

**RESEARCH, WRITING, STYLE AND REFERENCING GUIDE****SECTION 1: THE RESEARCH AND WRITING PROCESS**

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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.

<b>Action word</b>	<b>What it requires</b>
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 <i>is</i> 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 which 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 (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, LexisNexis Butterworths and Westlaw) 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*

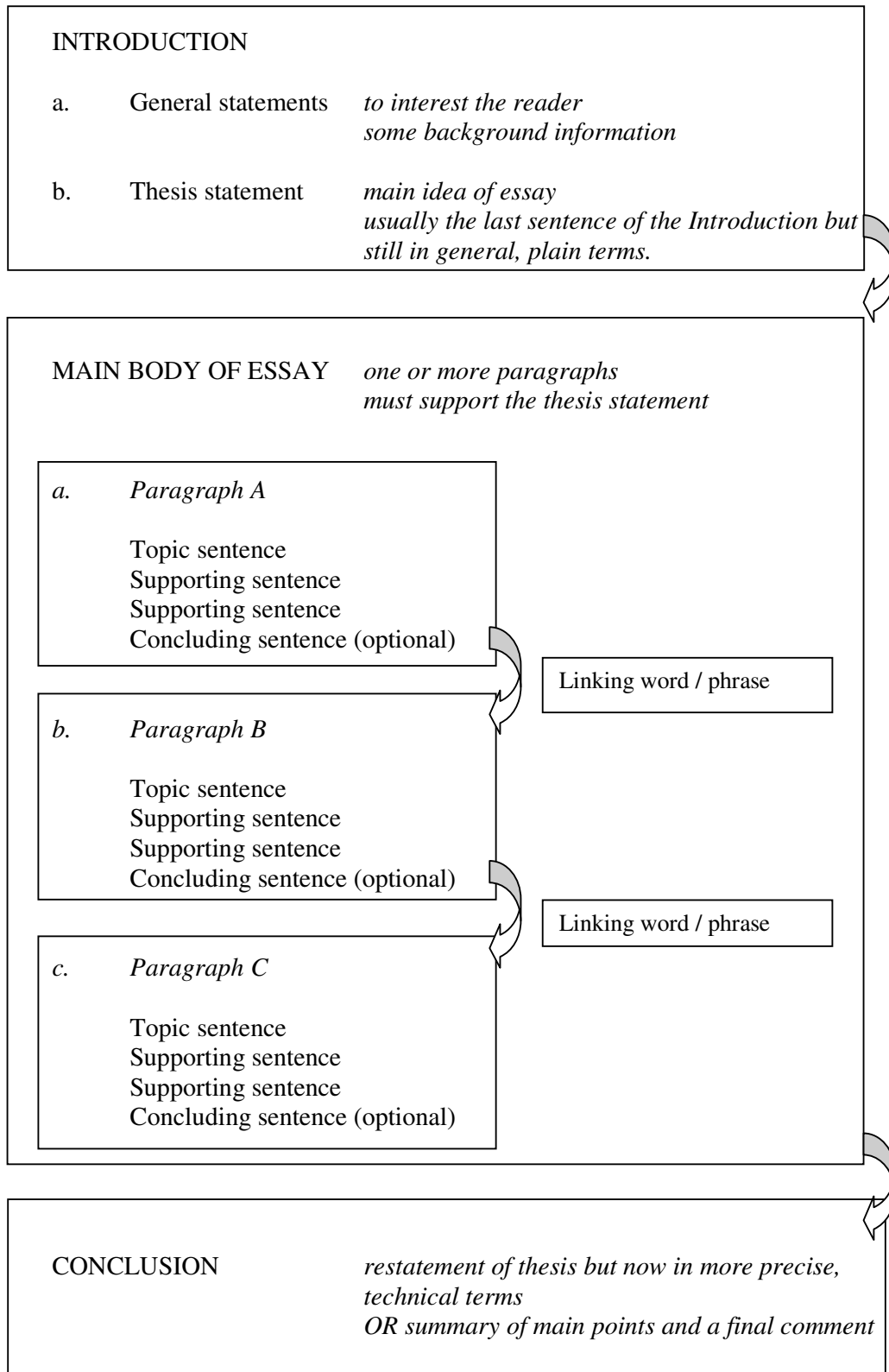
*Planning what you will say and where you will say it are probably the most important parts of producing an assignment or essay. It is essential that you develop a line of argument - this transforms your writing from a jumbled mass of information into a clear, logical and coherent paper. Assignments 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 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



## *Prepare 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, 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 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 conclusion is, in many ways, a more precise restatement of the argument in terms that have been elucidated in the body of the essay. 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.*)
- (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. Firstly, 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 leading 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 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 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 CC and 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.'<sup>1</sup> 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

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<sup>1</sup> Coetzee J in *Trade Fairs and Promotions (Pty) Ltd v Thomson and Another* 1984 (4) SA 177 (W) at 185.



