LEGAL RESEARCH METHODOLOGY



ONLY STUDY GUIDE FOR LME3701

DEPARTMENT OF CRIMINAL AND PROCEDURAL LAW

UNIVERSITY OF SOUTH AFRICA, PRETORIA

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FOREWORD

Dear Student

1.1 INTRODUCTION AND GENERAL ORIENTATION

Welcome to the module in Legal Research Methodology. At this stage of your studies, you will have made substantial progress both in your LLB studies and in your understanding of legal research, whether in the form of research essays or other such research work. Consequently, you are well on your way to understanding the complex interaction between various legal subjects, as well as the interrelationship between legal practice and legal research.

Banakar and Travers argued in 2005 that "there has been a major decline in the ability of law students and graduates to conduct effective legal research in recent times".[1] Senior researchers, practitioners and members of the bench often express the same concern, which is indeed disconcerting if one considers the degree of research and writing required in the practice of law, whether as a legal representative, or in a legal advisory role, or perhaps as a legal academic or other such researcher. This module, which is a continuation and extension of Introduction to Research Methodology for Law and Criminal Justice (IRM1501), aims to remedy the described situation by creating a sound foundation for effective future academic legal research on the basis of a legal research proposal. It does not deal with basic research skills such as finding sources of law – skills which we assume to be in place from your earlier legal studies – which were directed at developing competencies for legal research. On completion of this module (LME3701), you should have acquired a firm grounding in the various research methods, aids, strategies and processes that are involved in research from an academic perspective. This is what we mean when we say that this module builds on the basic legal skills developed at the first level of LLB studies. Applied practical legal research (i.e. research typically employed in legal practice such as drafting heads of argument) is left to the curriculum for Techniques in Trial and Litigation (TLI4801) in the fourth year of the Bachelor of Laws at the University of South Africa. The current module concerns itself with basic academic legal research from a general perspective in order to allow you to eventually design a research proposal.

This study guide was prepared for third-year law students who have a basic grounding in legal research from IRM1501, one of the modules in the first year of study. This guide provides a synoptic overview of essential legal research themes specifically for the novice legal researcher in the legal research planning stage. At its core, the module is grounded on research methodology and includes reference to the legal research conventions needed to execute basic academic legal research in preparation for writing up a research report in your fourth year of study. During your fourth year, you will be required to submit an LLB research report as part of RRLLB81. This module (LME3701) is designed to communicate general aspects of the research process and to demonstrate the planning phase connected to research in the field of law, which links up with the eventual writing up of your research report at the

1 Banakar R & Travers M *Theory and method in socio-legal research* (Oxford Hart Publishing Oxford 2005) xi–xii.

fourth level of study towards the LLB degree. Practically, the modules concerning research at the Unisa College of Law can be demonstrated as follows:



FIGURE 1
Modular sequence of legal research at Unisa College of Law

This module will concentrate on the legal research methodology necessary for drafting a research proposal. You should, however, be aware that there are also other methodologies used to examine socio-legal fields. Socio-legal research cannot be easily defined. Socio-legal studies cover a range of disciplinary contexts in the social sciences and law, and relate the legal to the sociological, political and economic dimensions of human activity. Thus, socio-legal research has as its essence interdisciplinary relationships and different perspectives on legal issues. While you may be required to employ these methods during future research endeavours, our concentration here is on legal research methodology.

From the outset, you should realise that research is an evolutionary process. Whatever the nature of the research, whether basic undergraduate research essays or assignments or postgraduate specialised research, we are all bound by certain basic research rules. Research is evolutionary because it builds from a basic concept and culminates in the production of new knowledge that contributes to both your chosen field of law and the research culture of South Africa.

1.2 PURPOSE AND OUTCOMES

(a) Purpose

The purpose of this module is to provide a professional development curriculum in the sub-field of academic legal research. Specifically, it equips students with the values, knowledge and skills required for applying the legal research skills, methodologies, techniques and technologies that contribute to the design and production of evidence-based research knowledge in a variety of legal professional capacities. It incorporates African epistemology and the indigenisation of research processes and recognises that the Constitution of the Republic of South Africa, 1996, is the basis for all legal action and that the Bill of Rights advocates the principles of Ubuntu, fairness, openness, responsiveness, social responsibility, and the humanisation of law.

LME3701 serves as a foundation for RRLLB81 in the fourth year of the Bachelor of Laws. Students who have been credited with this module (LME3701) will be able to compile, analyse, criticise and evaluate evidence-based knowledge and plan the production of research products such as research reports. In essence, this module develops your understanding of research skills in an applied context with the aim of producing a research proposal based on a research problem identified in Tutorial Letter 101. It is important that you consult Tutorial Letter 101 in order to identify

the legal research problem we want you to address in this module – **see specifically Assignment 02 for the semester in which you are registered**.

(b) Outcomes

The holistic outcomes for LME3701 and their corresponding assessment criteria are as follows:

	Specific outcome	**Assessment criteria**
1	Demonstrate an understanding of the conjectural framework for legal research.	1.1 Current and persistent issues and rules in the application of research precepts in the research process, as they apply to various research activities, are displayed. 1.2 Key terms, concepts, rules, procedures and principles are identified and applied in the relevant subject-specific legal arguments. 1.3 Fundamental knowledge of research skills, techniques, methods and technologies, as they apply in a variety of legal contexts, are displayed in formative and summative assessment.
2	Demonstrate an advanced and clear understanding of the notions and guidelines necessary to undertake legal research.	2.1 The scope, functioning and governing principles of legal research design, method and citation are incorporated into the cognitive framework for understanding the law as a set of related systems. 2.2 Fundamental knowledge of the core aspects of legal research design and methodology is used to substantiate evidence-based knowledge claims using conventional citation methods in practical scenarios.
3	Cultivate formatively sufficient knowledge, skills, values, attitudes and competencies in order to analyse and critically evaluate legal material (the Constitution, legislation, case law and academic opinion) and demonstrate an understanding of legal research in real-life situations.	3.1 Command of both the theoretical principles and practical consequences of specific aspects of the research process is displayed in formative and summative assessments. 3.2 Research conventions and mechanisms used to create a research product, such as a research proposal or other research product, are applied.

4	Demonstrate an understanding of the implementation and application of just, constitutional and lawful legal research in practice and theory.	4.1 Complex, concrete legal problems and issues relating to the application of research skills and techniques are identified in real or simulated scenarios using theory-driven arguments. 4.2 Substantiated arguments, opinions and solutions are presented, based on research. 4.3 The relevance and applicability of various legal sources and authorities in respect of identified problems are analysed and critically evaluated. 4.4 Different points of view are objectively discussed and evaluated.
5	Apply the principles of ethical legal research in practical situations and solve multidimensional legal problems using the conventions of legal research.	5.1 Responsible advice on an appropriate course of action is given in respect of identified issues in law as part of a research-based scenario. 5.2 Relevant sources and authorities are found to solve unfamiliar concrete and abstract legal problems. 5.3 The knowledge and skills students have acquired in other areas of the law, such as constitutional law, are integrated in discussing, analysing, applying and solving legal problems using a research-based approach.

The main constraint when compiling this module was the fact that it is required to fit into the confines of a single LLB module of 12 credits (or 120 notional hours). Thus, this module was compiled with the objective of enabling students to acquire a basic understanding of the research process in law. Since the module covers a number of aspects, we have selected only general principles governing legal research. We have, consequently, excluded many provisions governing specific research situations in order not to overwhelm you with detail. Further, many of these specific provisions are amended quite often, with the result that the relevant hard-won knowledge is subject to rapid obsolescence. By contrast, the general principles of academic legal research are fairly durable. Therefore, the time spent in mastering them should prove to be a good investment. Legal researchers with a sound knowledge of the basic principles invariably find it much easier to locate and master the specific situations as required in applied contexts.

1.3 HOW TO USE THIS GUIDE

(a) Prescribed material

This study guide constitutes the only prescribed source for the module. We refer hereafter to this document as the study guide. While we may refer you to additional resources, which you will source independently or obtain on the relevant links on myUnisa, the detail in this study guide is intended to guide you through the module content and ultimately achieve the above-stated learning outcomes.

In essence, the study guide forms the core source of this module, and the examination (by way of a portfolio) is based on the knowledge contained in it. It is important that you take note of our instructions with regard to formative and summative assessment in Tutorial Letter 101. Also ensure that you consult Tutorial Letter 101 with regard to the assessment mechanisms and the scope of assessment used in this module.

(b) Structure of study guide

The study guide comprises four sections: A, B, C and D.

- **Section A** consists of a survey of general themes in legal research and refers to the theoretical framework for academic legal research.
- **Section B** consists of twelve learning units dedicated to specific aspects to be considered when completing a research proposal (which represents the written planning for your eventual writing up of a research report in RRLLB81). Each learning unit provides the fundamental outcomes of that particular learning unit and gives practical guidelines on the content discussed in it.
- **Section C** discusses the requisite referencing method employed in the School of Law.
- **Section D** contains details of other essential documentation referred to throughout this guide.

The study guide will be supplemented on occasion by information included in tutorial letters and on myUnisa.

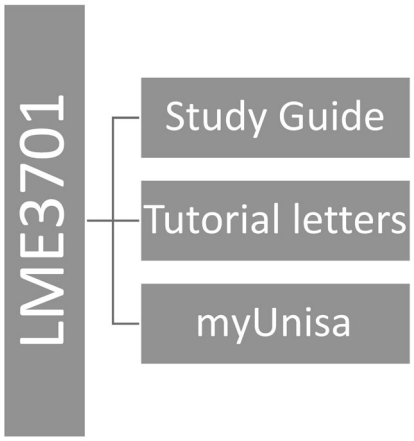


FIGURE 2
The study resources required for this module

In summary, the study guide, supplementary tutorial letters and resources on myUnisa form the body of your study material.

(c) Structure of the learning units

Every learning unit in section B contains a number of learning outcomes which indicate the fundamental competencies (basic competencies) you are required to demonstrate on completion of the learning unit.

(d) Use of gender

We use the masculine personal pronoun throughout this study guide for no other reason than ease of reading. In addition, it is much easier to write "He is guilty" than "He/she is guilty".

(e) Hints for studying this module

Experience has taught us that there are aids that make understanding this module a little easier. We discuss these below. However, if you find that different study methods suit you better, we encourage you to continue using them.

Firstly, there are a number of books on research methodology, most of which focus on particular disciplines (e.g. social research, legal research, communications research, and others). There is, however, no single source that covers research in all its related aspects. Each source addresses a range of methods, with some focusing on a particular discipline. The Unisa library has numerous general books on research and research methodology and you may wish to consult some of these if there are particular aspects of this module that you find challenging.

To be successful in your studies, you must use the study guide as a starting point to guide you through your learning. However, you are also reminded to consult further tutorial letters that may be available to you for this module and to use the knowledge they contain.

You must actively seek to understand the theoretical knowledge which is embedded in specific contexts that relate to the academic legal research process. As mentioned previously, you are required to read extensively to gain the necessary knowledge, develop skills, inculcate attitudes and demonstrate competencies related to legal research.

Studying is an active process. Practically, this means that you are required to read to comprehend and write to summarise. You are required to create a framework comprising the four cornerstones of success (see figure 3 below) that is ultimately coherent, logical and understandable.

Figure 3 summarises the four pillars of successful study. You should make full use of the 120 notional hours it will take to work actively through the module.

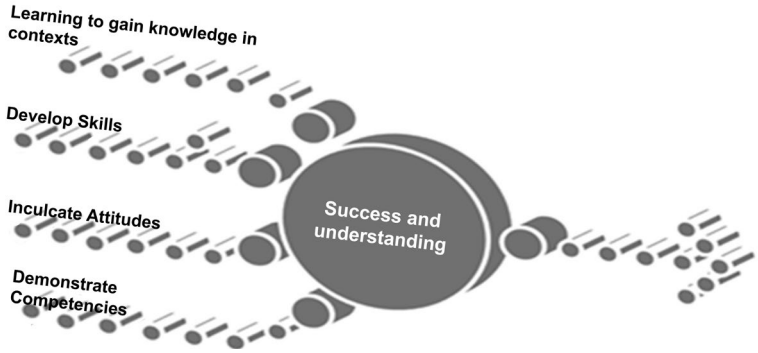


FIGURE 3
The four cornerstones of successful studying

Secondly, set yourself deadlines and stick to them. Your assessment plan and activities appear in Tutorial Letter 101. Allow yourself sufficient time to engage actively with the learning material and to prepare properly for assignments and the examination in the module. This includes making sure that we receive your assessment pieces before the due date. Many a student has tried to submit an assignment via myUnisa only to find that the platform has closed as the due date has passed – remember that time management is part of your training as a jurist.

Thirdly, if you are currently involved in a profession in which legal research is required, take note of the application of what you are learning in the real-life context. On the other hand, if you – like the majority of our students – are not involved in a career that brings you into contact with legal research, try to supplement your knowledge by reading real-life legal research products such as journal articles. A rule that seems abstract and illogical on paper is usually best demonstrated in practice.

Fourthly, **stick to the source material we prescribe**. Many students collect additional sources and material from the start of the semester and convince themselves that such "data collection" means that they engage with the module content. This is not the case, however. Rather spend your time on **the prescribed material.** Your primary objective at this stage is to acquire a fundamental understanding of academic legal research.

Our **fifth** tip is to endeavour to study actively. What we mean by this is to make diagrams and flow charts to enhance your understanding of certain principles and procedures. Form an overall impression of a particular learning unit before you dissect the minutiae of the matter. At the end of this module, the primary outcome is for you to form a holistic picture of the academic legal research process. This task requires you to engage actively with the study material and make effective use of your time.

On the topic of assessment (assignments and examinations), take careful note of the following advice:

- Please keep in mind that language is the primary tool of legal commerce. We do not consciously deduct marks for language, spelling errors or grammatical mistakes, but you will obviously want to make a favourable impression on your examiner in a module dedicated to research writing. A legal expert should be a lifelong student of language. Words are important, so if your language skills are inadequate, you must concentrate on improving them. We understand that for many of you, English is not your first language, and we do consider this when we set formative and summative assessment tasks. We do not expect you to become language experts – all we ask is that you use language clearly and directly. This point also applies to first-language speakers who respond to assignment and examination questions as if they were writing a thesis – remember brief and concise is better than extended and unintelligible. Language also relates to the manner in which you interpret a question. Read the wording of the question carefully before you begin drafting an answer.

SECTION A

LEGAL RESEARCH: GENERAL THEMES

Section A of the study guide contains a general discussion of legal research and is intended to provide you with a general overview of themes which you will apply practically in section B. The learning outcomes for this module are dependent on the implementation of practical skill and thus the learning outcomes are indicated in section B of the study guide. We wish to point out that selected content in this study guide relies on the work of various authors cited in the footnotes. It further relies on the work of various academics at the College of Law at Unisa. In this regard, we specifically acknowledge **Prof I Kroeze, Prof OS Sibanda, Prof A Smith, Prof F Abioye, Mrs S Smith, Prof M Schoeman and Prof MG Karels.** We further acknowledge other Unisa colleagues who may have contributed to these writings but who have inadvertently not been cited as such. We do not cite Unisa College of Law staff specifically in footnotes but rather acknowledge their contributions here.

