, consult a dictionary.

Some common errors:

- –able or –ible?
- Compound words: letter head / letter-head / letterhead
- Use of hyphens: co-operation / cooperation
- *Possessive case:*

Possessive of a singular noun is formed by adding ''s', except in the case of biblical or classical names ending in 's' (Jesus' teachings, Socrates' death, but the business's interests).
Possessive of a plural noun is formed by adding an apostrophe (the Smiths' house).
There is no apostrophe in the pronouns 'hers', 'ours', 'theirs', 'yours', 'its' ('it's' is a contraction of 'it is', and therefore the phrase 'it's flavour' is meaningless).

Do not rely exclusively on your PC's spellchecker. It is NOT always reliable.

PRESENTATION OF ASSIGNMENTS

General points

Your cover page must include a word count and should also provide the following information:

Course code:
Course name:

Tutorial group number:
Tutor's name:

Assignment number:
Assignment topic:
Due date:

Student's name:

The text of your essay should be double-spaced, and footnotes should be single-spaced and in a smaller font (usually 10 point in the same font as the main text of your essay).

12 point Times New Roman font is apparently the easiest on the eye of your reader.
Indent the first line of every new paragraph, but do not indent the first line that appears after a heading.

Words in a foreign language (including Latin) are printed in italics. However, if they are in roman print in a quotation, they must be left so.

Quotations

Use single quotation marks.
Quotes within quotes should appear within double quotation marks.
Quotations that are three or more lines in length should be indented, and single-spaced, and quotation marks should not be used.

Example:

The UN Rapporteur constantly refers to this perceived danger:

> [T]here are the modern private security companies which provide many different kinds of services, economic advice and sophisticated military training but which are covers for former professional soldiers and mercenaries who, in exchange for large sums of money, offer themselves as a solution to countries experiencing instability and armed conflicts and the consequent impossibility of developing their enormous natural resources.[9]

Ellipsis*:*

- Ellipsis points are used when you omit certain words from a quotation.
- Use three points to indicate the omission of part of a sentence.
- Use four points to indicate that the sentence ends with the quoted passage or that the ellipsis extends into a new sentence.

Example:

'As long as many African states hide behind a façade of sovereignty … there will be a market for private security operations ….'

The first ellipsis indicates that part of the sentence has been omitted.
The second ellipsis indicates that the sentence ends with the quoted passage.

Interpolations*:*

- It is sometimes necessary to alter a quotation slightly to clarify the meaning.

Example:
The original quotation reads: 'The judge stated that his evidence was not credible.'
It is not clear to whom the word 'his' refers. Therefore, you would interpolate a word or phrase to clarify this:

'The judge stated that [the defendant's] evidence was not credible.'

- Square brackets are also used to indicate that you are inserting a lower-case letter instead of the capital letter that appeared in the original: It has been noted that '[h]e was not telling the truth.' The sentence in the original read: 'He was not telling the truth.'

Abbreviations

Try to avoid making excessive use of abbreviations, and never use an abbreviation at the beginning of a sentence.

The general rule is that full stops are omitted in all abbreviations: ie (in other words), eg (for example), etc (et cetera), viz (namely)
But at the beginning of a sentence or footnote, all words should be written out in full: 'For example, in *R v Bowen* …' and not 'Eg in *R v Bowen*'.

The following abbreviations are permissible before a number:
(1) s for 'section' as in s 23.
(2) para for 'paragraph' as in para 4.
(3) reg for 'regulation' as in reg 45.
(4) GN for 'Government Notice' as in GN 344.
(5) GG for 'Government Gazette' as in GG 18523.
(6) sch for 'schedule' as in sch 5.
(7) art 'article' as in art 6.
(8) Chap for 'Chapter' as in Chap VII (of a statute or a constitution).
(9) ch for 'chapter' (of a book).

These words are not otherwise abbreviated eg 'the paragraph in question ...'