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

<i>Content</i>
* 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?
<i>Structure</i>
* 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?
<i>Expression and use of language</i>
* 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?
<i>Research</i>
* 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?
<i>Presentation</i>
* 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. The standard plagiarism declaration is attached to this guide and marked Annexure B.

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.

You *must*, 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), 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 21 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 'Things lecture notes 1998'. 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.*) 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.’<sup>2</sup>

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.

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<sup>2</sup> James Brand ‘Intellectual property and the abuse of dominant position in South African competition law’ (2005) 122(4) *SALJ* 907 at 927.



#### 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 because of the mitigating circumstances, or in spite of 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 10 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 - 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'.

### (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. 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 not be italicised unless they are in a quotation.

When quoting extensive Latin phrases an English translation should be provided.



(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).

*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 is 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 is deciding', 'the army is based in'.*

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

*Example:*

*'The Zulu live mainly in KwaZulu-Natal', 'the Irish are 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 12, he told his son about his past.’

Strictly speaking, this means that the father was 12 years old.

Therefore: ‘When his son was 12 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:  
Contact telephone number:



The text of your essay should be double-spaced, footnotes should be single-spaced and in a smaller font (usually 10 point Times New Roman).

12 point Times New Roman font is recommended for the body text. The font you decide to use for the body text should be easily readable and professional in appearance. Avoid 'aesthetic' fonts such as Comic Sans, Broadway, Jokermann etc.

Indent the first line of every new paragraph, as well as starting on a new line, but do not indent the first line that appears after a heading.

Words in a foreign language are not printed in italics but in roman print; but if they are in italics 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 four or more lines in length should be indented, and single-spaced, and quotation marks should not be used.

Where you quote from a quote you should acknowledge this in a footnote. For instance where you quote Derrida exactly as he is quoted in an article you are reading by Van der Walt, this should be acknowledged. It is important to note that reading an authority through secondary sources is not encouraged.

#### *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.<sup>9</sup>

#### 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* ...'

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

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<sup>th</sup>)

*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:  
JM 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).
- Titles of books, journals articles, and other secondary sources: only proper nouns and the first word of the title should be capitalised:  
    Procedural aspects of marriage dissolution in Japan  
    Commentary on the Criminal Procedure Act

#### *Page references*

When citing more than one page or paragraph:

at 1-5, at 11-13, at 112-19 (not 112-9), at 220-1, at 567-71, at 599-601, at 132F-H, at 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. Attached to this guide as Annexure A is a document that provides an example of proper referencing in legal academic work.



While styles vary, the main rule is to be consistent. Below you will find examples that comply with the house style of the *South African Law Journal*. This is generally endorsed in the UCT Law Faculty. Some permissible variants are also indicated, however.

Footnotes of an article should be numbered consecutively in Arabic numerals in superscript after any punctuation mark, and without any surrounding bracket or full stop. Thus: ‘*Regal’s* case<sup>21</sup> left the position unclear. This was in conflict with the view of Jones J,<sup>22</sup> but it was correct.’

Numbers of footnotes appear outside final punctuation marks.

*Example:*

‘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”.’<sup>16</sup>

Footnotes can also be used 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/arguments - the former should be avoided and the latter should appear in the text itself. Avoid unnecessary repetition of information already referred to either in the body text or in earlier footnotes. See Annexure A.

*Example:*

Both African States and dissident forces have employed mercenaries to fight in numerous conflicts.<sup>15</sup>

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<sup>15.</sup> Thomas op cit note 1 at 14-16. It has been suggested that the following factors led to the appearance of mercenaries in post-colonial Africa in the 1960s: the withdrawal or absence of traditional regional powers from direct military involvement when conflicts arose; the fact that the internal military forces were generally ineffective; and the uncertain legitimacy or recognition of ruling regimes.