LEARNING OUTCOMES

Once you have studied section A, you should be able to solve problems related to a practical set of facts on any of the following matters or to discuss any of the following concepts:

- identify the nature, scope and content of legal research
- explain the concept of research from a practical perspective
- explain the importance of research
- identify and apply different types of knowledge
- identify the defining characteristics of evidence-based knowledge
- identify the major research designs and methods used in legal research and enumerate their practical implications
- clarify terminology that is typical of research proposals in law and identify its generic meanings

1.1 INTRODUCTION TO LEGAL RESEARCH

The saying "knowledge is power"[2] is one you will have heard frequently in your life. Have you ever stopped to consider the meaning of the word "knowledge"? Knowledge, in the context of research, is not simply an accumulated mass of facts and figures but should rather be thought of as a database which you can access to solve problems in everyday life.

In the case of legal practitioners and academic writers, their knowledge database is frequently full of legal knowledge that is used, for example, to solve a legal problem for a client or present an opinion on a specific legal matter.[3] The wealth of knowledge is established during undergraduate study when lecturers lead you in

2 "Knowledge is power" is generally thought to derive from the Latin expression *"ipsa scientia potestas est"* which appears in Sir Francis Bacon's *Meditationes Sacrae* (1597). In its modern form, the expression has been used in various writings and its exact origin cannot be confirmed.

3 *Learning guide Rhodes University* (Rhodes University 2014) 6.

building a knowledge base in various areas/fields of law. You may, for example, have the foundational knowledge of the law of evidence or labour law within your legal database and are thus equipped to use that existing knowledge to answer questions and appear in court on behalf of a client.

But knowledge is not static. It changes and develops into new knowledge. The question is then where does new knowledge come from?

In the case of law, there are various answers. One that comes to mind immediately is judicial interpretation through case law. The courts analyse and develop the law as it stands in order to produce new theories or doctrines applicable to legal problems. The courts also use precedents which are cases decided in the past. Another source of knowledge generation is legislation. Legislative drafters use new legislation to fill gaps in the law or to create new law for specific purposes relevant to society. A third avenue for the creation of new knowledge is academic research.

As a law student, you have already received the basic principles of law in various subject fields and perhaps have used research skills in research assignments during your previous years of study. These form the basic tools that will enable you to enter the workforce. However, this is not the end of your legal training and you will require advanced research skills to contribute to the creation of new knowledge in order to, for example, assist clients, research legal problems or interpret and develop law from the bench. Further, some of you may wish to pursue postgraduate degrees and perhaps enter academia, which is where academic legal research becomes particularly relevant.

Research is a lifelong learning process that will enable you to evaluate existing knowledge, criticise knowledge, expand knowledge, and eventually contribute to the development of knowledge. The ability to create and, in some cases, manipulate knowledge makes you a valuable asset to employers because it demonstrates higher-level thinking and ingenuity. The purpose of guiding you through the research process is to equip you with the skills and aptitudes necessary for creating knowledge independently. In this process, you will learn that there are different forms of knowledge, and that not all of them will assist you in completing research. Among the types of knowledge are for example:[4]

i. *Itemised knowledge*. This is the kind of knowledge often called general knowledge. It is factual. For example, is the death penalty a form of sentencing in South Africa? The answer is obviously no. This form of knowledge is useful but does not tell you much more than there is no death penalty in South Africa. Of course, if you were asked to research the historical significance of the death penalty in South African criminal procedure, the fact that it is now not used is relevant and can be linked to a variety of other facts to demonstrate your point, but it is still factual or explicit knowledge. The itemised knowledge claim would then require research in order to be extended to become evidence-based knowledge.
ii. *Opinion-based knowledge*. This is a kind of knowledge based on the thoughts and interpretations of people. For example, if we took a survey and asked "should the death penalty be allowed in South Africa?" we would receive a variety of responses from people based on their personal experiences and thought processes. This does not, however, constitute knowledge, merely opinion. Often if opinion is questioned, it does not have any basis other than subjective thoughts and emotions. It is, in other words, not evidence-based

4 *Learning guide Rhodes University* 9 discusses these concepts in greater detail.

knowledge. Note, however, that this type of knowledge can contribute to statistical research where a researcher tries, for example, to establish what percentage of a particular population does or does not sanction the death penalty as a form of sentencing.

iii. *Evidence-based knowledge*. This is what we try to teach you to produce through the research process. Evidence-based knowledge stands the test of cross-examination and counter argument and is supported by authority.[5] The facts you learnt during your studies thus far are the tools which will allow you to produce this type of knowledge. Legal research allows you to expand/analyse and criticise knowledge and then to suggest new interpretations or applications of legal knowledge. Evidence-based knowledge requires you to substantiate everything you claim to be true or correct; thus an academic statement without authority (evidence) is of no consequence. Evidence-based knowledge has certain defining characteristics:

- *Evidence-based knowledge is aimed at filling a gap in existing knowledge*. It is not knowledge for the sake of it but rather knowledge that aims at curing a defect or developing an existing knowledge schema or suggesting a new form of knowledge or procedure.
- *It takes its lead from existing knowledge in the field*. Existing knowledge usually consists of theories or principles that are used to solve particular problems. This is the basic knowledge of a particular legal field. If your research interest is, for example, plea bargaining in the criminal process, you would not be able to produce new knowledge if you did not know the content of the specific legal instrument (section 105A of the Criminal Procedure Act 51 of 1977), which would form the basis of your research interest at the very least. Existing knowledge includes the work of authors who argue for or against specific points or areas of law. Court judgments also form part of the existing knowledge base for legal research.
- *Evidence-based knowledge is incremental*. It builds on existing theories and knowledge. The existing theories and knowledge are analysed and/or criticised by role players through research. If you do not know who the main theorists and role-players are within your field of research, you lack the basic literature for building knowledge in that field. Thus, it is important that a theoretical framework forms part of your research. Think of existing literature as a debate in which all those interested in a specific field of research have a conversation on a particular point of law.[6] They do not always agree with one another and may use various tactics to convince each other of a particular point. These arguments occur among all knowledge generators – from the most inexperienced researcher up to subject specialists and senior legal practitioners. During this process, knowledge-generators both engage with existing knowledge and build theories for new knowledge. These people build legal literature for the production of new knowledge. All knowledge-generators – from the inexperienced to the most senior – have a contribution to make. The only requirement attached to adding knowledge is that the analysis, criticism or interrogation is attached to a knowledge claim substantiated by reference to authority (in other words, it demonstrates evidence supporting its point).
- *Knowledge claims are central to evidence-based knowledge*. A knowledge claim is a statement about a certain topic or aspect of law that is substantiated by

5 *Learning guide Rhodes University* 9.

6 *Learning guide Rhodes University* 13 discusses these concepts in greater detail.

reference to authority. The knowledge claim is thus evidence based. A central knowledge claim is usually comprised of a series of smaller knowledge claims that holistically build an argument on an aspect of law. Evidence in the legal field usually takes the form of existing, proven, reliable knowledge and hence our advice not to simply accept a source without examining it for authenticity and reliability. You will not always agree with the evidence that already exists. However, as you develop into a sophisticated researcher, you will challenge existing evidence by making evidence-based knowledge claims of your own. Your knowledge claims are then deposited into the knowledge database for others to use as evidence and to concur with or dispute using their own evidence-based knowledge claims or theories.

– *Evidence-based knowledge* and the process of analysis, criticism, debate and so forth is how new knowledge is generated in specific legal fields.

LME3701 is designed to introduce you to various concepts originating from the field of legal research. These themes are discussed in general in the remainder of section A of this guide and thereafter selected aspects are practically applied in section B where we discuss the requirements of a research proposal at the Unisa College of Law.

Our point of departure is defining the nature, scope and content of legal research.

1.2 CLASSIFYING LEGAL RESEARCH

1.2.1 Defining legal research

Legal research is the process of finding an answer to a legal question. Sometimes, legal research can help to determine whether a legal issue is a "case of first impression" that is unregulated or lacks legal precedent. Virtually every lawsuit, appeal, criminal case and legal process in general requires a degree of legal research. Legal research can also be driven by policy considerations when, for example, law reform commissions investigate particular social aspects of daily interaction which require legal regulation. From your perspective, legal research forms that part of your undergraduate studies where you are no longer confined to textbooks but are rather asked to identify, analyse, critique and report on a certain aspect of the law as a tool for social interaction and the regulation of human conduct. Legal research is conducted for a variety of reasons but, in essence, the purpose behind legal research is to identify the sources of law applicable to understanding a legal problem and then to find solutions to the identified problem. Thus, the first step in legal research is the identification of a problem or gap in existing knowledge (more on this step can be found in section B of this study guide).

In the context of this module, Tutorial Letter 101 sets out a legal problem that we wish you to investigate using legal research methods. Thus, the gap or problem has already been clarified for you. This approach was adopted to ensure uniformity of assessment in this module. In a real-life research situation, you would identify the knowledge gap through your reading of the law or perhaps through your daily interactions with the law in a practical context.

In order to conduct legal research one must have legal information; therefore legal research is based on legal information. As you know from your early undergraduate

studies (specifically in IRM1501), legal information (or sources of law) can be either primary or secondary legal information:

(1) Primary sources are binding law codified in legislation, common law, regulations and case law. This is sometimes referred to as black-letter law or doctrinal law.
(2) Secondary sources comprise information that is not legally binding but rather explains or critiques primary sources and legal theory. Secondary sources include the writings of academics and other contributors. They are not binding but can be used as persuasive authority to support a binding evidence-based knowledge claim.

Legal researchers (much like legal representatives in all their forms) are problem-solvers. They solve problems based on the sources discussed above. Problem-solving is, however, underwritten by legal research – in other words, a legal problem cannot be solved without conducting research, whether elementary or sophisticated. During your studies, you have been required to master a large body of legal rules, many of which you will not remember or which will have become outdated by the time you graduate. What you will remember and retain, however, are the principles that underlie the operation of the law. These include knowledge of the sources of law and the relationship between these sources; the way in which the system of precedent works; the principles of statutory interpretation; the relationship between various organs of state; the various influences on judicial decision-making; and so forth. These will remain long after knowledge of specific legal rules has faded. These foundational concepts form the basic skills for conducting legal research. You may find, for example, that you are not immediately able to answer a question related to whether section 304 of the Criminal Procedure Act 51 of 1977 applies to child offenders. However, your basic comprehension of the way the law works and how its sources are categorised will enable you to find the source that will provide the answer to the question and how the question relates to higher legal concepts.

When it comes to legal research, there is no difference between what a practising attorney or advocate does and what a law professor or legal advisor does. Although the form in which their research is eventually presented may differ, the basics remain the same. Whether you are answering an assignment question on a legal problem, advising clients, drafting a legal opinion or completing a research paper, the process and approach will be the same. You should therefore apply the same basic techniques in all your legal research.

In essence then, legal research can be defined as the methodology and approaches used by legal representatives and other legal knowledge generators to solve complex legal problems within a changing and evolving social and legislative setting.

The purpose of research is to answer questions, test theories, and establish facts through enquiry and investigation.[7] In its simplest form, research "refers to a search for knowledge".[8] It is the scientific and systematic search for information on a specific topic through a form of scientific investigation. In other words, research is the primary vehicle through which we build evidence-based knowledge.

7 Venter F *Regsnavorsing: metode en publikasie* (Juta Cape Town 1990) 130.

8 Kothari CR *Research methods* (New Age International Publishers New Delhi 2004) 2.

Legal research problems cannot be solved unless they are cogently framed. Research starts with the framing of a legal question, problem or statement. This informs the reader of the gap you aim to fill with new evidence-based knowledge (this aspect is discussed practically in section B of this guide).

Remember, not all legal research is necessarily good legal research. Ask any law professor who has submitted a research article for publication to a journal and they will tell you that the process of peer review is critical and forces one to reflect on one's theories and interpretations. We mention this because undergraduate research is subject to the same critique – your work is guided by a supervisor with considerable experience who will ensure that your research product is sufficiently evidenced to contribute properly to the field of legal knowledge. Legal research is not knowledge for the sake of it and must make a contribution to the existing field of knowledge (or perhaps open a new field of knowledge). In order to do so, it should have certain defining characteristics. The United States National Research Council (quoted below from Briggs, Coleman and Morrison)[9] states that adroit research:

(1) poses important questions that are possible to answer
(2) relates research to available theory and seeks to test the theory
(3) uses methods allowing direct investigation of the questions
(4) creates a coherent, explicit chain of reasoning leading from the findings to the conclusion
(5) can be exposed to critique, rather than playing to a gallery of existing converts

1.2.2 Elements of legal research

Traditionally, legal research has taken two very basic forms:

The first is research based on black-letter law (also called doctrinal law) wherein the researcher concentrates on interpreting the law as a set of self-sustaining internal principles. This approach starts with the law itself and involves reading the sources of law and framing them into a cogent set of principles or guidelines in order to bring rationality and fresh perspectives to the law in isolation. Thus, this approach has little reference to the outside world or how the law practically affects human interaction.

The second form of legal research can be summarised as *law in context*. Its starting point is not the law but rather challenges experienced in society. This approach asks how the problem can be solved and not what the law dictates. In some instances, it frames the societal problem caused by the law – in other words, it asks whether existing law is *good* law or contributes to societal problems. These two approaches are not the only approaches to legal research and many other methods of legal research are used in the legal context. For your purposes, we will concentrate in the remainder of this guide on those methods which are pertinent to undergraduate studies and which will provide the basic skills necessary to eventually reflect on and adapt methodologically when you pursue legal research in your later careers. Regardless of the form of legal research, the elements remain the same:

(1) Research is a human activity. It is something that we as humans with all our faults, preconceptions and influences undertake. It is never value-neutral, but is nevertheless part of what makes us who we are. Therefore, legal research

9 Briggs B, Coleman M and Morrison M *Research methods in educational leadership and management* 3rd edition (SAGE Los Angeles 2012) 8.

in particular is, to a certain degree, subjective because it relies on humans to interpret existing theory. This is different from research, which uses scientific methods such as statistical analysis to validate theories.

(2) Research is a communal activity. In order to complete a research paper successfully, you are required to interact with your supervisor, with other scholars through their work, with what has been written and decided in the past, and so forth. You become part of a conversation between the past, the present and the future.

(3) What is regarded as acceptable research in law is very different from acceptable research in, for example, physics or psychology. As you work through your research, you will learn what is acceptable and what is not. A good indication can be found in articles written by law professors or other subject specialists. You will further find that the research methods used in law are often criticised as being unscientific and open to subjective interpretation – a point that many legal scholars continue to argue is untrue.

(4) The purpose of legal research is the study of legal problems and issues in order to increase our understanding of how the law functions, what contribution it makes to human interaction and how it can be improved in its function and effect.

(5) Legal research involves creative, systematic and original work that explains how the law functions. In addition, it embraces the critical evaluation of this functioning.

(6) At the most basic level, legal research involves critical engagement with an intellectual tradition.