Do not use full stops when citing abbreviations for law reports, journals, statutes, treaties or codes:
All ER
WLR
SE 2d
DLR (4^{th})
Harvard LR
THRHR

Dates, times, numbers, fractions and decimals

Dates:
28 November 2000
Avoid using 'from/between 1950–1969'. Write 'from 1950 to 1969' or 'between 1950 and 1969'.

Times:
Unless 'am' or 'pm' is used, the time of day should be spelled out: 'At five o'clock the jury retired. At 6.16 pm the jury returned.'
Numbers:
Sums of money: R20 000
R125,59
Ages are always given in figures: The boy is 8 years old.
Numbers from one to nine are written in words, except in references to pages, and in percentages.
Numbers 10 and greater are given in figures; also use figures for numbers that include a decimal point or fraction (4.25, 4½)
'Per cent' is written as two words (not 'percent' or '%').

Fractions and decimals:
Fractions should be hyphenated (two-thirds, four-fifths)
Fractions should be spelled out in words, unless attached to whole numbers.
Use fractions for approximate figures; use decimals for more exact figures.

Punctuation

- Do not use full stops for authors' initials or abbreviations denoting judicial office:
  J M Burchell 'Wilful blindness and the criminal law' (1985) 9 *SACJ* 261.
  Madala J; Roper and Clayden JJ; Mthiyane JA; Mthiyane and Farlam JJA; and Chaskalson CJ.

- Each footnote should end with a full stop.

- Names of countries and organisations should be spelled out in full (thus United States not US; United Nations, not UN).

Page references

When citing more than one page or paragraph:
When giving starting and ending page numbers and paragraph numbers, chop off the unnecessary ones: thus 34–5 and not 34–35. Care must be taken with teens: it is 514–15 not 514–5. However, with ones it is correct to say 20–1, 400–1 and so on.

Thus your references will look like this: 1–5, 11–13, 112–19 (not 112–9), 220–1, 567–71, 599–601, 132F–H, 16A–17C.

FOOTNOTES

General rules

The aim of footnotes is to ensure that the reader obtains a full citation to your source, and knows the precise place in the source to which you refer.

References must *always* be in the form of footnotes. See the note on plagiarism *supra*. The Law Faculty requires that all footnote references (and as well as the general presentation of written submissions, especially essays) conform to the *SALJ* House Style, which is reproduced below.

SOUTH AFRICAN LAW JOURNAL HOUSE STYLE

General

What follows are the stylistic requirements that most commonly require the attention of *SALJ* authors and editors. This document is by definition a general guide; it is not possible to cover every possible referencing and stylistic quirk. Where this document does not provide assistance, authors are requested to consider one of the following:

- to consult previous volumes of the *SALJ*, and to see how a similar stylistic issue has been dealt with in the text;
- to consult the main *House Style for Juta Publications* which may be found on the web page where this document was accessed. This document was drawn up largely by Professor Ellison Kahn in conjunction with members of the editorial team at Juta & Co, and contains 102 pages of information pertaining to referencing, language and style.

Matters of presentation and layout

Page layout

The page should have 1 inch (2.54 cm) margins all round (top, bottom, left, right). Line spacing should be 1.5. The text must be 'justified'.

All paragraphs (including those that come after long quotations) should be indented except the very first paragraph of a piece and any paragraph appearing immediately after a heading or subheading.

Line spaces should not be left between paragraphs.

Font and type
A Times New Roman font is used by the *SALJ*. The text must be in 12 pt font. An 11 pt font must be used for all isolated or indented quotations, ie long quotations. Footnotes must be in 10 pt font.

Italics are used for emphasis, for case names, names of journals and titles of books, plays, operas and films, names of ships and the titles of paintings and other works of art; and for web sites and other electronic references. They are also used to indicate paragraphs in legislation, as in s 34(1)*(a)*. All italics in direct quotations are reproduced, however.