*Cross-referencing; repeat references; footnoting to names in text*

As a general rule, only the first citation of a source need be given in the full form. Subsequent citations of this source can then refer back to the first reference.

The following abbreviations are used for cross-referencing, but sometimes incorrectly:

ibid = in the same place;

idem = the same;

op cit = in the work cited;

loc cit = in the place cited; and

supra = above.

The use of these frequently confusing phrases can easily be avoided – see the examples below.

*Example:*

<sup>1.</sup> HC Burmester ‘The recruitment and use of mercenaries in armed conflicts’ (1978) 72 *American Journal of International Law* 37.

<sup>2.</sup> *Cape Law Society v Parker* 2000 (1) SA 582 (C) at 590.

<sup>3.</sup> Burmester (note 1) at 41. [OR: Burmester (n 1) at 41]

<sup>4.</sup> *Cape Law Society v Parker* (note 3) at 591-2. [OR: *Cape Law Society v Parker* supra note 3 at 591-2.



Further examples:

- Books, essays or journal articles: Fish (note 23) at 367 (or: Fish op cit note 23 at 367). In such cases, only the author's surname is required.
- Where an author is mentioned in the text: 'Samuelson argues ...'<sup>8</sup> it is not necessary to repeat the author's name in the footnote, unless this is the first time the work is cited. The first citation of a work requires the full name of the author, in this case, Pamela Samuelson.
- Repeat citations of a case: *Van Rooyen v Van Rooyen* supra note 166 at 438F-H. [It is only necessary to repeat the litigants' name(s) if other sources have been cited since the first citation of this case.]
- If a case is cited repeatedly: *Mkangeli* case (note 29) at 288A.
- Where the name of an act or the name of a case is mentioned in the text, it is not necessary to repeat this information in the footnote, even if this is the first citation. For example, if the text reads: 'In *S v Martin*<sup>2</sup> the court held ...'. Footnote 2 will read: 1996 (2) SACR 378 (W) or: supra note 1.

If it is clear from the context of the text that the discussion refers to a particular act or case, it is not necessary to refer back to the full citation every time a particular section or paragraph is cited. For example, if the entire page text is devoted to a discussion of the *Martin* case (cited in full above), the footnotes in the continuing discussion need only contain the pinpoint references: at 382A.

### *Books*

Whenever a particular book is cited for the first time, you must provide the following:

- the name of the author(s) or editor(s). [First name(s) or initial(s) precede the surname. Do not use full stops].
- Where there is two authors give the details of both. Use '&' only where it is given by the authors as such. In all other cases, use the word 'and'.
- Where there is three or more authors, provide only the details of the first author, followed by the Latin abbreviation 'et al'. The same applies for the citation of journal articles that has more than one author.
- the name of the book (in italics) [Use capital letters for the first word of the title and proper nouns only]
- the edition (if applicable)
- the date of publication (in brackets)
- if you cite a particular page, provide the page reference

*Example:*

<sup>1</sup> William Twining and David Miers *How to do things with rules: a primer of interpretation* 4ed (1999) 125.

<sup>2</sup> Ellison Kahn *Contract and mercantile law: a source book* vol 1, 2ed (1988) 704-5.

The Old Authorities:

Citation is in the normal manner except that standard, well-known works may be shortened thus:

Grotius *Inleiding* 6.1.3

Voet *Commentary on the Pandects* 2.19.4



### Journal articles

Standard citation format:

Author	Title of article	Date	Vol	Issue no	Name of journal	Page on which the article begins	Page you are citing
Mario Gomez	'The modern benchmarks of Sri Lankan public law'	(2001)	118	2	<i>SALJ</i>	581	at 598

- Where there is more than one author, see the rule above under the citation for books.
- The title of the article appears in single quotation marks Use capital letters for the first word of the title and proper nouns only.
- The name of the journal appears in italics.
- If the journal does not have a volume number, the date does not appear in brackets.
- Put the date in brackets if the journal has a volume number. Include issue number if available, specifically where no page numbers are apparent.
- The names of well-known journals (such as *SALJ*) should be abbreviated. Otherwise, *LJ*, *LR* and other abbreviations may be used.