From what you have read in this study guide thus far, it is clear that there are different types of research in general and different types of legal research in particular. Below we survey different types of research in general and thereafter discuss three specific types of legal research. We nevertheless reiterate that it is possible to use most of the types of general research methods in law and law is not bound to only the types of research we discuss below.

1.2.3 Types of research

There are many types of research, which can be classified in different ways depending on the methodology of the research, the knowledge it produces, its target audience and the research problem it seeks to investigate. The following are examples of selected basic types of research or research approaches adopted mainly from Kothari[10] and

10 Kothari *Research methods* 5.

Mouton.[11] The list below is not exhaustive and other types of research can be added to it depending on the particular field in which the research is being conducted.

TABLE 1
Types of research

Descriptive research	*Descriptive research* includes surveys and fact-finding enquiries of different kinds. The major purpose of descriptive research is a description of the state of affairs at present. Descriptive research aims at clarifying *what is.* It can use either qualitative or quantitative research methodologies but does not strictly fit into either. An example of a descriptive research project may be, for example, "*How many students use the myUnisa system and what do they use it for?*" You can see from this basic research question that both qualitative and quantitative data will be necessary to come to a valid conclusion.
Analytical research	In *analytical research,* as opposed to descriptive research, the researcher is required to use facts or information already available, and analyse these to make a critical evaluation of the material. Using the example provided above, let us assume that there is already a study available on how many students use myUnisa and what they use it for. From an analytical perspective, another researcher may postulate that myUnisa use is low because the interface is not user friendly and may then use existing data to extend the research and ask further questions based on it.
Applied research	*Applied research* or "action research", as it is sometimes called, aims at finding a solution to an immediate problem facing a society or an industrial/business organisation. It is not knowledge for the sake of it – it seeks to ultimately improve a situation in practical terms. This research approach helps practitioners to investigate an aspect of their practice in order to solve the problem at hand and offer ways to improve the environment within which the problem is located. Using the same problem posed above, an applied researcher may, for example, conduct applied research on which strategies are best suited to encouraging students to use myUnisa.
Quantitative research	*Quantitative research* is based on the measurement of quantity or amount. It is based on numeric figures or numbers and is applicable to phenomena that can be expressed in terms of quantity. Quantitative research has as its objective the development and deployment of mathematical models, theories or hypotheses pertaining to phenomena. Using the same example provided above, a comparative quantitative researcher may research, for example, "*What percentage of men and women use myUnisa on a daily basis?*" or using a descriptive quantitative method the same researcher may ask "*What are the most important factors influencing the use of myUnisa by female students?*"

11 Mouton J *How to succeed in your master's and doctoral studies: a South African guide and resource book* (Van Schaik Pretoria 2001) 175–180.

Qualitative research	*Qualitative research,* as opposed to quantitative research, is concerned with qualitative phenomena, for example, phenomena relating to or involving quality or kind. It makes use of various methods such as observation and case studies. Using the same example provided above, a researcher may ask, for example, "*What specific challenges do students born before 1980 experience when using myUnisa?*" In order to answer this question a researcher may rely on, for example, case studies or observational research.
Conceptual research	*Conceptual research* is research related to some abstract idea(s) or theory. Philosophers and thinkers generally use it to develop new concepts or to reinterpret existing ones. Traditionally, this type of research involves thinking about a problem. For example, "*What causes students to commit plagiarism in exams?"*
Empirical research	*Empirical research* relies on experience or observation alone, often without due regard for system and theory. It is data-based research, coming up with conclusions that are capable of being verified by observation or experiment. Empirical research can be either qualitative or quantitative. An **empirical study** uses primary data (surveys, experiments, case studies, etc) or analyses existing information (criticism of texts, content, historical studies). **Empirical studies**[12] **generally rely on** comparative methodology, evaluation research, historical studies or textual analysis. **Non-empirical studies**[13] **generally rely on** philosophical analysis or literature reviews.
Experimental research	*Experimental research* requires the researcher to intervene in the problem in its natural setting and to be able to control a number of variables to determine a causal relationship between two or more properties of an individual or unit. Experimental research in the field of law is rare.

As mentioned earlier, legal research in particular has generally relied on a black-letter law approach or an approach which perceives law in context. These can be loosely referred to as doctrinal research (or descriptive research) and empirical research.

1.2.3.1 Doctrinal legal research

Doctrinal legal research is likely the type of legal research you are most familiar with at this point of your legal studies. According to McConville and Chui[14] it "aims to systematise, rectify, and clarify the law on any particular topic by a distinctive mode of analysis to authoritative texts that consist of primary and secondary sources". It relies on the assumption that the character of legal scholarship is derived from the law itself. This type of legal research may be more familiar to you if you consider it to be the basis of the now famous FIRAC method. FIRAC requires a law student to identify the facts (F) of a particular legal problem; determine the issue (I) arising

12 Mouton *How to succeed* 154–174.

13 Mouton *How to succeed* 175–180.

14 McConville M & Chui WH "Introduction and overview" in McConville M & Chui WH (eds) *Research methods for law* (Edinburgh University Press 2014) 4.

from the facts; identify the rule(s) of law (R) of law governing the particular issue identified; apply (A) the rule of law as identified to the issue; and eventually come to a conclusion (C). This approach presupposes a specific set of skills such as the ability to find the law, use the law, relate the law and present the law in a clear and cogent format. It is founded on the assumption that the ability to reason and rationalise the law as it stands will allow the researcher to reach conclusions and perhaps make recommendations as to future legal reform. We have presented this method here in a very basic format from the perspective of an undergraduate student, but the reality is that this method can be found in the majority of postgraduate and academic research albeit in a more sophisticated format. There is nothing particularly wrong with this method of research but it must be seen for what it is – namely, an internally reflective system of legal analysis. The difficulty with this type of research is that it is not interdisciplinary and does not make use of qualitative and quantitative legal research tools which give a broader perspective to a dimension of law while linking it to the society which, after all, the law regulates. Many law faculties have moved away from pure doctrinal research towards teaching other legal research methods.

1.2.3.2 Empirical legal research/socio-legal studies

The doctrinal method of legal research can be criticised for its rigidity and the fact that it is an inward-looking system of legal analysis. Different schools of thought will interpret this statement differently and have differing opinions on its validity. Law is and remains a social phenomenon.

> As the Latin maxim runs: *ubi societas, ibi jus*. Where there is society, there is law. The socio-legal research method simply does this: it contextualises the teaching of law to the society which it regulates. The relevance of using other disciplines such as psychology, political science, international relations, sociology, anthropology, criminology, history, etc contributes to broadening legal discourse. After all, as the adage goes, the law regulates the human being from the cradle to the grave. It intertwines with several other areas of human knowledge and essentially regulates them in all their manifold existences. It is so all-encompassing that it is not possible to conceive of any of the other academic subjects where the law does not have a say.[15]

In response to this, in recent literature there is strong evidence for the growth of interdisciplinary methods of legal research (such as socio-legal studies and feminist legal studies). The use of empirical research in law moves away from strict doctrinal analysis of primary sources and asks the researcher to consider the law as a social phenomenon. It thus borrows from or embeds research methods from other fields such as the humanities or social sciences in its approach to legal research. The idea of this type of research is to move away from seeing law as a self-standing set of guidelines and principles and rather move towards the study of law within a broader social or political context. Using these methods, the researcher is able to gather empirical evidence to answer a research question. This method forms the bridge between law in textbooks and law in action and is concerned with how the law affects society. In some cases, it is used to suggest that the law itself may be the cause of a problem in society as opposed to being the solution to a problem. This approach to legal research is distinct from the pure method (i.e. doctrinal legal research) and employs a wide range of both qualitative and quantitative methods. It must be understood

15 https://www.timesofmalta.com/articles/view/20170313/opinion/Legal-research-methods.642262 (date of use: 16 July 2017).

that recent trends indicate that pure legal research and interdisciplinary research can be used simultaneously to enrich research findings.

1.2.3.3 International and comparative legal research

We live in a world of global interdependence and this fact is not lost in the legal field of research. Most legal research, whether it takes a doctrinal or empirical form, relies on reference to a variety of international instruments, foreign domestic law and the interface between private and public international law. This type or form of legal research is widely acknowledged as facilitating understanding of the operation of internal legal systems on the formulation of public policy and assists a legal researcher to develop the skill of critical thinking through engagement with comparative schools of thought.

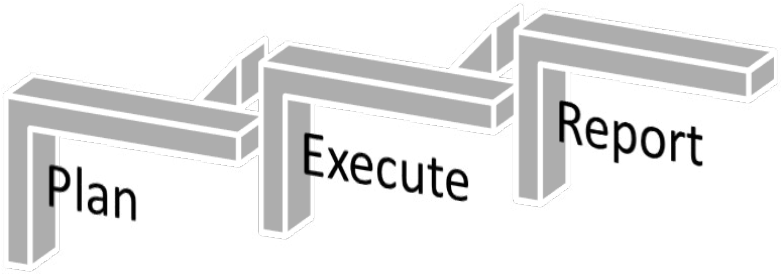
The above types of legal research are by no means exhaustive, as is evident in the variety of methods that have developed (e.g. feminist legal studies and critical legal studies). However, no one course in legal research can cover all the types of legal research and, thus, in this module we limit ourselves to basic legal research skills often found in the doctrinal or black-letter law method. In your postgraduate studies, you may find that you will rely on other methods of research in order to prove your point.

1.3 CONDUCTING RESEARCH IN LAW

From our brief introduction above, you will have noted that legal research is not a simple matter. It does not correlate with simply writing an essay but rather is dependent on planning and effective execution. In order to make these nebulous concepts more practical the research process in its fundamental aspects consists of

(1) planning of research
(2) executing the research
(3) reporting on your research findings

In other words, the research process can be represented simply as:



1.4 RESEARCH DESIGN (PLANNING) AND METHODOLOGY

This part of section A concentrates on research design and methodology. You may ask yourself how important this aspect is to overall research. The answer is simple: it is imperative to any research project that you undertake. We liken design and methodology to an architectural design for a house, or to drawing plans for some kind of construction. Its purpose is to ensure that the eventual structure is architecturally sound – this, metaphorically, is the purpose and importance of clear research design and methodology.

1.4.1 Research design (planning)

There are different types of design serving the same purpose, which is planning the work to be accomplished and enabling a visualisation of the product (in a smaller, more condensed form, even before construction begins). Thus, design tells a story and gives us a foretaste of what is to come. The same goes for a research design or proposal, which is aimed at giving an impression of what the research is going to be about and what the final product will be.

Every kind of research requires a good design or plan to ensure that the research is carried out properly with as few difficulties as possible. With a good plan the researcher is able to anticipate the different areas of difficulty in the research process and plan ways to mitigate such difficulties. Thus, a research design serves as a guide and helps you as the researcher to reach your goal safely, effectively and efficiently. Young [16] views a research design as "a plan of action, a plan for collecting and analysing the data in an economic, efficient and relevant manner". She goes on to assert that a research design helps the researcher to save time, energy and money, and thus make the research study fruitful and effective.

In order to plan your research, you first need to know what you want to do. What are the questions to be answered and have they been formulated properly? After formulating the questions, you then need to plan, plan, and plan some more!

- Firstly, it is advisable that you write out a plan of action to follow.[17] What sources do you require and in what order are they applicable? How do you find the following sources applicable to your research problem?

  – primary controlling authorities
  – primary persuasive authorities
  – secondary authorities
  – sources for checking and validating authorities[18]

- Secondly, you need to keep a good record of every item that you find, including what it says and the citation of the authority and page number where the material is found. This is the part of keeping track in research. Keeping a record of every item will avoid frustration because one cannot find the book, article or source.

A well-prepared record of the findings can be used as a skeleton or outline for the written work and can pass as a first draft research proposal in our context. As you do research, you will probably discover that there are a number of elements required for the rule on the legal issue with its own exceptions or defences to the rule. Alternatively, you may find authorities that provide for the law, case law, limiting factors, policies and the like. Capturing all of these in your plan helps in developing a skeletal structure for your research and makes it easier for you to fill it in and populate it as you go along.[19]

As indicated above, for our purposes in an academic legal research context, a research plan can also serve as a draft research proposal. It is a proposal that is presented to

16 Young PV *Scientific surveys and research; and introduction to the background, content, methods, principles and analysis of social studies* (Prentice Hall New York 1960) 88.

17 Murray MD & DeSanctis CH *Legal research, writing and analysis* (Foundation Press New York 2015) 11.

18 Murray & DeSanctis *Legal research, writing and analysis* 11.

19 Murray & DeSanctis *Legal research, writing and analysis* 12.

your supervisor that sketches out your planned research and the way you envisage concluding it. This is the aim and purpose of this module; namely, that you will know how to draw up a good research design (proposal) based on the research problems provided to you in Tutorial Letter 101.

There are some key characteristics of a good research design. Das[20] summarises these as follows:

- It must have *specific* and *clear* objectives. It must not be vague or misleading. It must be precise and specifically express its objectives, in other words, what the research sets out to do.
- It must maintain *consistency*. It must not be based on emotional or biased feelings, but rather on a sequence of thought and analysis.
- It must contain a *hypothesis* and a good one at that. A good hypothesis stems from an imaginative idea which draws logical consequences from either empirical or non-empirical testing.
- It must provide for the *techniques* for data collection.
- It must *interpret data scientifically*, in other words, in a systematic, logical and scientific (with proof) manner.
- It must provide an *operational framework* both in terms of the time and reach (geographical, societal etc).

Note that while a research design will have its minimum qualification requirements, it is not cast in stone and you, as the researcher, may add other areas that you deem necessary to the proposal and your particular research problem.

We now turn to the "how to" part of doing research by examining research methodology.

1.4.2 Research methodology

You are probably wondering what methodology is and how it relates to research. A further question should be whether methodology includes method and vice versa. Incidentally, an important question to be raised here is whether "method" and "methodology" mean the same thing or not. This distinction is very important as the two terms are often confused and, unfortunately, used interchangeably (even by notable authors on the subject).

At first-year level you were introduced to general research methods and here we extend this knowledge.

Research methods are generally concerned with "how to do research" and include the techniques and approaches that the researcher adopts in carrying out the research. *Research methodology*, on the other hand, can be defined as a study of techniques and approaches to determine the reason for particular techniques or approaches.

Many authors have attempted to make this very important distinction. Kroeze, for example, defines *research methods* as the skills and practical ways to go about doing research and presenting the research, whereas *research methodology* is defined as a science studying research methods (and not an exposition of the methods themselves). In

20 Das BK *Legal education and research methodology* (Manglam Publishers and Distributors Delhi 2012) 324–325.

other words, it is a science in itself which examines the different features and issues that underlie research methods.

Das has further attempted to distinguish these terms, stating that "research methodology [is] the techniques involved in the pursuit of pursuing research. Methodology is important and vital in the process of carrying out research or to gain new knowledge. It provides standard guidelines to the researcher, includes the entire process to gain information about the phenomenon of research, and in the wider sense, includes philosophy and procedure of holding research".[21]

Research methodology examines the different techniques, tools and processes used in research. It is through methodology that researchers are able to identify approaches for conducting their research activities.