The *SALJ* does not use underlining at all. Nor is bold type to be used.

Titles of articles and notes, authors' names

All this material is *right-aligned*.

Titles of articles and notes are always in capital letters.

Titles of articles are in italics with case names appearing in roman. Acknowledgements are placed in a footnote to an asterisk appearing at the end of the article's title. A line is left between the title and the author's name, which is in roman capital letters. The author's degrees are given in a footnote to the symbol † (and in the case of a second author, ††). The author's designation appears immediately under her name, in italics and sentence case.

Titles of notes are in roman with case names in italics. A line is left between the title and the author's name, which is again in roman capital letters. The author's designation appears immediately under the name, in italics and sentence case. Degrees are not given but acknowledgements may be made in a footnote to an asterisk appearing after the author's name.

Headings

All headings are left-aligned (other than headings of sections of the journal).

Main headings are in capital letters. The headings in articles are numbered in roman numerals (eg'I INTRODUCTION').

Subheadings and sub-subheadings in articles are in italics and sentence case (using *(a), (b), (c)* for subheadings, followed by *(i), (ii), (iii)* for sub-subheadings). Authors should avoid, wherever possible, going beyond sub-subheadings.

Lists

Bullet points may be used for any list, and should be used particularly where the list consists of phrases as opposed to full sentences. Full sentences should start with a capital letter and end with a full stop. Phrases may, however, begin with lower case and end with a semi-colon (and a full stop right at the end of the list).

Lengthy items consisting of whole sentences or several sentences may appear in numbered lists (using (a), (i) or whatever seems appropriate). Such items always begin with a capital letter and end with a full stop.

We use 'first' (not firstly); thereafter 'secondly', 'thirdly'.

Spelling, grammar and other related matters of style or convention

Spelling and capital letters

The *SALJ* uses the 's' form of English spelling: recognise, emphasise, analyse, realise, organization (but assets are 'realized'). We say 'in so far as' and not 'insofar as'; 'moneys' and never 'monies'.

Capital letters are used only where essential, ie in all proper names (South Africa, Constitutional Court) and by tradition for a few other things, such as Act, President (of the country), Parliament and the Constitution (in the sense of a particular document; otherwise lower case).

Please note: Capitals are *not* used for court, appeal court, judge, judge of appeal, committee, board, council, municipality, province, premier, etc. (When in doubt, use lower case.)

The use of capitals in titles and headings is dealt with below.

Numbers, dates, percentages, currencies

Use words for all numbers between one and twenty and for all approximations (about two hundred years, a thousand ways).

Numbers higher than twenty may be in figures. All numbers in tables and graphs are in figures. So are ages (5 years old), percentages (the *SALJ* uses the words 'per cent' in the text (10 per cent), and only uses the figure % in tables) and measurements and quantities and amounts (6 cm, 40 km, R5 million). It is advisable also to use figures where a lot of numbers appear in a piece, as a consistent style looks better. A space (not a comma) is used in large numbers, as for instance in 42 567. Where a 'rands and cents' figure is used, the cents should be connoted by a dot (R456.45). For other currencies, use US$, £, €.

A sentence should *never* begin with figures, ie recast the sentence or use words.

Dates and centuries: on 4 July 1978; in the 1980s (*not* 1980's – there is no apostrophe); in the twentieth century.

Dashes, hyphens etc

(a) The *SALJ* uses the long dash ('—') with spaces on either side of the dash (known in the publishing trade as the 'em rule') where the author wishes either (i) to tack a word, phrase or clause onto the end of a sentence for emphasis, or (ii) to mark off a 'by the way' remark in much the same way as a parenthesis, but generally to give it greater emphasis.

TIP: The em-dash can be created on a PC by holding down the ALT key and typing 0151 on the numeric keypad. Only the numbers on the right hand keypad are able to do this, not

the numbers above the letters. You can also add one through the selecting insert>symbol> and then choosing from the list of symbols. On a Mac, press Shift-Option and the minus key to make en em-dash.