*Example:*

<sup>11</sup> WE Harvey and D Husak 'The meaning of "identity documents" in case law' (1965) 82 *SALJ* 224 at 227.

<sup>2</sup> Alfred Cockrell 'Second-guessing the exercise of contractual power on rationality grounds' 1997 *Acta Juridica* 26 at 42.

<sup>3</sup> Hugh Collins cited in Cockrell (note 2) at 40.

[When you quote from a publication that you yourself have not consulted.]

Electronic journals (with no print equivalent):

Lynn Foster 'Obstacles to citation reform' 2000 (3) *The Journal of Information Law and Technology*. Available at <http://elj.warwick.ac.uk/jilt/00-3/foster.html> [Accessed 2 December 2002].

### Essays in collected editions

Where you refer to an essay in an edited book, you must provide:

- the name of the author(s) of the essay First name(s) or initial(s) precede the surname. Do not use full stops.
- the title of the essay in single quotation marks Use capital letters for the first word of the title and proper nouns only



- follow this by the word ‘in’ and then give the full citation of the book as set out in point 4.1 ie:  
the editor(s) of the book in which the essay appears  
the name of the book in which the essay appears (in italics)  
the edition (if applicable)  
the date of publication.
- the page of the book on which the essay begins
- the particular page you are citing (preceded by the word ‘at’)

*Example:*

<sup>1</sup>. Anthony Seeger ‘Ethnomusicology and music law’ in Bruce Ziff and Pratima V. Rao (eds) *Borrowed power: essays on cultural appropriation* (1997) 52 at 64.

### *The Internet*

Provide internet address and the date on which you visited the website.

*Example:*

<sup>1</sup>. Pamela Samuelson ‘Tightening the copyright noose: why you should be worried about the White Paper on Intellectual Property Rights.’ Available at [http://www.eff.org/pub/Intellectual\\_property/tightening-copyright-noose.article](http://www.eff.org/pub/Intellectual_property/tightening-copyright-noose.article) [Accessed 2 January 2002].

### *Cases (South African)*

Standard citation format:

Case name	Year	Volume	Law Report Series	Page case begins	Court	Pinpoint reference (page and paragraph)
<i>Administrator, Transvaal v Traub</i>	1989	4	SA	731	A	at 761F-G.

- The names of the parties must be in italics.
- If you cite a particular page or paragraph, supply the page and paragraph number, preceded by the word ‘at’:  
*Boesak v Minister of Home Affairs* 1987 (3) SA 665 (C) at 684 H.
- Where the court numbers the paragraphs of its judgment (as the Constitutional Court tends to do) you may also cite the court’s paragraph number:  
*Mohlomi v Minister of Defence* 1997 (1) SA 124 (CC) para 19 at 133 H.

Recent South African law reports series:

**Tip:** The publisher of the law report series usually prints the case citation in the required form at the top of each page.



South African Law Reports (1947 - )	<i>Boesak v Minister of Home Affairs</i> 1987 (3) SA 665 (C).
All South African Law Reports (1996 -)	<i>Ex parte Stoter</i> [1996] 4 All SA 329 (E).
Constitutional Law Reports (Butterworths) (1994 -)	<i>Harris v Minister of Education</i> 2001 (8) BCLR 796 (T).
Industrial Law Reports (1980- )	<i>Franks v University of the North</i> (2002) 22 ILJ 1158 (LC).
Juta's Tax Law Reports (1997- )	<i>Tiger Oats Ltd v Commissioner, South African Revenue Services</i> 2001 (11) JTLR 385.
Juta's Tax Law Reports (1997- )	<i>Tiger Oats Ltd v Commissioner, South African Revenue Services</i> 2001 (11) JTLR 385.
Labour Law Reports (Butterworths) (1994 -)	<i>TGWU &amp; Others v Coin Security Group (Pty) Ltd</i> [2001] 4 BLLR 458 (LC).
Prentice-Hall Weekly Legal Service (1923 - 1995 )	<i>S v Louw</i> 1994 (2) PH H73 (T).
South African Criminal Law Reports (1990- )	<i>S v Martin</i> 1996 (2) SACR 378 (W).
South African Tax Cases (if not reported in SA Law Reports) (1926- )	<i>Muller v CIR</i> (1953) 18 SATC 17 (T). If before the Income Tax Special Court: ITC 1033 (1964) 26 SATC 73.