For ease of understanding, we depict these differences in the table below:

Research method	Research methodology
Techniques, processes and tools for carrying out research	A scientific study of the research methods that have been adopted by the researcher
Focuses on the research process, as well as the instruments and procedures used to conduct the research, in other words, the technical aspects of research	Involves studying the different steps that have been adopted by the researcher to study and address his or her problem, and the logic behind such steps
	A branch of knowledge dealing with general principles or axioms for the generation of new knowledge, referring to the rationale and philosophical assumptions underlying research in the human sciences.

From the above discussion, you can see why the two terms are easily confused. For the purposes of this module, make sure you are able to distinguish between them, and take note of the differences as you embark on your research. Another important issue to discuss in this section is approaches to research. In dealing with this, the thinking must be "how do I do this research and what should my approach be in carrying out this research?"

1.4.3 Approaches to research/types of research

Note that there are different approaches to research. These approaches cut across different fields of research and can be used and adapted to suit different fields. However, some approaches are more suited to particular fields of research than others. Hence, the type of research and the goal of the research being carried out will influence the approach to be adopted. You therefore need to know what approaches are more suited to your field of legal research and what approaches are better suited to other fields.

At 2.3 above, you were given a table showing different research types (methods) and approaches (table 1). These are the more common types of research but the list is by no means exhaustive. Note that these approaches are not used exclusively and there

21 Das *Legal education and research methodology* 220.

are usually overlaps in the research approach adopted at any time. Depending on the research, certain approaches will tend to be more suited than others.

As indicated at 2.3 above, some of the research approaches are particularly important for legal research. Of these some are more common than others, and we will briefly highlight those that will be pertinent to your legal research in one way or another.

1.4.3.1 Qualitative research vs quantitative research

These are commonly known as the basic types of research.

Qualitative research aims to answer the question "why?" It endeavours to *describe and explain* certain phenomena or positions within a wider context. Here, the data collected consist of unstructured information in the form of words, objects and pictures. Statistical analyses are not employed in qualitative studies. For the legal researcher, data collection will include a review of the literature, case law, statutes and other sources of "black-letter law" (usually referred to as *law-in-book*s or doctrinal law). Qualitative research also tends to be more subjective because much of the result depends on the researcher's interpretations of the data (i.e. the primary and secondary sources). Typically, a qualitative research approach relies on a doctrinal or black-letter law methodology.

Quantitative research, on the other hand, focuses on data collection in the form of numbers and statistics. These types of data will be subject to statistical analysis, which allows for results that are more objective. The ultimate aim of quantitative research is to explain certain findings through statistical models. A quantitative approach, according to Kothari,

> … can be further sub-classified into inferential, experimental and simulation approaches to research. The purpose of inferential approach to research is to form a database from which to infer characteristics or relationships of population. This usually means survey research where a sample of population is studied (questioned or observed) to determine its characteristics, and it is then inferred that the population has the same characteristics.

Quantitative research can be applied in various research types but is typically found in action-based or analytical research.

NOTE: In law, we generally rely on qualitative research rather than quantitative research, although nothing precludes the use of the latter. Keep in mind that if you intend to use a quantitative research design, you will be required to apply for ethical clearance from the College Research Ethics Committee before you can proceed with the research. A mixture of the two methods is also acceptable. This approach is known as mixed-method research. A mixed-method research project collects both qualitative and quantitative data and uses them either concurrently or sequentially in the study.

Within the traditional doctrinal legal research methods, historical or comparative approaches are usually preferred as the tools of research. These approaches are more commonly used due to the nature of legal studies.

1.4.3.2 Legal comparative approach

The *legal comparative* approach entails a study of how your research topic/issue is dealt with by the different legal systems, rules and institutions of the world with the aim of obtaining critical insights. This approach involves a method of study and research aimed at examining and comparing the principles or methods in different systems of law in order to achieve the purpose of the research.

The comparative method goes beyond a mere listing of the legal rules that exist in several jurisdictions – it must have a purpose and an end. In the case of legal research, the purpose must be to compare and discuss the similarities and differences found in these legal systems in order to be able to advocate ways in which your issue could be better dealt with in your jurisdiction.

For the purpose of clarity, take note that the comparative approach is

- NOT a study of a single/solitary foreign system of law, and
- NOT a study with mere incidental references to other legal systems

In adopting a comparative approach, the study must involve an explicit and systematic study of at least two legal systems. Note that for the purposes of postgraduate research, the comparative jurisdictions are usually numerous.

A comparative-method approach can take the form of either a macro-comparison or a micro-comparison. Macro-comparison refers to the study of legal systems or groups of legal systems as a whole, whereas micro-comparison concentrates on the study of particular legal institutions in two or more legal systems (e.g. the system of bail in various legal systems). **Note** that at this level of your LLB studies, your research is geared to a micro-comparison, since you will be involved in research on particular rules and/or institutions within legal systems. In order to achieve this, it is important to have an understanding of the groupings of legal systems. When legal systems share similar characteristics, they can be grouped into units referred to as legal families. Groupings into legal families were traditionally done ethnocentrically along the lines of the Roman-Germanic and Anglo-American legal systems. However, in acknowledging the existence of other cultures and societies, Du Plessis has provided a more contemporary grouping as follows:

(a) Anglo-American systems (e.g. USA, New Zealand, Australia, UK)
(b) Roman-Germanic systems (e.g. European legal systems)
(c) Mixed legal systems (e.g. South Africa, Canada, Zimbabwe, Botswana, Lesotho)
(d) African and other traditional legal systems (e.g. African customary law, customary law of the Maori and the Inuit, native tribes in the USA and Canada)
(e) Religious systems (e.g. Hindu, Jewish and Islamic law)
(f) Eastern European legal systems (e.g. Latvia)
(g) Eastern legal systems (Chinese and Japanese law)
(h) South American legal systems (e.g. Brasilia, Chile etc)[22]

NOTE that these are by no means exhaustive and that these systems could be grouped according to other characteristics. However, this grouping now caters for the phenomenon of legal dualism, legal pluralism and mixed legal systems found in practically all African and Asian countries.

22 Du Plessis W *Research methodology and dissertation writing* (North West University Potchefstroom 2007) 28.

1.4.3.3 Legal historical approach

The historical method of legal research is employed when a problem relating to a legal figure or feature of law has been identified and the origin of that figure or feature is traced or its development over time is investigated. As you are aware, law develops over time and often incorporates the norms of specific periods of history. Law is influenced by a wide range of aspects such as politics and social policy. The historical method therefore aims to analyse these developments in law and perhaps suggest where the contemporary use is based on incorrect assumptions or reforms. According to Du Plessis:[23]

> Legal history is more than the study of the development of material legal norms. It also includes the analysis of these rules in the light of the external legal history (the economic, cultural, political, social, philosophical and religious development). The development provides answers as to why a legal system has certain characteristics. The lawyer should not be taught only to use the legal history to find the sources of the present day law, but he or she must be able to use his or her knowledge to propose alternatives for legal development – he or she must be able to break through the boundaries of the history as is stated by Prof Visser of the University of Cape Town.

When choosing this method, you will generally focus on a single legal system in one jurisdiction over time. When you understand the development of a legal system, it may be possible to suggest future law reform. When using this method, it is important to indicate in the research proposal the exact time frame you will examine. Depending on whether you are investigating a specific rule or legislation, different procedures apply to the way you investigate the historical development in your eventual thesis/ dissertation. Generally, historical research is chronological. It is advisable to discuss the exact procedure to follow with your supervisor, who will be in a position to advise you on the chronology to follow in regard to legal research in specific fields or on specific topics.

1.5 ORGANISING THE RESEARCH AND FORMULATING A WORKING TITLE

Formulating a research topic or working title is a very important step in the research process because it informs your planning and the organisation of your data collection, as well as your research proposal or research format and research writing. The general rule is that the title of your research product should clearly and concisely reflect your research interest. It should be brief, enlightened, honest and realistic. You should not create expectations that you are not going to meet. The title should also be linguistically correct[24] and must comply with the following important requirements:

(a) It must be clear and concise – guard against lengthy explanations of your research theme. Phrases like "with specific reference to" should be avoided. However, do not cast the net too wide with a short title. The reader should still have an idea of the exact focus of your study.
(b) The title must be informative to the reader. Imagine a researcher looking for information in your field of interest. Would your title tell another researcher exactly what your research contains?

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23 Du Plessis *Research methodology and dissertation writing* 31–32.

24 Du Plessis *Research methodology and dissertation writing* 39.

(c) Be honest in formulating a title. The reader should not be misled by the topic into thinking that the research project comprises more than it actually does or that it addresses issues other than those it implies in the title.
(d) Never copy another researcher's title!
(e) Do not begin your title with an article, for example: the, a, an.

Examine your title after writing it down and ask yourself whether it encapsulates your research content and whether there is any ambiguity in the wording. If you are uncertain of your title, we suggest framing it in different ways and then consulting your supervisor on the most appropriate choice.

1.6 RESEARCH QUESTION, PROBLEM OR STATEMENT

The purpose of research is to answer questions, test theories, and establish facts through enquiry and investigation. In other words, research is the primary vehicle for building evidence-based knowledge. In order to frame your research, you are required to identify a research problem or statement. This informs the reader of the gap you aim to fill with new evidence-based knowledge.

Clearly identify the problem or statement at the outset of your research journey because it proves to the reader that the question is worth answering and that the answer contributes to the body of legal knowledge. In order to formulate your problem statement, ask yourself the following questions:

(1) What area of law would I like to research?
(2) What are the current issues in the field that interest me?
(3) What specific issue in the list of issues identified in the field would I like to address?

Research problems frequently originate from the following sources:

- your own practical situation and experiences
- problems encountered in a specific work environment
- problems facing society or a specific community
- scientific literature and theories

The first step in finding a suitable research problem is to analyse your personal interests and expertise. It may help if you ask yourself the following questions:

- What are my interests? What areas or themes in law would I like to explore or know more about? Remember that research is specialised and not a general exploration.
- What areas of law interest me?
- What areas of the law am I more conversant with as a result of my work experience or studies?
- What expertise or knowledge do I already have because of my professional experience?

Make a list of your answers. This should give you a clear indication of the area of research you should be focusing on.

Choosing the right research problem is important for the following reasons:

i. It should be something that really interests you. Remember, you are going to spend at least a semester at undergraduate level doing research on a particular problem.
ii. To a certain extent, the problem you choose determines the development and direction of your own professional career. In other words, the research problem may develop your knowledge, professional skills and expertise in a specific area of law.
iii. It serves as the guideline for your study. It directs and determines the aim of the study, the methods you will use, the research questions you are testing, or the problem statement that you are investigating, and your conclusion.
iv. It contributes to the science of the field and should lead to an improvement in the practices in the field.

The following checklist will help you to determine the suitability of a topic for your study. Spend some time honestly evaluating your research topic and answer "yes" or "no" to the following questions or groups of questions. An overall picture will emerge which will give you an indication of how suitable your research topic or problem is.

TABLE 2

Problem statement checklist

		Yes	No
1	Is the problem/statement topical and will the result of my research have an impact on society or on a practice of law or perhaps on future legal developments in a specific field?		
2	Does the problem have practical implications? In other words, will solving the problem and adding to the knowledge database make a useful contribution?		
3	Will the research lead to further research and provide scope for further inquiry into new problems or aspects? Sometimes research raises more questions that require the intervention and further research of others.		
4	Is the research topic important in the bigger scheme of law? This question is best answered by considering whether you would be proud to attach your name to the research product and consider it an achievement that is worthwhile.		
5	Is the problem that is identified suitable for research? You must realise that some research fields and problems are over-researched which means that finding a novel angle may be difficult.		
6	Is the problem researchable? By this we mean can you solve the problem through research and is it possible to solve the problem within the scope of the course/module or degree that you are registered for? An LLD, for example, provides a wider scope for research than a short dissertation.		
7	Is it practically possible for me to carry out the research? Are the sources that I need readily available and accessible?		
8	Is your research method valid and reliable? In other words, could another researcher duplicate your results if they used the same method?		

9	Is your research problem suitable in terms of ethical considerations? Bearing in mind that research must not offend or cause harm to another, have you considered all the ethical implications of your research?		
10	Do you have the necessary knowledge to conduct research in the field?		
11	Does the problem interest you? In other words, are you motivated to conduct research in the area?		
12	Is your research plan feasible? Do you have the time to do the research?		
13	Do you have the necessary financial, logistical and access resources to do the research?		
14	Can you complete your research in the time you have available?		
15	Do you have access to administrative, statistical, computer and consultative facilities for your research if necessary?		

If any of your answers to the above questions is "no", you should contact your supervisor to discuss how the problem can be solved.

In Tutorial Letter 101 you are presented with a legal problem that we wish you to investigate using legal research methods. Although the gap or problem has already been clarified, you are still required to frame the research question, statement or problem clearly in your proposal.

At this point, you should have a general idea of your research problem or statement. Once you have isolated your problem statement, you must determine whether your research problem is empirical or non-empirical in nature because this orientates the reader to your method of research. Your research question or problem will typically be empirical or non-empirical in nature.

According to Mouton,[25] empirical questions ask something about our everyday life and real-life problems (not scientific, expert or academic concepts). In order to answer these questions, we can either collect information about everyday life or make use of existing data and analyse the content.

There are several types of empirical question:

- exploratory questions – explore criteria/situations/factors ("What are the criteria/tests applied by the court in order to determine separation of trial?")
- descriptive questions – ("How many?/Are x and y related?")
- causal questions – ("Why?"; "what are the causes?")
- evaluative questions – evaluate the outcome ("What was the outcome?"/"Has X been successful?")
- predictive questions – predict the outcome of something ("What will the effect of X be?")
- historical questions – what were the events that led up to something? ("What led to Y happening?")

25 Mouton *How to succeed* 53–54.

According to Mouton,[26] non-empirical questions address questions about scientific concepts, trends in academic scholarship or the chances for success of a new theory or hypothesis. These types of question should not be answered with reference to everyday, real-life data but through careful analysis of the entirety of scientific information available on the subject.

Types of non-empirical questions:

- meta-analytical questions – what are the positions of leading researchers on something? What is the current state of research? ("What are the key debates on ...?")
- conceptual questions – investigate the meaning of a concept, model, and position ("What is the meaning of ..."?)
- theoretical questions – evaluate theories, their meaning. How do theories compare? ("What are the definitions, theories, models, hypotheses, et cetera of ...?")
- philosophical/normative questions – identify the ideal profile of something ("Do animals have rights?")

Some empirical questions may overlap and more than one question type may be employed to frame a collective research problem. In addition, a main research question may be posed with one or more subordinate questions. Your research question will influence your choice of research design and methodology.

1.7 SCHOLARSHIP/LITERATURE REVIEW

> The information in books is … constantly changed, amended by events, adapted to the world. I will only read a few thousand books in my lifetime, about a tenth of one percent of the contents of the richest libraries … The trick is to know which books to read.
>
> Dr Carl Sagan

Now we come to the very important topic of *literature review*. What is literature review? What makes it beneficial to your research? How does one carry out this review? The quote above voices the dilemma of most researchers, namely, knowing which books to read (and in our parlance today, which sources to consult). This is important, because one could end up spending valuable time and energy reading books that do not contribute to the research topic.