Examples:
His expertise and loyalty are available — at a price.
A policy shift is necessary to protect third parties — possibly unsophisticated entrepreneurs — who enter into pre-incorporation contracts.

(b) Where the author wishes to refer to sequences of figures to indicate continuity, or to join compounds, then a shorter en rule ('–') should be used with no spaces on before or after the dash.

TIP: On a PC, you can get an en-dash by holding down the ALT key and pressing 0150 on the numeric keypad. Please note — this only works using the numbers on the numeric keypad on the right of your keyboard, not with the number keys above the letters. You can also add one through the selecting insert>symbol> and then choosing from the list of symbols. On a Mac, you can get the en-dash by pressing the option and dash keys simultaneously.

Examples:
Pollak on Jurisdiction (1967) 45–52. (This is the standard mark for all page references from … to … .)
The blood–brain barrier.

(c) In other circumstances, the short hyphen ('-') must be used.

Examples:
Jean-Jacques.
Seven-year-old boy.

NB: Some books (especially looseleafs) have double-jointed page numbering; for example 'A-4' or '3-32'. In such cases, the short hyphen should be used, as this will indicate clearly a specific page is being referred to, and <u>not</u> a sequence from … to … .

Quotations

Quotations are reproduced exactly, including all original italics and original punctuation, notwithstanding that the original forms may not comply with the *SALJ* style.

Quotations appear in single quotation marks. Quotations within quotations appear in double quotation marks. (Back to single for the rare quotation within a quotation within a quotation.)

Short quotations appear as part of the text. Long quotations, ie quotations of more than three lines **or** more than one sentence, are isolated from the text by being indented from the margin. It is permissible to isolate a shorter quotation for emphasis.

Whenever a quotation is introduced with a colon, the quotation itself should begin with a capital letter (using square brackets to indicate an alteration where necessary). If no colon is used, the quotation should start with lower case. Where the quotation begins with a capital letter, the closing full stop should normally appear inside the closing quotation mark (eg In *Makwanyane* Chaskalson P stated: 'The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished.') But if the quotation forms part of the larger sentence, the full stop should

appear after the closing quotation mark (eg The judge said in passing that the debate centred on the hard choice 'between [imposing] the death sentence and the murder going unpunished'.)

Ellipses need not be used at the start of a quotation but must be used in the middle and at the end of a quotation to indicate missing words. We use three dots for any missing word/s and a fourth dot to show any missing full stop. (The placement of the dots indicates where the full stop appeared, so it will be … . or . ...)

Square brackets are used for all editorial changes and interpolations.

Referencing standard legal sources

Cases

Broad (Pty) Ltd v Thin 2008 (4) SA 456 (SCA).

All case titles (ie the names of the parties) are to appear in italics. The citation (ie the date, volume number, law report, page number, and court abbreviation) should be in roman print. (See the example of the case of *Broad (Pty) Ltd v Thin* immediately above.)

The case name and citation should be given in full and exactly as it appears in the relevant law report the first time it is cited. However, additional parties should be left out unless it is necessary to retain them in order to make sense of the discussion (eg where the author makes mention of 'the respondents'). Such parties are given in lower case, and in English ampersands are used (& another, & others). In Afrikaans the ampersand is not used: en 'n ander, en andere.

Double citations are neither required nor encouraged.

Paragraph references or page references (with marginal letters) may be given. The former are preferred. The *SALJ* does not use 'at' with para references, although it does with page references.

If the case is not reported in a published set of law reports (either at all, or has not as yet been published in this manner due to the decision being very recent) the author should please provide some form of citation for the purposes of reference. This could be a JOL or JDR citation, or a neutral citation used by the courts and SAFLII.