#### Southern African courts

Important judgements from outside of South Africa are sometimes published in South African series of law reports such as The South African Law Reports and Butterworths Constitutional Law Reports. The court is identified as follows:

Botswana (or BAC) = Appeal Court, Botswana LesA = Lesotho Court of Appeal NmH (or Nm) = Namibia High Court NmS (or Nm) = Namibia Supreme Court RAD = Rhodesia Appellate Division SBAC = Swaziland, Basutoland and Bechuanaland Appeal Court. SR = High Court of Southern Rhodesia. SWA = South West African Division of the Supreme Court of South Africa. Z (or ZS, ZSC) = Zimbabwe Supreme Court.	Examples <i>Government of the Republic of Namibia v Cultura</i> 1994 (1) SA 407 (Nm). <i>Attorney-General v Dow</i> 1996 (6) BCLR 1 (Botswana) at 7. <i>Kauesa v Minister of Home Affairs</i> 1994 (3) BCLR 1 (NmH) at 13.
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#### 1910-1947

The Supreme Court of South Africa was established in 1910. From 1910 to 1947 the decisions of each Division of the Supreme Court were reported in a separate series, one for each Division of the Court:	
Appellate Division (1910-1946)	<i>Zeeman v Botha's Trustee</i> 1923 AD 167.
Cape Provisional Division (1910-1946)	<i>McMillan v Locomotive Drivers' and Firemen's Mutual Aid Society</i> 1922 CPD 578.
Eastern Districts Local Division Reports (1910-1946)	<i>Miller v West</i> 1914 EDL 563.



Griqualand West Local Division Reports (1910-1946)	<i>Snyder v Steyn</i> 1912 GWL 67.
Natal Law Reports (New Series) (1879-1932)	<i>Ntsele v Ntuli</i> (1927) 48 NLR 3.
Natal Provisional Division Reports (1933-1946)	<i>Stender v Stender</i> 1938 NPD 125.
Orange Free State Provincial Division Reports (1910-1946)	<i>Nel v Minister of Justice</i> 1923 OPD 14.
Transvaal Provincial Division Reports (1910-1946)	<i>R v Paizes</i> 1941 TPD 118.
Witwatersrand Local Division Reports (1910-1946)	<i>Ferreira v Grant</i> 1941 WLD 187.

Before 1910:

Some more common examples of pre-1910 law reports series:

NOTE: where a series consists of numbered volumes (eg SC, numbered 1 – 26), the date of the case appears in brackets. Brackets are not used when the series consists of annual volumes denoted by year rather than volume number.	
Buchanan’s Appeal Court Reports (1880-1910)	<i>Harsant v Olssen</i> 1885 Buch AC 108.
Buchanan’s Supreme Court Reports (1868-1879)	<i>Peacock v Hodges</i> 1876 Buch 65.
Cape Supreme Court Reports (1880-1910)	<i>R v Maphaga</i> (1908) 25 SC 230. (Note: the volumes of SC reports are numbered consecutively from 1 – 26. The date thus appears in brackets.
Cape Times Law Reports (1891-1910)	<i>Skibble v Kolbe</i> (1906) 16 CTR 292.
Eastern Districts Court Reports EDC (1880-1887; 1891-1909)	<i>Mba v Elliott</i> (1898) 13 EDC 35.
Griqualand West High Court Reports (1882-1910)	<i>Anderson v Lindquist</i> (1886) 4 HCG 39.
High Court Reports [South African Republic] (1881-1892)	<i>Scorgie v Smit</i> (1882) 1 SAR 21.
Juta’s Supreme Court Reports (1880-1894)	<i>Wheeler v Van Reenen</i> (1883) 2 Juta 269.
Menzies’ Supreme Court Reports (1928-1849)	<i>Wood v Gilmour</i> (1840) 3 Menz 159.
Official Reports of the South African Republic (1894-1899)	<i>S v Tom</i> (1895) 2 OR 27.
Orange River Colony Law Reports (1903-1909)	<i>Bothma v Lace Diamond Co Ltd</i> 1903 ORC 13.
Roscoe’s Supreme Court Reports (1861-1867; 1871-1872)	<i>Jones v Stewart</i> (1878) 3 Roscoe 17.
Searle’s Supreme Court Reports (1850-1867)	<i>Slabber v Bell</i> (1861) 4 Searle 37.
Transvaal Supreme Court Reports (1902-1909)	<i>Blower v Van Noorden</i> 1909 TS 890.
Witwatersrand High Court Reports (1902 – 1910)	<i>Doucet v Piaggio</i> 1905 TH 267.