When you have decided on a topic for your research study, it is time to gain all and any knowledge possible on the subject. This is literature/scholarship review. In order to be able to answer the question of which sources to consult, we must firstly be clear on the purpose of literature review.

Bhatia and Srivastava[27] indicate the purpose of literature review as follows:

- It greatly assists in topic focusing. Literature review comes after the topic has been finalised and formulated.
- It is meant to set the foundation for the research questions. The literature review is profitable for the researcher because it helps the researcher to understand the research problem conceived in terms of historical background, theoretical framework, and current research developments or trends.

26 Mouton *How to succeed* 53–54.

27 Bhatia KL & Srivastava SC *Legal method, reasoning and research methodology* (Regal Publications Delhi 2013) 9.

Literature review consists of reading the existing knowledge in the field you are researching. Although you may feel overwhelmed by the amount of literature available, you will eventually begin to see a pattern in the available knowledge. At this point we suggest you make use of a research journal (hard copy or electronic) to categorise knowledge claims. Your goal with a literature or scholarship review should be to investigate what information is available on your subject of choice and how other authors have investigated the topic.[28] Some of the aspects you may want to include in your research journal are[29]

(a) definitions of concepts
(b) different theories, questions and available models in the area of your research
(c) solutions offered by expert researchers in the field. Remember that you must know who the main role-players are in your area of study.
(d) data and empirical findings by other researchers
(e) how different courts have interpreted the law (keep in mind the system of precedent)

The following guidelines may be of assistance during your scholarship review:

- *Conduct comprehensive research on the main aspects of your topic only.* No researcher is able to study every article, book or work on a specific topic. However, your review should be thorough on the main points relating to your research problem.
- *Do not rely exclusively on electronic sources of information.* Though it is tempting to draw all information from the internet, books and articles should be your first sources of information.
- *Your review should be well-organised.* Your scholarship review should NOT be a mere summary of what you have read. When reading, you should keep your research problem in mind. You must synthesise sources.
- *Use a retrospective reading method.* Start with the most recent sources first and work your way back in time. (This strategy may be varied if you are doing a historical study.)
- *Read the abstract.* When reading an article, make sure that the article is of value to your study by reading the abstract and the headings, and scanning the bibliography first. This will save you the effort and time of reading articles that, in the end, prove to be irrelevant to your study.
- *Read the article carefully.* When you have identified a relevant and valuable article, read it attentively to gain all the knowledge you can and identify the line of argument, the problems and the strategies used by other authors.
- *Recognise when you are finished.* When no new ideas emerge, or when important concepts start repeating themselves in your reading, it might indicate that you have reached the end of your literature review process. This will emerge from your research journal.

Once you have identified a legal problem, framed a legal question, defined a working title, thought about your research method and conducted a literature review, you will be required to contextualise your preliminary work into a research proposal (which is a design for your future research). While research proposals have different components depending on the field of research and often the requirements of the institution at which research is undertaken, there are some basic inclusions that you will need to consider.

28 Mouton *How to succeed* 87.

29 Mouton *How to succeed* 87.

1.8 FUNDAMENTAL ASPECTS OF A RESEARCH PROPOSAL

In this section, we will be dealing with the various aspects that need to be addressed in a research proposal. Although the writing of a research proposal depends mostly on the author, there are some guidelines that must be followed based on the subject field of the research. Below we will address some of the requirements for a law research proposal. At its most basic, a legal research proposal should include the following:

- research title
- introduction
- research problem/problem statement/research question
- research objective
- assumptions and limitations
- hypothesis
- research method and literature review
- time frames
- conclusion

Each of these terms are explained as follows:

Research title	At this point, your research title is often preliminary and may be subject to changes as you progress. For this reason, we refer to a working title which you will discuss and refine with the input of your supervisor.
Introduction	This section sets the background to the research. It states the nature of the problem and contains the reasons behind the choice or selection of the research.
Problem statement/ question	All research begins with a problem which the researcher seeks to address. The problem statement or question is the gap that your research intends to fill.
Research objective	This is also referred to as the *purpose of the research*. It reflects the reason for the study, in other words, why the study has been undertaken and what it seeks to achieve. It answers the question why the study is being undertaken and what the significance of the study is/will be.
Assumptions and limitations	Legal assumptions require clear statements in order to understand the area and reach of the research study. It is important to state categorically the specific areas that the study will cover and why, as well as what areas will not be covered and why not. This is necessary to assist the reader to understand the context of the research.

Hypothesis	This is an assumption, a speculation or an unproven statement, the truth of which is provisionally assumed to be valid but is to be subjected to scientific analysis in order to determine its validity. In other words, it is an educated guess. Hypotheses about the research must be formulated based on the literature; they cannot be thumb-sucked. As indicated above, the hypothesis must be formed on the strength of the literature review or on prior knowledge and rational anticipation of the answers to the research question. The intention of the research is thus to test the hypothesis for validity (to prove its truth or otherwise its fallacy). This must be done scientifically. For this reason, you need to carefully consider and formulate your hypothesis.
Methodology and literature review	Methodology has been discussed above. At this level of study, you will usually conduct doctrinal or non-empirical research using a comparative or historical method but these are not the only forms of methodology available in legal research.
Time frames	Here you will be expected to set the time frames that you intend to use to complete the research. If there are deadlines and due dates, remember to work within those deadlines and dates.
Conclusion	This section summarises your work (yes, even in the proposal) and indicates what the outcomes of the research are.

1.9 STYLE AND FORMATTING OF RESEARCH IN LAW AT CLAW

This section is applicable to all assignments in this module and to your eventual research proposal and portfolio examination:

- Your document must be in A4 format.
- The main text of your document must be typed in Arial font size 12. The required paragraph spacing in the main text is 1.5.
- Your footnotes must be typed in Arial font size 10. The required paragraph spacing in the footnotes is single.
- All quotes in the main text must be indicated by quotation marks and italics if they appear within the text.
- When a quotation does not form part of the text and stands alone, it must be in italics and reduced in size to 11 and must be indented by 1 cm. No quotation marks are required when a quotation stands alone.
- The title page for the research proposal must be formatted as per the example found in section D of this study guide.
- The research proposal must contain an academic honesty declaratio, an example of which can be found in section D of the study guide.
- The research proposal must contain a list of abbreviations and acronyms used in the work.
- Your document must contain page numbers. Place page numbers at the bottom of the page in the right hand corner.

1.9.1 Footnote style

- Please use the footnote style prescribed by the School of Law as contained in section C of this study guide. With the footnote style, consistency is key.
- Please place your footnote number correctly within the text. The following is an example: "… *this research indicates*[30] *that the Constitution forms the primary text in procedural,*[31] *interpretation and analyses.*[32] **NOTE THE EXPLANATION AT THE BOTTOM OF THIS PAGE.**
- When you mention an author, the footnote appears directly after his or her name. By way of example: concerning the determination of criminal capicity of child offenders, Karels & Pienaar[33] asserts *"The Child Justice Act amended the common law position pertraining to the minimum age of criminal capacity*".
- Do not use a source author's first name or initial in the text. For example, do not write M Karels and L Pienaar states "…." but rather, Karels and Pienaar[34] states "…". **NOTE THE EXPLANATION AT THE BOTTOM OF THIS PAGE.**
- The FIRST time you use a source in your footnotes it must be fully cited. Only **AFTER** the first reference can you use the short form which is prescribed in section C of this study guide. Please note further that **ALL FOOTNOTES** end with a full stop and must be tabbed 1 cm from the number margin (see our footnotes in this document as an example of the format we expect).
- Please refrain from the use of *op cit* and *ibid*, *supra* etc. It is distracting when we mark your work. On the same topic, please do not use the same source repeatedly. When we read your footnotes it is obvious whether or not you have consulted only a few sources. Obviously doctrinal law will be a main primary source for your research but do not concentrate on limited secondary sources (textbooks, articles etc).
- Please do not use study guides as a reference. Remember that study guides are persuasive authority. They are often based on primary sources and we prefer you to consult the primary source as opposed to merely repeating the content of a study guide.
- Please **DO NOT** use Wikipedia or other popular online sources as a source of reference. Remember that you are conducting research, which means that all of your sources **MUST** be authoritative and persuasive as well as valid and reliable.

1.10 CITATION AND REFERENCING METHODS

Refer to section C of this study guide where we provide the citation and referencing methods prescribed in the School of Law.

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30 Footnote style and reference in-text example 1. Note that the there is no space between the word and the footnote number and again after the footnote number.

31 Footnote style and reference in-text example 2. Note that the footnote number occurs after the grammar mark.

32 Footnote style and reference in-text example 3. Note that the footnote number occurs immediately after the full stop (no space after the full stop).

33 Karels M & Pienaar L, "Determination of criminal capacity of child offenders – interfacing the procedural requirements of the Child Justice and Criminal Procedure Act" 2015 *Obiter* 57–78 at 58.

34 Karels & Pienaar 2015 *Obiter* 57. Note the use of full citation in the footnote above, and the use of short citation here. We gave the full citation when we first used Karels & Pienaar's work and on second mention, used the short form. See section C of this guide for the CLAW referencing method which also contains the formatting of full and short-form footnote references.

1.11 RESEARCH INTEGRITY AND PROFESSIONAL CONDUCT

All research in all disciplines must be based on integrity, quality and rigour. All work must meet the ideal of academic integrity. Academic integrity can be defined as *the meaningful and concerted effort to ensure honesty, trust, fairness, respect and responsibility in research.* All research in the School of Law, whether a first-year assignment or a doctoral thesis, should be guided by this ideal.

The opposite of academic integrity is academic dishonesty. In line with Unisa's policies, the following activities are forms of academic dishonesty and can result in disciplinary action being taken against a culprit.

- Copying/cut-and-paste/patch-writing: This type of dishonesty involves copying someone else's work either word for word or changing it slightly without indicating that it is copied by, for example, putting it in inverted commas or brackets.
- Absence of references: This involves using someone else's ideas, thoughts, insights or data without acknowledging that they are not your own.
- Cheating/falsifying information: This is the fabrication of data which does not exist or the omission of contradictory evidence. It is also called cherry picking.
- Padding: This refers to the practice of referring to sources that were not consulted, but which makes the footnotes and/or bibliography seem more impressive.
- Too many quotes: This form of dishonesty entails that more than 15% of the work consists of quotes.
- Incorrect referencing: Incorrect referencing shows a lack of rigour and of disciplinary expertise.
- Helping someone to cheat: This might range from the innocuous (allowing someone to copy from you) to the more severe (providing someone with the means to cheat). It is the reason why students are not allowed to hand in the same assignment, even if they worked in a group.[35]

We largely rely on the honesty of our students when doing research work. However, we do require that all documents be accompanied by a declaration of honesty. The template for this declaration is provided at the end of this document in section D. **Note:** You are required to complete this and attach it to all your assignments and your final research proposal for this module.

In the next section, we will zero in on plagiarism and on the ways to avoid and prevent both intentional and unintentional plagiarism. Plagiarism has become a scourge in research due to technological developments that have made research easily available to the researcher.

1.11.1 Plagiarism[36]

In this section, we explain the offence of plagiarism, show you how to avoid it, and warn you of the penalties for plagiarising.

35 This section was written by Prof Kroeze, Department of Jurisprudence at Unisa.

36 This section was written by Prof A Smith of the Department of Mercantile Law at Unisa and was originally included in Tutorial Letter 101 for the postgraduate module Research Methodology for Law (MPLLW91).

1.11.1.1 *Defining plagiarism*

We will explain the concept of plagiarism by quoting two definitions. The *Oxford English Dictionary* defines it as "[t]*he action or practice of plagiarizing; the wrongful appropriation or purloining, and publication as one's own, of the ideas, or the expression of the ideas (literary, artistic, musical, mechanical, etc.) of another*". Further, the Writing Center at Colorado State University gives a working definition and examples of plagiarism:

> Simply stated, plagiarism is the dishonest use of someone else's thoughts or words. It's Cheating. Plagiarism can vary from submitting someone else's paper as your own to "borrowing" a nice sounding phrase, to using a source without citing it correctly, to "padding" a bibliography by making up sources or including sources you didn't use in your research. Whenever you use a general concept or idea, quotation, statistic, fact, illustration, or phrase that was not your own without giving proper credit to the author, you are guilty of plagiarism (see "What is plagiarism?", accessible at http://writing.colostate.edu/guides/sources/plagiarism/pop2.cfm).

Plagiarism can be committed unintentionally or intentionally. As Palmquist explains (in *The Bedford researcher: an integrated text, CD-ROM, and Web site* (2003) at 173–174), quoted in the Writing Center, Colorado State University "Plagiarism: Understanding and Addressing It", accessible at http://writing.colostate.edu/guides/teaching/plagiarism), the worst plagiarism is deliberately copying another person's work and then representing it as your own work. On the other hand, plagiarism generally consists of the unintentional use of another person's work or ideas without duly acknowledging their source.

Therefore, the key aspects of the offence of plagiarism are

- intentional or careless
- use of another person's idea(s) or material
- without properly acknowledging your use of such idea(s) or material

As you can see from the working definition above, plagiarism can take various forms. We shall now discuss the first – copying other students' work.

1.11.1.2 *Copying another student's work is plagiarism*

Unfortunately, students sometimes copy one another's work when submitting their work for a module. This is intentional plagiarism and is a form of cheating. In the College of Law, you are required to do your own work. Therefore, you must not copy other students' work or allow them to copy your work. Of course, you may discuss your work with other people, such as people whom you interview for your research, your fellow students, librarians, legal practitioners, or the supervisor (promoter) of your dissertation or mini dissertation. However, you are required to plan and write your own work, and to provide proper acknowledgement of the ideas or work of others. The submission of jointly planned or written assignment answers, examination answers, dissertations or theses by two or more students is not acceptable in the College of Law.

1.11.2 Copyright and academic writing

Copyright law grants the copyright owner exclusive rights in relation to a work embodying intellectual property (i.e. a product of the intellect). There are no formalities which must be met before a work may be protected by copyright law. The Copyright Act 98 of 1978 provides that any work which is original, that is, the result of the author's own skill and labour and which is in a material form (paper-based or digital) is automatically protected as a copyright work.

Copyright infringement includes the infringement of the economic rights of the right holder and the moral rights of the author. The economic rights of the right holder are infringed, for example, when a person knowingly or unknowingly makes an unauthorised reproduction or adaptation of a substantial part of a work protected by copyright. A work is reproduced if it is copied and the adaptation of, for example, a literary work is the translation of such a work. Moral rights are infringed when the author of a work is not given due acknowledgement of his authorship or where the work is treated in a derogatory manner.