With the proliferation of electronic databases and neutral citations, there is less and less call for an author to refer to a case as being unreported. However, where it is necessary to do so, the *SALJ* uses two basic styles for unreported cases, the date being the date of judgment:

Dlamini v Jacobs (NPD) unreported case no 98/05 of 3 August 2006; **or**
Dlamini v Jacobs (NPD) unreported case no 98/05 (3 August 2006).

In addition, the placement of the word 'unreported' may be varied in accordance with the structure of the sentence, eg 'in the unreported case of *Dlamini v Jacobs* (NPD) case no 98/05 of 3 August 2006…'

A full set of standard case abbreviations and citations may be found in the *House Style for Juta Publications*.

Books

When a book is referred to for the first time, authors' names must be given in the footnote as they appear on the title page of the book or on the title page of the chapter / relevant page of the article. For instance, John D Smith must appear as John D Smith and not as J D Smith or J Smith.

In a *reference* the co-authors of any work (book, article, chapter, whatever) take an ampersand: Smith & Dlamini. We cite up to three authors: Smith, Dlamini & Pillay. Thereafter use 'et al'. When referring to authors in an ordinary sentence the ampersand is not used: 'Smith and Dlamini believe that . . .'.

If the named persons are the authors of the book, then no more need be said. But if these are the editors, then the abbreviation (ed) or (eds) must appear after the names.

Book titles take the title case (where the first letter of each principle word is capitalised) and appear in italics.

If the book is in an edition after the first, the number of the edition must appear after the title: 2 ed, 3 ed, 4 ed — but not 2nd or 3rd ed. If it is the first edition of the book, then no edition need be referred to; it will be assumed that it is the first edition.

The year of publication must appear in brackets after the title (first editions) or edition.

The precise page number where the authority was found comes next, if necessary. If the book operates by paragraphs or sections (which may be connoted either by 'para' or by '§'), then this will be a sufficient reference. If it is necessary to refer to both paragraph/section and page, then do so as follows: para 27 p 160. This latter method should be used only where absolutely necessary. Where the reference is generally to a chapter in the book, this should be indicated by the abbreviation 'ch' (unless the word chapter starts the sentence, in which case it must be in full).

Examples:

John D Smith & Sipho Dlamini *Hand's Law of Arbitration* 5 ed (2006) 115.
P Q R Boberg *The Law of Delict: Aquilian Liability* (1984) ch 3.

Chapters in books

Where an author refers to a chapter in a book written by a specific author (most commonly in a book constituted of chapters by experts on a common theme, and which have been collected an edited by a general editor or editors), then both the chapter and the book must be referenced in full the first time the work is cited.

The author must be referred to exactly as he or she was in the book, and the titles of chapters in collections are always in sentence case and roman. The book is to be cited as above.

Example:
M Bear & D Bear 'Too hot, too cold, just right?' in Mary Goldilocks (ed) *The Politics of Cookery* 3 ed (2004) 23–7.

Some works (especially *LAWSA* and looseleaf books) can give probems. Try to follow this style:

A J Kerr 'Lease' in W A Joubert (founding ed) *The Law of South Africa* vol 14 First Reissue (1999) para 164.
Joe Bloggs 'Executive government' in Stuart Woolman et al (eds) *Constitutional Law of South Africa* 2 ed (Service 12) 6-18.

Journal articles

The name of the author(s) must appear exactly as they appear in the journal being cited.

The title of the article must appear in sentence case, in roman, and within single inverted commas.

The year (in brackets) the volume (where relevant) and the title of the journal must be supplied. The title of the journal must be in italics.

The names of well-known journals (such as *SALJ*) should be abbreviated. Otherwise *LJ*, *LR* and other abbreviations may be used.

Examples:
Jane Dube 'The new Consumer Protection Act: An introduction' (2002) 119 *SALJ* 700 at 725.
S P Moyo 'The decline and fall of constitutionalism' (1998) 23 *SAJHR* 456.