‘Black Appeal Courts’ reports

During the period of their existence, these courts were named Native Appeal Courts, then Bantu Appeal Courts, Black Appeal Courts, and finally merely Appeal Courts.
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## Examples

*Bobotyane v Jack* 1944 NAC (C&O) 9.

[Native Appeal Court: C&O = Cape and Orange Free State Division; N&T = Natal and Transvaal Division]

*Mwanzi v Zulu* 1954 NAC 143 (S).

[New Series following the new division of the Native Appeal Court into Southern (S); Central (C) and North-Eastern (NE)]

*Sibiya v Xala* 1978 (1) AC 22 (NE).

## Unreported Cases

### Example

*S v Snyders* (C) Case no 1756/02 25 September 2002, unreported.

In addition, you may supply a reference for the electronic version of the case, as found using Butterworths Judgments Online, Jutastat Daily Law Reports, or from the official court web pages of the Constitutional Court or the Supreme Court of Appeal.

### Example

*Geuking v President of the Republic of South Africa and others* (CC) Case No CCT35/02 12 December 2002, unreported. Available at <http://www.concourt.gov.za/judgments/2002/geuking.doc> [Accessed 10 February 2003].

## Cases (foreign)

Standard citation format for British and Irish cases:

Case name	Year	Vol number if applicable	Reporter	Page case begins	Specific page and paragraph citation	Court if CA, HL or PC
<i>Donaghue v Stevenson</i>	1932		AC	562	at 564A	HL

Unlike South African court citations, where the court is routinely cited (eg CC, T, C, etc), an English court should only be cited if the judgment is delivered by the Court of Appeal (CA), the House of Lords (HL) or the Privy Council (PC).

If a case is reported in The Law Reports (the official series), use this citation. If not reported in The Law Reports, use the All ER citation (example below) in preference to any other series.

All England Reports (1936- ). Cited as All ER	<i>R v Bryce</i> [1992] 4 All ER 567 (CA). <i>Wakeham v Mackenzie</i> [1968] 2 All ER 783.
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## Germany

Where the case was heard in the BVerfG (Bundesverfassungsgericht – Federal Constitutional Court) cite to the BVerfGE (Entscheidungen des Bundesverfassungsgericht) as follows:

Name of law reports series	Vol	Page case begins	Page cited	Optional: a name by which the case has become known
BVerfGE	34	269	at 272	<i>Princess Soraya</i>

Examples:

BVerfGE 54, 148 (154).  
BVerfGE 30, 173 (197) (*Mephisto*).

Reichsgericht (RG)) cite to the:

- BGHZ (Entscheidungen des Bundesgerichtshof in Zivilsachen) (Civil matters) (1951- )
- RGZ (Entscheidungen des Reichsgericht in Zivilsachen) (Civil matters) (1880-1945)
- BGHSt (Entscheidungen des Bundesgerichtshof in Strafsachen) (Criminal matters) (1951- )
- RGSt (Entscheidungen des Reichsgericht in Strafsachen) (Civil matters) (1880-1945)

As follows:

Name of law report series	Vol	Page case begins	Page cited	Optional: a name by which the case has become known
BGHZ	26	349	at 352	<i>Herrenreiter</i>

Examples:

BGHZ 35, 363 (369) (*Gisengwurzeln*).  
BGHZ 66, 388 (390).  
RGZ 54, 255 (259).

## US Supreme Court

United States Reports (1754 - ) (official series) cited as US	<i>United States v Nixon</i> , 418 US 683, 689 (1974).
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## International Law Reports

Examples

International Court of Justice: Reports cited as ICJ Rep. Year appears as on the spine of ICJ reports. Provide page on which case begins and page cited if necessary. If an advisory opinion, do not list the names of the parties.	<i>Military and Paramilitary Activities in and against Nicaragua (Nicaragua v US) (Merits)</i> [1986] ICJ Rep 14 at 92.  <i>Corfu Channel (UK v Albania) (Merits)</i> [1949] ICJ Rep 4.
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	<i>Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (Advisory Opinion)</i> [1950] ICJ Rep 65 at 68.
Publications of the Permanent Court of International Justice: Cited as PCIJ. These were published in six series (A to F). Cite by number of the case, not the page number on which case begins.	<i>Chorzow Factory (Germany v Poland) (Jurisdiction)</i> [1928] PCIJ (ser A), No 17 at 8.  <i>Diversion of Water from the Meuse (Netherlands v Belgium)</i> [1937] PCIJ (ser A/B) No 70 at 7.
United Nations Reports of International Arbitral Awards	<i>Trail Smelter Arbitration (US v Canada)</i> (1938 and 1941) 3 RIAA 1905.