Statutory exceptions curtail the copyright owners' rights. A copyright work may be reproduced or adapted by any fair dealing with a work for the purpose of research or private study, criticism or review of that work or for reporting on current events in a periodical. The source of the work as well as the name of the author must be mentioned. The following will be an infringement of a work and will not be exempted as fair dealing:

- the failure to indicate clearly (e.g. with quotation marks or indent and different font) phrases or passages taken verbatim (word for word) from a published or unpublished text without crediting the original text and author
- the paraphrasing of an article, a book or an electronic text without acknowledging the source(s) and the author of the work. This amounts to reproducing a text in different words by changing the word order of the text, the sentence type and the style of the author.
- use of more than a substantial part of the work will not be fair dealing, even if an acknowledgement of the source and the author is given

Copyright infringement and plagiarism are closely related, but they are not the same. The following important differences can be identified: copyright infringement is prohibited by the Copyright Act and such an infringement is prosecuted in court, whereas plagiarism amounts to intellectual dishonesty and co-workers, researchers and professional bodies will act if this happens. Plagiarism is avoided by acknowledging the original authors but copyright infringement is avoided by acquiring permission from the holder of the right to use the work.

The difference between copyright infringement and plagiarism can be illustrated by using the following examples:

1.11.2.1 Both copyright infringement and plagiarism

A student buys an Afrikaans book and translates four chapters into English. He uses this text in his dissertation without any permission, recognition or references. He has accordingly infringed the author's economic rights by making unauthorised use of the work and infringed his moral rights by not acknowledging the author. It is also plagiarism because he did not acknowledge his source and pretended that the work was his own.

1.11.2.2 Copyright infringement but not plagiarism

A student publishes a book. On the first page, he writes, "Prof P wrote a fantastic book. Here it is." Then the complete book is quoted. On the last page, the quotation is ended and he writes:

"You must agree that this is a good book." The student reproduced the entire book by Prof P and, thus, the economic rights of the author have been infringed. However, the author was recognised and his moral rights were not infringed. The student did not commit plagiarism as the source was clearly referenced.

1.11.2.3 Plagiarism but not copyright infringement

A student translates large parts of Shakespeare (of which the copyright protection has long since lapsed) and uses the translation in his dissertation without any permission, recognition or reference. Since the copyright is no longer protected, there is no infringement, but the actions of the student amount to plagiarism.

1.11.3 How to avoid plagiarism

- **Start to plan and draft your writing well in advance of any relevant deadline**

Students sometimes commit plagiarism because they leave it until it is too late to begin taking notes and planning their writing properly, and then they rush this process to meet a looming deadline. Since it will probably take you some time to produce a sound piece of academic writing, it makes sense to start planning and drafting your writing project well in advance. In this regard, you may find it helpful to compile a portfolio of documents that relate to your writing project, as described in Bedford/St Martin's "Straight Talk about Plagiarism", accessible at http://bcs.bedfordstmartins.com/plagiarismtutorial/content/cat_470/pdf/StraightTalk-bw.pdf. During the writing process, you should record clearly which ideas you obtained from other people's writings, and which ideas are your own. Detailed suggestions of the steps you could take in this respect are set out by the Purdue University Online Writing Lab (see "Making Sure You Are Safe", accessible at http://owl.english.purdue.edu/handouts/research/r_plagiar.html). These suggestions relate both to the development of your writing and to the form of your finished piece of writing.

- **Decide which references you need to include in your piece of writing**

You may wonder whether you need to provide references for every single idea or fact in your piece of writing. You may feel that to do so would overburden it with references corroborating ideas or facts that are obvious or of common knowledge. However, certain ideas or facts do have to be substantiated by the appropriate references to their sources, so that it is clear to the reader which ideas or facts are your own, which have been stated by other people, and how your ideas and facts relate to theirs. To help you make the appropriate choice in this regard, refer to the table compiled by the Purdue University Online Writing Lab (in "Choosing When to Give Credit", accessible at http://owl.english.purdue.edu/handouts/research/r_plagiar.html). The decision whether to document an idea or a fact may sometimes be difficult for you to take. You have to exercise your judgement in the particular context. If you are not sure whether or not to document an idea or fact, it is advisable to err on the side of caution and supply the reference rather than omit it.

- **Acknowledge the sources that you decide you need to refer to in your writing**

After taking the decision described in paragraph above, you must always acknowledge the appropriate sources from which you obtain the ideas or text that you rely on in your writing. You must make this appropriate acknowledgement clearly each time that you rely on ideas or text from another writer. The acknowledgement must appear in the main body of your writing. It is not sufficient merely to list your sources in the bibliography or list of references at the end of your work. The acknowledgement is usually made either in brackets or in footnotes. (If you are still not sure how to refer to sources, please consult section C of this study guide.) The acknowledgement must also be sufficiently detailed to enable your readers to find the relevant idea or text easily in its source. Therefore, if the source is a book, for example, it is not sufficient to state a bare reference to the book as a whole. Instead, you should refer to the relevant page or pages of the book.

Which are the most common types of sources that you would be required to acknowledge when writing about a legal topic? The usual types of sources would be the following: law reports; statutes; textbooks; articles; casebooks; theses and dissertations; study materials such as tutorial letters; and material borrowed from websites and web pages on the internet.

The discussion on the need to acknowledge your sources leads us to make a further point about avoiding plagiarism in your research. Research implies that you should consider and rely on numerous sources. It is not sufficient merely to rely on a single source. Relying on a single source could thus be regarded as plagiarism.

- **Use quotation marks to indicate that you are using another author's original text**

If you use the exact words of another author, you must place those words in quotation marks. Quotation marks are either double quotation marks (which look like this: "text being quoted") or single quotation marks (which look like this: 'text being quoted'). Further, you should follow the convention for quotations appearing within quotations. Therefore, if you choose double quotation marks as your primary form of quotation marks, text quoted within the quoted passage should appear in single quotation marks. Alternatively, if you choose single quotation marks as your primary form of quotation marks, text quoted within the quoted passage should appear in double quotation marks.

It is important to adopt one style of quotation marks (either single quotation marks or double quotation marks) as your primary form of quotation marks at the beginning of your piece of writing, and then apply that style consistently throughout. Do not change from one style of primary quotation marks to the other. By means of quotation marks, you show your readers that you know that you are using the text of another writer. Consequently, it is not sufficient to acknowledge the original text as being some other writer's but then to use the exact words of that original text without placing them in quotation marks. An example may help to clarify this point. Chapter 1 of Jane Austen's novel, *Pride and Prejudice*, begins with the following sentence: "It is a truth universally acknowledged, that a single man in possession of a good fortune must be in want of a wife." Notice that in the previous sentence, the relevant words from that novel are enclosed in quotation marks, indicating that they are recognised as being Jane Austen's words, not the words of the writer of this Unisa study guide. It is not sufficient to write a sentence to the effect that Jane Austen wrote in *Pride and Prejudice* (chapter 1) that it is a truth universally acknowledged that a young man

in possession of a good fortune must be in want of a wife. The previous sentence technically remains plagiaristic, because its writer indicates or represents that the words in question – it is a truth universally acknowledged, that a young man in possession of a good fortune must be in want of a wife – are his own, when in truth they are Jane Austen's.

The correct way to write the sentence in question would thus be as follows: Jane Austen wrote in Pride and Prejudice (chapter 1) that "[i]t is a truth universally acknowledged, that a young man in possession of a good fortune must be in want of a wife". A different way of understanding this point is that you as the writer must not claim originality where it is not you who had the original thought or wrote the original text as it stands in your piece of writing. Of course, if you do not enclose the relevant text within quotation marks, then you are required to express the idea in your own words. In the present instance, this might be done as follows: in chapter 1 of Pride and Prejudice Jane Austen wrote that it is generally accepted that rich young men do need wives. (Expressing the idea in your own words is called paraphrasing, which is discussed in more detail below.)

You must make sure that your quotations are correct. You must be certain that the exact words of another writer that you place in quotation marks are in fact the exact words. Moreover, when you decide to omit a word or words from the original text of another author (because, for example, you wish to exclude matter that you do not regard as relevant for your purposes), it is essential that you do not twist the meaning of the original text so that your quotation misrepresents the original meaning of the text. This point is explained and illustrated as follows (see The UVic Writer's Guide, University of Victoria "Plagiarism", accessible at http://web.uvic.ca/wguide/Pages/CitPlagiarism.html): "It is unethical and improper to quote in such a way that the contextual sense of the passage quoted is violated."

Example:

The original: "I found the play so bad that my urge to leave after the first act was compelling."

An example of improper use: One critic said that he "found the play ... compelling".

You may quote legislation without placing the text of it in quotation marks because legislation is not subject to copyright. Apart from legislation, however, you must place the exact words of the text in quotation marks if you quote from the sources mentioned above: that is, from law reports; textbooks; articles; casebooks; theses and dissertations; study materials, such as the tutorial letters; and material borrowed from websites and web pages on the internet.

In addition, remember that even if you express information from these sources in your own words, you still need to acknowledge the relevant source or sources from which you obtain the information. The combination of the advice section can be expressed in a formula:

Acknowledge your sources appropriately

PLUS

Use quotation marks to indicate another writer's original material

- **Remember that direct translation from other languages, without proper acknowledgement, is still plagiarism**

It is important to remember that, if you make a direct translation of a writer's original text written in a language different from the primary language of your piece of writing, you are still using the ideas and words of another writer. Therefore, your use of text written in another language requires you to acknowledge that text properly as a source.

How should you indicate that you are relying on ideas or text stated in the other language? It would be inappropriate to place the translation within quotation marks, because quotation marks are used to indicate the original text in the other language, and not your direct translation of that original text in the other language. As a result, you should try to paraphrase and summarise materials written in a language different from the primary language of your piece of writing.

- **Try to keep your quotations to a minimum**

Remember that your readers see your piece of writing as your writing. Your piece of writing should therefore not consist of a series of quotations merely joined together or interspersed with phrases such as "Jones states that ..." or "The court held that ..." Excessive quotation has the result that "[p]retty soon your paper looks like nothing but a field of quotation marks with a few country roads in between (your few sentences) connecting them. This does not represent very much intellectual work on your part. You have assembled a paper rather than writing one" (Honors Program, Georgetown University "What is plagiarism", accessible at http://gervaseprograms.georgetown.edu/hc/plagiarism.html).

It has been suggested that you should aim to have no more than 10 per cent of your work in the form of quotations. See, for example, James D Lester Writing Research Papers 2 ed (1976) at 46–47, as quoted in Purdue University Online Writing Lab "Paraphrase: Write it in Your Own Words", accessible at

http://owl.english.purdue.edu/handouts/research/r_paraphr.html

- **Paraphrase and summarise ideas and text wherever you can**

When you need to rely on the ideas and text of other people, then, since you should keep your quoted passages to a minimum, you should paraphrase and summarise those ideas and that text as much and as often as you can. By paraphrasing you express those ideas and that text in your own words. On the differences between paraphrasing and summarising, see the Purdue University Online Writing Lab "Quoting, Paraphrasing, and Summarizing", accessible at http://owl.english.purdue.edu/handouts/research/r_quotprsum.html and Jerry Plotnick, Director, University College Writing Workshop, University of Toronto "Paraphrase and Summary", accessible at http://www.utoronto.ca/ucwriting/paraphrase.html. In

improving your power of paraphrasing and summarising, you will help yourself to become more knowledgeable about your field of study and more fluent in expressing your knowledge.

For advice on how to paraphrase text and for examples of paraphrasing, you may also wish to consult the following web pages:

(a) University of Wisconsin-Madison Writing Center "Quoting and paraphrasing sources", accessible at http://www.wisc.edu/writing/Handbook/QPA_paraphrase2.html
(b) North Carolina Wesleyan College "Research Skills and Exercises", accessible at http://annex.ncwc.edu/writing_lab/nc/handouts/setv/prints/SETV8P.html
(c) Dr Alicia Knoedler "Citations and Paraphrasing in APA Style" University of Notre Dame, Indiana, accessible at http://www.nd.edu/~aknoedle/methods/paraphrasing.html
(d) Andreas Teuber "Examples of Plagiarism" Brandeis University, accessible at http://people.brandeis.edu/~teuber/usemexamples.html
(e) The interactive tutorial in Vaughan Memorial Library, Acadia University "You Quote It, You Note It!" accessible at http://library.acadiau.ca/tutorials/plagiarism. This tutorial gives you choices to make in order to avoid plagiarism, comments on why your choice is correct or incorrect, and the option of seeing how to correct plagiarised text.

ACKNOWLEDGE YOUR SOURCES APPROPRIATELY AND PARAPHRASE OR SUMMARISE MATERIAL WHEREVER YOU CAN.

- **The detection of plagiarism**

Lecturers can detect plagiarism by various signs, such as the following:

– A variation in the style and language register of the student's piece of writing. For instance, if the student writes in a plain style and makes several grammatical mistakes, and then produces a passage written in a more elaborate style and without grammatical mistakes, it may be possible that the latter passage (particularly if not accompanied by a source reference) has been plagiarised from another person's writing.
– A breakdown in the fluent expression of ideas, indicating that the student has not integrated the ideas or material properly into his writing. Possible plagiarism may also appear in the mistaken use or application of concepts, rules or principles, and in the occurrence of irreconcilable passages or contradictory arguments.
– Non-existent sources mentioned in the bibliography, variation in the styles of citing references, and the occurrence of web page references that malfunction when the reader tries to access them (see the Writing Center, Colorado State University "Detective Work", accessible at http://writing.colostate.edu/guides/teaching/plagiarism/detective.cfm).
– Lecturers can also detect plagiarism by using search engines such as Google. Remember that if you have found material on the internet and have plagiarised it, your lecturers will probably also be able to find that material on the internet and catch you out.
– The use of plagiarism detection software such as Turnitin.

- **The consequences of plagiarism**

Plagiarism may have the following consequences:

– disciplinary proceedings may be instituted against you by the University of South Africa which, if successful, may result in your suspension from study permanently or for one or more years
– refusal of a "fit and proper" letter from the Dean's office if disciplinary proceedings were successfully instituted by the University
– an immediate bar to any proposed academic career if a finding of plagiarism has been made by a disciplinary committee

Please bear these consequences in mind when you are tempted to use the internet or other resources without acknowledgment. You are a senior law student and cannot plead ignorance of the consequences of copyright infringement and plagiarism. Any suspected breach will be dealt with in accordance with the University's disciplinary code.

SECTION B

LEGAL RESEARCH PROPOSAL: LEARNING UNITS

This section of the study guide is broken down into learning units. Each unit deals with specific aspects of compiling a research proposal, which is the ultimate outcome of this module. Each learning unit contains learning outcomes which guide you in determining whether you have achieved the outcomes of each particular unit.

Learning unit 1

Research proposal

OVERVIEW

Once you have studied section A and all the learning units, you should be able to draft a research proposal.

LEARNING OUTCOMES

Once you have completed this learning unit you should be able to:

- identify the nature, scope and content of a research proposal in the Unisa College of Law
- identify the purpose of a research proposal
- clarify terminology typical to research proposals and identify their generic meanings

1.1 INTRODUCTION

Your research proposal is a vital aspect of the research process. Your proposal is a written outline of your thinking on the research problem and shows the reader how you intend to prove your hypothesis. Let us pause for a moment and consider the nature of a research product in law. A good research product at **undergraduate** level has the following characteristics:

- It avers a certain knowledge claim relevant to a specific area of law and then provides evidence to support and defend that claim. Keep in mind that defending a claim is not a one-sided pursuit. In order for your argument to be valid, it must examine all sides of the claim you make – not simply the arguments that defend your chosen position.
- It demonstrates in-depth knowledge of the primary sources relevant to the chosen field of law. The primary sources are authoritarian in nature. Secondary sources are persuasive and must be used to show that experts in the field support your arguments. Think of primary sources as the foundations of a house. They provide the groundwork for you to build on and are the most important part of the structure. Secondary sources form the walls of the house and allow you to construct a pleasant environment in which to live. The roof of the structure is composed of your conclusions and recommendations. Without the foundations and walls, the roof has no support structure and would simply fall flat. Your research product cannot ignore the foundations or the walls of the building.