Where the periodical carries no volume number, the year is not placed in brackets, eg 2006 *Acta Juridica* 43; 2003 *TSAR* 89; 2004 *Annual Survey of South African Law* 776.

Theses

Mary Brown *South African Theories of Justice* (unpublished LLM thesis, Rhodes University, 2001) 334.

Newspapers

Angela Jones 'Nuclear reactor in trouble' *The Star* 24 May 2005 at 2.

White papers, etc

The *White Paper on Energy Policy* (GN 3007 in *GG* 19606 of 17 December 1998).
The 'National Policy on HIV/AIDS for Learners and Educators' (published in *GG* 20372 of 10 May 1999).

Law Commission papers

South African Law Commission Issue Paper 20 (Project 123) *Protected Disclosures* (2002) para 3.
South African Law Commission Discussion Paper 107 (Project 123) *Protected Disclosures* (2004) para 56.
South African Law Commission (Project 123) *Report on Protected Disclosures* (2007).

The Constitution

The long citation (used when referring to the Constitution for the first time) is simply Constitution of the Republic of South Africa, 1996. The interim Constitution is cited in the same way as all other legislation, ie Constitution of the Republic of South Africa Act 200 of 1993.

Legislation

In the first reference give the short title, number and year of a statute without any punctuation: the Judicial Service Commission Act 9 of 1994. Thereafter variants may be used: the Judicial Service Commission Act, the Act, or Act 9 of 1994.

Use abbreviations for sections, subsections, paragraphs and subparagraphs, but never at the start of a sentence: Chapter = Chap, section = s, sections = ss, subsection = subsec, paragraph = para, subparagraph = subpara, article = art. (Plurals: subsecs, paras, subparas, arts.)

Use italics as shown to avoid confusion: s 45(2)*(b)*(i)*(aa)*.

Schedules: 'in terms of Schedule 4 to the Act' (cap), but 'according to the schedule' (lower case).

Delegated legislation

A proclamation is cited as follows: Proc R46 *GG* 24567 of 31 January 2003.

Regulations are cited by referring to the notice in which they appear, eg the Road Accident Fund regulations in GN 232 *GG* 24568 of 1 February 2003. A regulation is abbreviated to reg, as in reg 5(1) (but not at the start of a sentence).

Some pieces of delegated legislation should be abbreviated, others not:

Government Notice = GN
General Notice = General Notice
Proclamation = Proc
Provincial Notice = Provincial Notice
regulation = reg

If unsure whether you are dealing with a proclamation, a government notice or a general notice, consult the list of contents on the back page of the *Government Gazette* in question or check Juta's annual index to the *Government Gazette.*

Internet references

Wherever possible, a published or authoritative source should form the basis of a reference. However, it is true that more and more frequently authors are referring to websites. This may be done, provided that the author considers carefully how authoritative the source of the information is before using it.

Where an internet reference is to be used, it must appear as follows:

John Bringardner 'IP's brave new world' available at *http://www.law.com*, accessed on 12 May 2008.
B I G Stick 'Time to bring back the death penalty?' *The Star* 24 May 2005 at 2, available at *http://www.thestar.com/arts/wed*, accessed on 23 February 2009.

NB: the URL must appear in italics, in black, and must NOT be underlined.

Where an author has accessed a published source on the internet (eg a journal article accessed through WestLaw) then the original citation should be given, and there is no need to refer to the URL.

The exceptions to the above rule are newspaper articles accessed from the internet, or resources such as law commission reports etc from other countries, which may not be obviously or easily accessible to interested readers. For convenience, a URL reference may be given to assist the reader.

The use of footnotes in articles — cross-referencing

Footnotes serve two main purposes. First, you may use footnotes to elaborate on points that would otherwise clutter the main text of the article as well as to provide further information that is of interest, but is not directly relevant to your main argument. However do **not** be tempted to use them to provide either useless *or* important information or arguments — the former should be avoided altogether and the latter should appear in the text itself.