### *Legislation*

#### Statutes

The Restitution of Land Rights Act 22 of 1994.

Sections are cited as follows:

Income Tax Act 58 of 1962 s 9.

Income Tax Act 58 of 1962 ss 9 and 10.

In s 6(2)(d) priority is given to claims which affect a substantial number of persons.

#### Subsections

Income Tax Act 58 of 1962 subsec 9(1)(d)(bis).

#### Chapters:

Restitution of Land Rights Act 22 of 1994, Chapter III, ss 22-38.

#### Parts:

Labour Relations Act 66 of 1995, Chapter VII, Part D, s 151.

#### Schedule:

Short-term Insurance Act 53 of 1998, sch 2.

**NB.** Where the word section, subsection, chapter, part or schedule is the first word in a sentence, it should be given in full: Section 6(2)(d) provides that priority is given to claims that affect a substantial number of persons.

#### Subordinate Legislation:

Provide the government assigned regulation or proclamation number, and the number and publication date of the Government Gazette in which it appeared. The abbreviations GNR, GN and GG are permissible before a number, except if at the beginning of a sentence or footnote.

#### Examples:

Code of Good Practice: Key Aspects on the Employment of People with Disabilities GNR 1345 GG 25789 of 19 August 2002.

Department of Transport Notice 1957 GG 18541 of 12 December 1997.



## Treaties and Conventions

Provide the *ILM* reference if available. Alternatively, provide the UNTS reference or the full UN or OAU or EU reference.

Examples:

Vienna Convention on the Law of Treaties, 1969 (1969) 8 *ILM* 679.

OAU Convention for the Elimination of Mercenaries in Africa, 1972 OAU Doc. CM/433/Rev.L, Annex 1 (1972).

International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 1989 United Nations General Assembly Resolution 44/34 (1989).

## BIBLIOGRAPHIES

- (1) 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)
- (2) Secondary sources are ordered alphabetically by authors' surnames. 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.
- (3) 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.
- (4) Primary sources of law 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.

*Example*

## BIBLIOGRAPHY

### Primary Sources

#### *Cases*

*Boesak v Minister of Home Affairs* 1987 (3) SA 665 (C).

*Mohlomi v Minister of Defence* 1997 (1) SA 124 (CC).

#### *Statutes*

Income Tax Act 58 of 1962.

Labour Relations Act 66 of 1995.

Restitution of Land Rights Act 22 of 1994.

### Secondary Sources

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Blackman, MS 'Companies' (1997) 4(1) *LAWSA* Butterworths, Durban,.

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 Mass.



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Twining, William and Miers, David *How to do things with rules: a primer of interpretation* 4ed (1999) Butterworths, London.

CE Scollo-Lavizzari *Restitution of land rights in an administrative law environment -- the German and South African procedures compared* (1996) Unpublished LLM Dissertation, University of Cape Town, Cape Town.

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Campbell, E; et al *Students' guide to legal writing* (1997) Sydney, The Federation Press.

Du Plessis, Lourens *An introduction to law* 3ed (1999) Juta, Cape Town.

Garner, BA (ed) *Black's law dictionary* 7ed (1999)

Hofman, Julien *Guide for producing written assignments in the law faculty* 5ed (1999) Cape Town, Department of legal history and method, Faculty of law, University of Cape Town, Cape Town.

O'Malley, T *The round hall guide to the sources of law: an introduction to legal research and writing* (1993) Dublin, The Round Hall Press.

Miller, S *Legal skills handout* (2000/2001) Edinburgh Law School, Edinburgh.