The research proposal is the first chance you have to organise your research problem and to create a framework for later consultation. Consider it a roadmap – it keeps you focused on your topic and allows you to structure you research early on in the research process.

A research proposal is a written plan of your research project (research design). It has two functions. Firstly, it can be understood as the planning of any scientific research from the first to the last step. This plan should specify the phenomenon to be studied, the reasons for investigating that phenomenon, and how the investigation of that phenomenon will be carried out. In this sense, the research proposal is a programme to guide the researcher in collecting, analysing and interpreting observed facts. The proposal should be well structured, concise, clear and comprehensive. Secondly, it also relates to the testing of research questions.

In short, the research proposal is a plan in which you state how you intend to conduct your research. The proposal has the following characteristics:

- It is like a map – it guides you through your research.
- It is like a picture – it gives you an overall view of the whole process and of the important actions you will need to take to complete your research.
- It clarifies exactly what is expected of you.

You will find the whole process of writing a research proposal confusing to begin with, as the terms used can be confusing and common phrases are used differently in different fields of research. For your convenience, we have reproduced in paraphrased form a table of generic questions and corresponding terminology from a book called *Making the Researcher's Life Easier* by Mathews and Taylor[37] in order to orientate you to terms used when writing research proposals and their corresponding synonyms:

TABLE 3

Generic research terminology

Generic research question	**Commonly used terminology in a research proposal**	**Alternative phrases for the generic research question**
1. Why is research in this field necessary? 2. Why your research is needed (by referring to what others have done)?	Background	problem setting, introduction, need for this study, literature review, preliminary survey, motivation, rationale, importance of this study, state of the art, current status, justification, historical overview, situational analysis, summary of SWOT analysis
What are you going to do?	Purpose of this project	main research question, problem statement, project statement, final goal, vision, focus, overall objective
What are the broad sub-problems (or hypotheses)?	Issues to be addressed	sub-problems, sub-hypotheses, hypotheses and objectives, research sub-questions, theories, postulates, objectives, mission, aims, achievable goals, boundaries of the project, demarcation of study, conjectures

37 Mathews EH & Taylor PB *Making the researcher's life easier* (Research Toolbox Chicago 1998) 37.

How are you going to do your research (or prove your hypothesis)?	Research methodology	materials and methods, methods used to achieve results, methods of work, approach, methods used to test hypotheses, validation procedure and instruments, research design, experiment design, sample selection, data collection and analysis plan, project methodology, strategy
Who will benefit from your research?	Beneficiaries	stakeholders, key receivers, end users, market
What is the expected impact on beneficiaries?	Expected results	impact, expected benefits, possible outcomes, value of research
Detail on how you plan to complete the project (when, who, with what resources)	Work plan	research management, research activities, research plan, research outline, protocol, activities, strategy implementation

As you can see from the above, many of the key terms of a research proposal answer very basic questions in the line of when, what, where, and how. Different fields use different terms but, in essence, they all remain more elegant terms for the basic when, what, where and how questions. Below we have reproduced a paraphrased table from Mathews and Taylor[38] to demonstrate aspects of research proposals in different fields of research.

TABLE 4

Field specific research terms

Proposal question	**Medical scientist**	**Consultant**	**Social scientist**	**Natural scientist**	**Philosopher**
Why?	Literature survey	Introduction	Motivation	Rationale	Justification
What?	Problem statement	Project statement	Focus	Research question	Vision
What?	Hypothesis and objectives	Issues to be addressed	Aims	Theory	Hypothesis
How?	Materials and methods	Project methodology	Data collection and analysis plan	Experimental design	Research methodology
For who?	Stakeholders	Target market	Beneficiaries	Key receivers	Beneficiaries
How (in detail)?	Protocol	Project management	Research activities	Work plan	Research plan
Extra heading	Constraints	Intellectual property issues	Definition of terms/limitation of study	Clarification of concepts	Potential problems

38 Mathews & Taylor *Making the researcher's life easier* 37.

The challenge with law is that it can fit into more than one of the above categories. For this reason, a research proposal in law often borrows parts from various fields (mainly the social sciences and philosophy).

A research proposal in law at the University of South Africa must contain the following elements:

i. Title page
ii. a proposed title/working title
iii. Introduction
iv. a problem statement
v. a hypothesis deduced from the problem statement
vi. points of departure and assumptions
vii. conceptualisation of central research themes
viii. proposed chapter layout
ix. projected time scale
x. description of proposed research methodology
xi. preparatory study and research
xii. Conclution

Additional requirements may be set by your supervisor.

The extent of a proposal varies. In the case of a proposal for an LLB research report, it should not exceed 12 pages[39] excluding the title page, preliminary material and bibliography.

Ensure that you refer to Tutorial Letter 101 for the topics we have assigned for this module for the particular semester in which you are registered. Your eventual examination will be based on those topics.

39 This is a general guideline and nothing prevents you from submitting a longer research proposal. At a minimum, however, 12 pages is an acceptable length at LLB level.

Learning unit 2

Preliminary work

LEARNING OUTCOMES

Once you have completed this learning unit you should be able to

- identify the preliminary steps involved in the research process before you begin drafting your research proposal
- construct a method for approaching your literature review

2.1 CONSTRUCTING A RESEARCH JOURNAL

In Tutorial Letter 101, we have provided you with a set of legal research problems which you will use to complete this module. In your fourth year, you will be required to draft a research report based on topics covering different areas of law from the different departments in the College of Law. For now, we rely on the topics provided in Tutorial Letter 101 to advise you on completing this module.

The first step in this learning unit requires you to read Tutorial Letter 101 and identify the research problem you are going to pursue. In other words, we have already identified the knowledge gap for you to concentrate on. You will formulate your research proposal using the guidelines contained in the remainder of this study guide.

The first step after identifying the gap which you wish to research (which we have done for you) is to undertake a literature review and to organise your research.

When you have decided on a topic for your research study, it is time to gain all and any knowledge you can on the subject. This is sometimes called a literature review or scholarship review. It consists of reading the existing knowledge in the field you are researching and was referred to above as a collection of knowledge claims made by others which constitutes the existing database of knowledge on a topic or field. Although you may feel overwhelmed by the amount of literature available, you will eventually begin to see a pattern in the available knowledge. At this point we suggest you make use of a research journal (hard copy or electronic) to categorise knowledge claims. Divide your journal into the following categories:

(a) legislation
(b) case law
(c) journal articles
(d) books
(e) electronic sources
(f) miscellaneous sources

Under each heading, write down the citation for each source you read and make concise notes as to the content of that source. In some cases, such as legislation, this will be straightforward because you will only examine specific sections that state the law as it currently operates. Articles and cases may present more of a challenge

because they frequently present more than one side of an argument. Make notes of all knowledge claims made in court cases and journal articles. This exercise will allow you to see the pattern of thought and views in the field as it currently exists. It will also help you later when you construct your research proposal and bibliography.

Your goal with a literature or scholarship review should be to investigate what information is available on your subject of choice and how other authors have investigated the topic.[40] Some of the aspects you want to include in your research journal are[41]

- definitions of concepts
- different theories, questions and available models in the area of your research
- data and empirical findings by other researchers
- how different courts interpreted the law (keep in mind the system of precedent)

2.2 ORGANISING YOUR RESEARCH

At this point, your research journal provides the method by which you will organise the information obtained from your literature review. There are a number of ways in which you may structure or organise the research journal. Above it was suggested that you divide your journal into source types but you may have another method. This is fine provided it presents knowledge logically. Some researchers use alphabetical hard-cover school books, others Excel spreadsheets and some the old index card system. It does not matter how you format your journal as long as it works as an information retrieval system that you understand. Keep the following guidelines in mind when constructing your research journal:

- Organise you research material into primary and secondary sources. Remember to keep comprehensive citations for each source. Many a researcher has come to the end of a research project and then cannot locate the complete reference to a source they have used.
- When you deal with case law, it is a good idea to summarise it in your research journal. Summarising case law, specifically when the judgment is long and complicated, allows you to refine the salient points of the court's rationale.

At the end of your literature or scholarship review (which is condensed and organised using the journal method), you can begin the process of writing the first draft of your research proposal. At this point, consider the following:

- Who is the audience? Your audience in the academic setting is primarily your study leader/supervisor who expects a certain level of sophistication in both writing style and knowledge.
- What does my audience need to know? Your supervisor is likely to be an expert in the field you are working in and thus may not require in-depth analyses of the basic concepts of your research topic.
- What arguments am I going to advance in favour of my knowledge claims? Here your research journal becomes central – you already have a list of sources for and against your knowledge claim provided that you constructed a proper framework during the scholarship review phase.

40 Mouton *How to succeed* 87.

41 Mouton *How to succeed* 87.

- What am I going to do with evidence that contradicts my knowledge claims? A good researcher never ignores evidence contrary to their knowledge claim but rather analyses the contrary knowledge and refutes it by way of further knowledge claims or evidence. Another way of dealing with contrary research findings is to show how they may be correct if used in a specific context but may be flawed when framed in another. Remember that research is an ethical field – do not attack another researcher's character but rather his evidence or knowledge claim. There is no need to be petty or derogatory about another researcher's work. The fun in research is the argument and counter-argument just so long as it is conducted with respect and in a manner that acknowledges and respects the dignity of others. Always keep in mind that there are always different ways of looking at a problem.

Once you have conducted a basic literature review, you will be more au fait with your research field of investigation. At this point, you have identified the knowledge gap, conducted an overview study of the available literature and gained preparatory knowledge to set the field for your research proposal. You can now begin the process of drafting your research proposal.

Learning unit 3

Proposed/working title and introduction

LEARNING OUTCOMES

Once you have completed this learning unit you should be able to

- identify and discuss the nature, scope and content of a proposed title/ working title
- identify the elements of a superior proposed/working title
- draft the introduction and proposed working title for your research proposal based on the research problems presented in Tutorial Letter 101

3.1 PROPOSED/WORKING TITLE

The title of any research product must be a reflection of your research theme. The aim is to inform the reader what the study addresses without coming to any conclusion on your hypothesis. Once you have completed your scholarship review, you are in a position to determine an exact title. A well-formulated title carries weight in the knowledge database because it itemises the knowledge you formulate. A well-formulated title should meet the following criteria:

i. It should be brief yet informative. Your title is not a summary but an identifier. It places the reader in the position to determine whether the research is suitable for their needs or interests. Your title must not include excessive explanations. For example, consider the following titles:

Legal representation of children before the South African courts with specific reference to rules of ethical practice and conduct

Although the above title appears suitable for research, it lacks in certain aspects. Firstly, it does not indicate what the author means by "legal representation". Secondly, is the author referring to child offenders or children in private law? Thirdly, it does not identify the court structure that is relevant in the study. Fourthly, it is too wide.

Competent legal representation of child offenders in the pre-trial and trial phases of the South African criminal justice process

This title is more suitable because it tells the reader exactly what the researcher is concentrating on.

ii. The title must be informative and tell the reader what area of law and what aspect of that area is addressed in the research.
iii. It must be *linguistically correct* and the spelling must be impeccable. You should also avoid stating your title in the form of a question.

Examine your title after writing it down and ask yourself whether it encapsulates your research content and whether there is any ambiguity in the wording. A good practice is to show the title to a colleague without telling him anything about your

research topic. Ask your colleague to indicate what he thinks the title relates to and to explain the content they would expect to see in an article with the same title. If the answer does not reflect your intention, then consider rewording the proposed title.

Remember that although we have provided you with a research topic in Tutorial Letter 101, you are required to frame your research title. DO NOT simply restate the problem posed as a title.

Even though the working title appears first in your proposal you may want to only finalise your title after you've written your posposal as you will then have a better idea of the scope and limatations of your research.

The next part of the research proposal should encompass your research introduction.

3.2 RESEARCH INTRODUCTION

Your introduction should familiarise the reader with the context and scope of the topic. It should also provide information to contextualise the topic and the problem by identifying the general importance and present understanding in the field. In brief, an introduction should give a short overview of the problem, issues or topic to be researched and of the reasons why it is an important problem to study. In some cases, the introduction includes a historical background to the problem.

In general, your introduction must

- establish the field of the topic
- identify a particular focus of the topic within a specific field
- identify the more specific parameters of interests

Below you will find generic excerpts taken from previous research projects:

> **Topic 1:** This research investigates the field of South African public law at a macro-level and constitutional criminal procedure at a micro-level. The research focuses specifically on the constitutional right to legal representation within the framework of the Criminal Procedure Act 51 of 1977. The research focuses on the meaning and interpretation of the right to counsel within the parameters of equality of arms.
>
> **Topic 2:** This research investigates the field of South African public law at a macro-level and constitutional criminal procedure at a micro-level. The research focuses specifically on the constitutional right to open justice within the framework of the Constitution, 1996 and Criminal Procedure Act 51 of 1977. The research focuses on the impact of social media on the fair trial rights of the adult accused.
>
> **Topic 3:** This research investigates the field of South African public law at a macro-level and constitutional criminal procedure at a micro-level. The research focuses specifically on constitutional interpretation and development within the framework of the Criminal Procedure Act 51 of 1977. The research focuses on the meaning of and interpretation of customary law within the parameters of the trial process for adult accused. The focus of this investigation is limited to the trial and sentencing phases of the criminal process and thus disregards pre-trial process and post-trial remedies.

Note that the above examples tell the reader what general area of law you are researching, what specific part of the area you have isolated, and finally what aspect of the area you are investigating. They are by no means complete and can be further elucidated depending on your particular research focus. You can now apply the same principles to the problem you are researching as contained in Tutorial Letter 101.

Thus far, you have told the reader what the problem is and where it is found in law. Next, you need to develop the problem statement to assist the reader in understanding how you will go about solving the problem you have identified.

Learning unit 4

Problem statement

LEARNING OUTCOMES

Once you have completed this learning unit you should be able to

- identify and discuss the nature, scope and content of a problem statement
- draft a problem statement for your research proposal based on the research problems presented in Tutorial Letter 101

4.1 PROBLEM STATEMENT

Research is intended to answer questions in a scientific manner. Before research commences, therefore, the issue or problem that will be investigated must be considered, clearly delimited and explained. Before a compact formulation of the problem statement can be achieved, an explanatory exposition must be given.