The second and main purpose of footnotes is to provide the relevant references without cluttering the text.

In the main text of writing the footnote number must appear outside the (final) punctuation mark in a sentence or clause of a sentence. The footnote number must be in roman (ie not italics).

Examples:
'Amnesty is a heavy price to pay. It is, however, the price that the negotiators believed our country had to pay to avoid an "alternative too ghastly to contemplate".'[16]

In *S v Mathebula,*[20] Stafford J admonished the trial court for appointing an intermediary 'without considering the requirement of undue stress'.[21]

In footnotes a reference to any authoritative source (which must comply with the house style described above) is **given once in full**.

Thereafter a **secondary source** — a book, chapter, journal article, newspaper article, law commission report, thesis, etc — will be cited by author and a **cross-reference** (using '**op cit**') to the FIRST footnote where the full reference appeared. An abbreviated reference to the work may be used to provide further guidance where appropriate (eg several of an author's works are cited sporadically in an article).

Examples:
Smith & Dlamini op cit note 5 at 67.
Pillay et al *Disclosure* op cit note 19.

Primary sources, especially cases, are also cited using the cross-referencing method, however, '**supra'** is used: *Fedsure* supra note 12 para 34.
Supra note 16 at 365G–H.

For consecutive references to the same source (primary or secondary), **ibid** is used with or without a page number / paragraph reference as appropriate.

Examples:
Ibid.
Ibid at 45.
Ibid para 45 (no 'at' with para refs).

On the following page an example is given of the first page of an article to give you some guidance as to what your essays should look like.

TAKING DIVERSITY SERIOUSLY: RELIGIOUS ASSOCIATIONS AND WORK-RELATED DISCRIMINATION

PATRICK LENTA*

Associate Professor, School of Philosophy and Ethics, University of KwaZulu-Natal

I INTRODUCTION

In a series of decisions implicating the right to freedom of religion, the Constitutional Court has indicated its readiness in appropriate cases to grant exemptions from facially neutral laws or regulations of general application where such laws or regulations impose disproportionate burdens on members of religious groups.[1] In a recent decision, *MEC for Education, Kwazulu-Natal & others v Pillay*,[2] the Constitutional Court granted an exemption from a regulation to permit a member of a religious group to engage in a practice that (the court determined) expressed her religious beliefs and culture. Should courts likewise be prepared to grant an exemption from anti-discrimination legislation to permit religious associations to engage in work-related discrimination on legally prohibited grounds?

In *Pillay*, a central reason for the court's decision to accommodate the pupil concerned was that the school's interest in enforcing the school uniform regulations without exception was weak. As Langa CJ observed, it was difficult to see how granting an exemption to permit the wearing of a nose stud by a pupil would interfere with the effective running of the school and the purposes the school uniform was designed to further.[3] The government's interest in enforcing …

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[1] *Christian Education South Africa v Minister of Justice* 2000 (4) SA 757 (CC), *Prince v President of the Law Society of the Cape of Good Hope* 2002 (2) SA 794 (CC) and *MEC for Education, Kwazulu-Natal & others v Pillay* 2008 (1) SA 474 (CC). For a discussion of these decisions and related matters, see: Paul Farlam 'Freedom of religion, conscience, thought and belief' in S Woolman, T Roux, J Klaaren, A Stein, M Chaskalson & M Bishop (eds) *Constitutional Law of South Africa* 2 ed (2003) (service 2) ch 41; Denise Meyerson 'Religion and the South African Constitution' in P Radan, D Meyerson & R Croucher (eds) *Law and Religion* (2005) ch 5; Patrick Lenta 'Religious liberty and cultural accommodation' (2005) 122 *SALJ* 3; Johan van der Vyver 'The contours of religious liberty in South Africa' (2007) 21 *Emory International LR* 77; Patrick Lenta 'Muslim headscarves in schools and in the workplace' (2007) 124 *SALJ* 296; Patrick Lenta 'Cultural and religious accommodations to school uniform regulations' (2008) 1 *Constitutional Court Review* 259; and Mark Kende *Constitutional Rights in Two Worlds: South Africa and the United States* (2009) ch 8.