## ANNEXURE A EXAMPLE OF PROPER REFERENCING IN LAW

In *United Democratic Movement v President of the RSA and Others (1)*<sup>3</sup> it was contended that ‘the right to vote and proportional representation are part of the basic structure of the South African Constitution, and... not subject to amendment at all’.<sup>4</sup> The basis of this argument is to be found in *Premier of Kwazulu-Natal and Others v President of the Republic of South Africa and Others*<sup>5</sup> where the Court suggested that an amendment that ‘radically and fundamentally’ changed the structure of the Constitution<sup>6</sup> might not be classed as an amendment.<sup>7</sup> The Court suggested that there may be a limit to what can be amended.<sup>8</sup> This doctrine has its roots in Indian jurisprudence, as Devenish notes.<sup>9</sup> Indian courts have however restrained their use of the doctrine to amendments touching the rule of law and separation of powers.<sup>10</sup> Ultimately, whether the doctrine is part of our law is unclear.<sup>11</sup> It appears that the anti-defection provisions of our Constitution are not a part of its basic structure.<sup>12</sup> A further argument raised in the *United Democratic Movement* case was that the legislation in issue conflicted with the ‘founding values’ of the Constitution.<sup>13</sup> Devenish’s view is that the Court’s reasoning on this point is the ‘Achilles heel of the judgement’.<sup>14</sup> Smith disagrees arguing that the only founding value of the Constitution is its protection of the salaries of civil servants.<sup>15</sup>

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Section 2 of the National Environmental Management Act<sup>16</sup> recognises a set of principles to guide the behaviour of organs of state in actions that may impact on the environment.<sup>17</sup> Key among these is the s2(3) principle that development must be environmentally sustainable. This requirement is further elaborated to involve the avoidance of disturbance to ecosystems,<sup>18</sup> of pollution<sup>19</sup> and of disturbance of landscapes.<sup>20</sup>

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<sup>3</sup> 2002 (11) BCLR 1179 (CC). [NOTE: NOT *United Democratic Movement v President of the RSA and Others* 2002 (11) BCLR 1179 (CC).]

<sup>4</sup> At para 14.

<sup>5</sup> 1996 (1) SA 769 (CC).

<sup>6</sup> Constitution of South Africa, 1996.

<sup>7</sup> At para 47. [NOTE: NOT *United Democratic Movement v President of the RSA and Others* 2002 (11) BCLR 1179 (CC) at para 47]

<sup>8</sup> At para 49.

<sup>9</sup> GE Devenish ‘Political musical chairs – the saga of floor-crossing and the Constitution’ (2004) 1 *Stell LR* 52 at 55.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.* 56.

<sup>12</sup> *United Democratic Movement* (note 1) para 16.

<sup>13</sup> At para 17.

<sup>14</sup> Devenish (note 7) 57.

<sup>15</sup> GE Smith *The New Constitution* (2003) 642.

<sup>16</sup> Act 107 of 1998.

<sup>17</sup> These principles were derived from F Kaganas ‘The State and the Environment’ in GE Luthuli *Our New Environmental Regime* (2001) 612.

<sup>18</sup> Section 2(4)(a)(i).

<sup>19</sup> Section 2(4)(a)(ii).

<sup>20</sup> Section 2(4)(a)(iii). See also s 33(4).



**ANNEXURE B**

**UNIVERSITY OF CAPE TOWN**

**FACULTY OF LAW**

**PLAGIARISM: DECLARATION TO BE MADE BY STUDENTS**

The following declaration is to be completed and included each time an essay is submitted for assessment. The principles contained in the declaration apply also when submitting other forms of written work, but you may be instructed that a declaration is not necessary. In other words, plagiarism in any form is always not allowed, but you may not have to submit a declaration with each piece of written work handed in for assessment in this faculty.

**DECLARATION**

1. I know that plagiarism is wrong. Plagiarism is to use another's work and pretend that it is one's own.
2. I have used the footnote\* convention for citation and referencing. Each contribution to, and quotation in, this essay/report/project/.....from the work(s) of other people has been attributed, and has been cited and referenced.
3. This essay/report/project/..... is my own work.
4. I have not allowed, and will not allow, anyone to copy my work with the intention of passing it off as his or her own work.
5. I acknowledge that copying someone else's assignment or essay, or part of it, is wrong, and declare that this is my own work.

Signature:..... Student No.....

\* NB No other convention of referencing is permitted in the Law Faculty.