[2] Supra note 1.

[3] *Pillay*'s case ibid para 101.

BIBLIOGRAPHIES

A bibliography is a detailed list of sources referred to in your essay, or consulted during the course of its preparation. It contains **more detail than footnote references**; in particular, it indicates the **publisher** and **place of publication of books**. (Publishing details of journals and law reports are never provided, thus the bibliography reference of a journal article will be [almost; see below regarding the inversion of authors' names] exactly the same as its first footnote reference.) As with footnotes, each bibliography reference should end in a full stop.

Primary sources:

Primary sources of law (ie cases and legislation) are listed in alphabetical order (according to the name of the first party, for cases).

Primary sources should be listed in separate tables of statutes and cases. When primary sources from more than one jurisdiction are used, these tables should be sub-divided by jurisdiction, or at least so as to distinguish between South African and foreign/international sources.

Secondary sources:

Secondary sources (ie books, journal articles, newspapers, etc) are ordered alphabetically by authors' surnames.

Where there is one author, her or his name is listed with the surname first and then the first name (or initial, as the case may be), separated by a comma, eg Ncube, Caroline B 'You're fired! The removal of directors under the Companies Act 71 of 2008' 2011 (1) *SALJ* 33.

Where there is more than one author, only the name and surname of the first author are inverted, eg Schwikkard, PJ & Saras Jagwanth '*K v The Regional Court Magistrate NO* 1996 (1) SACR 434 (E): the constitutionality of s 170A of the Criminal Procedure Act' (1996) 9 *SACJ* 215.

It is usually not necessary to distinguish between books and journals, but it may be, depending on the number of sources consulted. In a doctoral thesis there should be separate sections on books and journals.

Official publications and publications produced by organisations, for which there is no named author, should be listed by reference to the body responsible for the publication thereof, eg Commission for Gender Equality; Department of Justice; Organisation of African Unity.

An example of a bibliography appears on the next page.

Example:

BIBLIOGRAPHY

Primary Sources

Constitution
Constitution of the Republic of South Africa, 1996.

Statutes
Income Tax Act 58 of 1962.
Labour Relations Act 66 of 1995.
Restitution of Land Rights Act 22 of 1994.

Cases
South African:
Boesak v Minister of Home Affairs 1987 (3) SA 665 (C).
Mohlomi v Minister of Defence 1997 (1) SA 124 (CC).

Foreign:
R v Levogiannis [1993] 4 SCR 475 (Canadian).

Secondary Sources

Alford, William P 'Exporting "The pursuit of happiness"' (2000) 113 *Harvard LR* 1677.

Barrass, Robert *Students Must Write: A Guide to Better Writing in Course Work and Examinations* (1982) Methuen & Co, London and New York.

Blackman, M S 'Companies' *LAWSA* vol 4, Part 1 First Reissue (1997) Butterworths, Durban.

Campbell, Enid; Richard Fox & Gretchen Kewley *Students' Guide to Legal Writing* (1997) The Federation Press, Sydney

Cockrell, Alfred 'Second-guessing the exercise of contractual power on rationality grounds' 1997 *Acta Juridica* 26.

Fish, Stanley *Is There a Text in This Class?* (1980) Harvard University Press, Cambridge, Massachusetts.

Seeger, Anthony 'Ethnomusicology and music law' in Bruce Ziff and Pratima V Rao (eds) *Borrowed Power: Essays on Cultural Appropriation* (1997) Rutgers University Press, New Brunswick.

Twining, William & David Miers, *How to Do Things with Rules: A Primer of Interpretation* 4ed (1999) Butterworths, London.