Firstly, a case must be made that the issue is indeed a scientific problem and, secondly, that it is worth the research and calls for resolution. The formulation of the problem statement must convince the reader that the project should be undertaken. In formulating the problem, it must be kept in mind that it must serve as a guideline for the research throughout the entire project. This means that the following must be kept in mind:

- The extent of the question or problem must be appropriate for the proposed project because the problem statement determines the parameters within which the project will be carried out. The researcher should, therefore, consider what the end result must be – in other words, do not undertake a study for an LLB which is more appropriate for an LLD study.
- The problem must be solvable. Although the researcher cannot be expected at the time of formulating the problem statement to know what the conclusions are going to be, he or she must know enough to be satisfied that this is a viable project. You should, however, keep in mind that it is sometimes enough to simply point out a problem that no one else has identified.
- It must be understandable. The problem statement must be outlined with sufficient clarity so that, firstly, the researcher is never in doubt as to the type of research that is being undertaken and, secondly, that the reader of the problem statement does not have any doubt as to the direction the project will take.

At the end of the exposition of the problem statement, the essence thereof must be set out in a single sentence, frequently in the form of a question. This, however, largely depends on your research topic and it will not always be possible to put the problem to a reader in one sentence or question.

Below you will find two examples of very brief problem statements. They are not real problem statements, but are intended to show some of the typical mistakes researchers make.

Example	Comment
I awoke to the sound of hungry babies crying. I felt helpless because there was nothing to feed them. That is why I decided to write about the funding problems of orphanages. People should be ashamed of themselves for not caring. It is all the government's fault for wasting money on trains and so on. I will be telling you the truth about this.	The problem is that this statement is emotional and unscientific. While it is certainly sad that orphanages are not funded appropriately, that is not the point of a problem statement. The researcher must indicate why this is a **legal and scientific problem** and how the research can help to **solve the problem.** An appeal to emotion is not enough. Finally, you should avoid using the first person (I, me, us, our) in scientific writing.
SA law is basically Roman-Dutch law. That is why the writings of Roman and Dutch authors are important. SA law developed from Roman law and can, therefore, be said to have a two-thousand-year history. In this article I will look at time share contracts from early antiquity to today.	You can easily see what the problem is here. There is no connection between the first two sentences and the last one. In addition, no problem is indicated, so the reader does not know what the problem is with time share contracts and what that has to do with Roman law or why he should care.

A statement of the problem, sometimes called the statement of purpose,[42] is the most important part of your proposal, and should therefore "*be written with such clarity and in such logical and sequential fashion that it may stand alone on its own merits. If so done, it should indicate not only the problem for which you seek a solution [or answer], but also the steps whereby you plan to find that solution.*"[43] The statement must flow from the introduction, and should lead logically to your research goals and research questions. Maree states, "*in a well-formulated statement of purpose* [problem statement] *words like "assess", explore" and "compare" are used to state the researcher's intention explicitly and indicate how the research will be done*".[44]

4.1.1 Problem statement examples

Here are some basic examples based on the topics from previous research proposals in continuation of the topics introduced in the previous learning unit:

> **Topic 1**: The purpose of this research is to critically analyse the right to legal representation in criminal litigation and to investigate the potential effect of competency, or lack thereof, on equality-of-arms considerations in South African criminal procedure.

42 Maree K & van der Westhuizen C "Planning a Research Proposal", in Maree K (ed) *First steps in research* (Van Schaik Publishers Pretoria 2009) 29.

43 Turabian KL *A manual for written term papers, theses, and dissertations* 6th ed. (University of Chicago Press Chicago 1996) 74–75.

44 Maree & Westhuizen *Planning a Research Proposal* 19.

Topic 2: The purpose of this research is to evaluate the use of social media as a reflection of open justice and to gauge its impact on the fair trial rights of the accused in South African criminal procedure.

Topic 3: The purpose of this research is to evaluate the integration of customary law in South African criminal procedure and to evaluate the potential for its development as a Constitutional consideration of interpretation.

The major question or statement should be included with a possible list of secondary questions following as appropriate. Each of the statements above can be divided into sub-questions/statements/hypotheses. For example:

Topic 1: This research will include aspects that incorporate the following:

- What is the practical application of the right to legal representation in South African criminal procedure?
- Does the right to legal representation make reference to the efficacy or competence of legal counsel?
- What is the meaning of "equality of arms" and how are competency considerations assumed therein?
- What is the effect of inequality of arms or incompetency of counsel on an accused?

Topic 2: This research will include aspects that incorporate the following:

- Where does open justice find application in the Constitution and how is it interpreted in the criminal process?
- How has the use of social media affected the right to an open and public trial for adult offenders?
- Does the use of social media have advantages or disadvantages for the fair trial right of the accused and how can these be developed or mitigated within South African criminal procedure?

Topic 3: This research will include aspects that incorporate the following:

- How does the Constitution incorporate the development of customary law?
- What is the impact of customary law on constitutional interpretation?
- What values underlie the incorporation of customary law in South African criminal law and procedure?
- Where do customary values and practices find application in the current criminal process?
- Where could customary values and practices find further application in the existing criminal process?

This section is an extended discussion of the problem, often with some literature noted in the footnotes to show the reader that the researched problem is valid and necessary to solve.

You can now apply the principles above to develop the problem statement for the research topic contained in Tutorial Letter 101, Assignment 02 for LME3701, before moving on to the next step in the research proposal, viz the hypothesis.

Learning unit 5

Research aim/Hypothesis

LEARNING OUTCOMES

Once you have completed this learning unit you should be able to

- identify and discuss the nature, scope and content of a research aim/ hypothesis
- draft a research aim/hypothesis for your research proposal based on the research problems presented in Tutorial Letter 101

5.1 WHAT IS A HYPOTHESIS

A hypothesis is an unproven statement, the truth of which is provisionally assumed, but with a view to subjecting it to scientific analysis in order to determine its truth. While a hypothesis should not be confused with a conclusion or a research result, neither is it merely a wild guess or what the Americans would call a "hunch". A hypothesis is formed on the strength of prior knowledge and rational anticipation of the answers expected to be found to the research problem. The intention is not to prove the truth of the hypothesis at all costs, but to test it to the utmost with scientific honesty before it can be included in a theory or be accepted or rejected as a conclusion. The development of hypotheses, therefore, also requires thorough consideration and precise formulation.[45]

In law, we do not always find an hypothesis in a research proposal. It is more likely that you can easily fit what you intend to find under a "research aim". This could especially be the case if you are embarking on a historal research project or a comparative research project in order to establish how we reached a certain point in law and/or how a certain jurisdiction approach a specific legal issue. It could be challenging to formulate a hypothesis here as the research does not really serve to prove something but rather explores a certain state of affairs or phonomena.

In essence, your research problem/statement identifies **what** the problem is. The hypothesis tells the reader **what** you consider to be the solution. At the beginning of the research, you cannot prove your hypothesis – that is the point of researching it. In some cases, specifically with descriptive research, the hypothesis and the research problem are synonymous. A hypothesis can be a single solution or a series of solutions (hypotheses) which you predict will solve the issue identified in your research problem/statement.

At this point, you should have a general idea of your research area, research problem/ statement and hypothesis/hypotheses/research aim.

45 The information in this paragraph was taken verbatim from a 2013 tutorial letter for DPLLW9 drafted by Prof I Kroeze.

Once you have isolated your research problem/statement and hypothesis/research aim, you must determine if your research problem/statement is empirical or non-empirical in nature because this orientates the reader to your method of research and research design. Your research method and design tell the reader **how** you intend to prove your hypothesis or achieve your aim/goal, which are based on your research problem/statement. Your research problem/statement will typically be empirical or non-empirical in nature.[46] More on research methods in learning unit 10.

46 Mouton *How to succeed* 53.

Learning unit 6

Points of departure and assumptions

LEARNING OUTCOMES

Once you have completed this learning unit you should be able to

- identify and discuss the nature, scope and content of points of departure and assumptions
- draft your points of departure and assumptions for your research proposal based on the research problems presented in Tutorial Letter 101

6.1 POINT OF DEPARTURE AND ASSUMPTIONS

The **point of departure** refers to two things. In the first place, it refers to the basic theory behind a research project. It is important to consciously formulate one's point of departure because it provides a test of consistency throughout the module of the research and gives direction to the making of basic scientific (especially theoretical) choices. If, for example, you study the position of women after divorce, you could do so purely from a patrimonial point of departure (i.e. from the private-law theoretical perspective); or from a procedural point of departure (i.e. from the point of view of the law of civil procedure); or from a feminist viewpoint (i.e. a study of feminist critique of divorce law). You can see that in all these cases the content and conclusions of the project will differ widely, even if they deal with the same subject. Therefore, the same subject from different points of departure will lead to different research projects. Your point of departure is basically the angle that you are taking to look at the research problem. It is from a Constitutional law perspective or Adminstative law perspective etc.

In the second place, the point of departure refers to the method of research that you choose. You may use a historical method, a comparative method for instance. These methods were discussed in a previous section, but you must state the method you choose explicitly in this section of the research proposal. Almost inevitably, though, legal research will largely be based on a literature study. The nature of the material (legislation, decided cases, journal material, monographs and textbooks, electronic sources, material of other disciplines, sources in other languages, etc) that is expected to be of greatest significance for the research may also be indicated here. The proposed method must be suitable for the resolution of the problem statement.

In order to limit your study and to keep it manageable, it is frequently necessary to make certain **assumptions**. Usually the making of an assumption entails that a certain state of affairs is taken as a given. For example, it is not necessary to prove that South Africa is a constitutional democracy; you can take it as proven. Assumptions are there so that you do not need to prove everything, so that you can exclude some things from your study and to make use of well-known previous research. In other words, this is where you say what you will be doing but, more importantly, what you will **not** be doing. This is important to forestall any possible criticism about things your examiners might think should be in your dissertation. If you say you will not be doing certain things, they cannot criticise you if you do not do them.

Learning unit 7

Conceptualisation of central research themes

LEARNING OUTCOMES

Once you have completed this learning unit you should be able to

- identify and discuss the nature, scope and content of central research themes
- draft at least three central research themes for your research proposal based on the research problems presented in Tutorial Letter 101

Your research topic will relate to certain terms and/or themes. You are required to provide brief definitions of your central research terms and/or themes here with reference to authority. For example, if your research topic is the *Defence of child offenders in the pre-trial and trial phase of the South African criminal process*, you may consider defining precisely what you mean by "defence counsel", "child offender", "pre-trial" and "trial". Defining your research terms and/or themes allows the reader to operate within your frame of reference with certainty as to your meaning and interpretation. Although the example used is very basic, this task becomes important when your research relates to terms or themes that have no definite meaning such as dignity, ubuntu, values, and the like. Because researchers differ in their views on certain terms or themes, it is very important to inform the reader which definition you accept to be correct within your research framework.

These central research themes come primarily from your literature review.

Learning unit 8

Chapter layout

LEARNING OUTCOMES

Once you have completed this learning unit you should be able to

- identify and discuss the nature, scope and content of a proposed chapter layout
- draft a proposed chapter layout for your research proposal based on the research problems presented in Tutorial Letter 101

Your proposed chapters must cover all the aspects of your research adequately. Your breakdown could, for example, reflect the following:[47]

TABLE 5

Chapter layout example 1

Chapter 1	General conceptualisation of research problem and methodology. This chapter will conceptualise aspects of the research problem necessary for the development of the dissertation in later chapters.
Chapter 2	General contextualisation of the research topic in South African law.
Chapter 3	Comparative analyses of topic in chosen jurisdictions (only if you have chosen a comparative method of research) OR historical review of the development of the topic in South African law between 1910 and 1994 (if you have chosen a historical method of research).
Chapter 4	Conclusions and recommendations

Depending on your method of research, you may have more chapters than those described above and you must indicate the content of each chapter.

The framework for your research proposal depends largely on the topic and your chosen research method. We, however, suggest that when you start the process of writing, you use the following temporary framework. This framework is based on the use of comparative research (if you use a historical method, you will adapt this format accordingly).

47 The structure is merely an example and can be amended, extended or altered to suite your topic and methodology.

TABLE 6

Chapter layout example 2

Chapter title	Content
Research parameters and conceptualisation	This chapter is, in essence, your research proposal and an explanation of the concepts you intend to use in the research. If your dissertation is a map, then this chapter is the legend to the map and provides the reader with the GPS coordinates to your eventual destination (viz your conclusions and recommendations).
Contextualisation of theme	This chapter contextualises your theme in the South African framework and often includes aspects relevant to international treaties, the Constitution and the history of the legal aspect you are researching.
The South African perspective	This chapter tells the reader about the legal position in South Africa regarding your chosen topic. It provides the law and your analysis of the law.
Comparative perspective[48]	This chapter presents the law concerning your research topic in a comparative jurisdiction and must show the similarities and differences between the two countries.
Comparative perspective	Depending on whether you are doing an LLB research report, an LLM or an LLD, you will have more than one comparative jurisdiction to compare. Your chapters must show the differences between South Africa and the comparative jurisdictions.
Conclusions and recommendations	This chapter provides your conclusions (summary of research), which must answer your hypothesis or address your research aim and include your recommendations which are supported by the arguments you presented throughout the research.

Obviously, the above is not suitable for every topic and it is definitely not developed enough to be a complete product. It does, however, give you an initial structure to work within. Your product may have more or fewer chapters or may choose to examine themes as opposed to jurisdictions, which would then be presented as follows:

TABLE 7

Chapter layout example 3

Chapter title	Content
Research parameters and conceptualisation	This chapter is, in essence, your research proposal and an explanation of the concepts you intend to use in the research. If your thesis is a map, then this chapter is the legend to the map and provides the reader with the GPS coordinates to your eventual destination (viz your conclusions and recommendations).

48 Remember that if you use a historical method, your chapters will reflect this.

Contextualisation of theme	This chapter contextualises your theme in the South African framework and often includes aspects relevant to international treaties, the Constitution and the history of the legal aspect you are researching.
Theme one	This chapter tells the reader about the legal position in South Africa and your comparative jurisdictions on a specific theme. For example, this chapter could deal with the procedure for arrest – the author then tells the reader the law regarding arrest in South Africa, Germany and Japan (or whatever jurisdictions were chosen to compare).
Theme two	Same as the previous chapter, but with a different theme. For example, if your topic is arrest procedure, your next theme may be the use of force, in which case you will give the reader the legal position on the use of force in South Africa and your chosen comparative territories.
Conclusions and recommendations	This chapter provides your conclusions (summary of research), which must answer your hypothesis and recommendations. These are supported by the arguments you presented throughout the research.

Obviously the higher the level of degree, the more themes (and therefore chapters) you will have. Again, the above is not definitive and may be altered to suite your topic. Both of the suggested frameworks are intended to merely order your thought process when you write your research proposal and demonstrate to the reader that you have a plan for your research direction.

Learning unit 9

Projected time frame

LEARNING OUTCOMES

Once you have completed this learning unit you should be able to

- identify and discuss the nature, scope and content of a projected time scale to be included in a research proposal
- draft a projected timescale for your research proposal based on the research problems presented in Tutorial Letter 101

Your time scale tells us when you expect to submit work and what work you intend to submit for comment. The following is an example of a time scale:

TABLE 8

Time schedule example

Chapter	Expected date of submission
Submit draft research proposal	**22 January**
Receive draft proposal with comment	**30 January**
Resubmit corrected research proposal	**15 February**
Register for thesis	**27 February**
Submit draft chapter 1	**30 March**
Submit draft chapter 2	**30 April**
Submit chapter …	**…**
Revise and resubmit chapters 1–4	**30 September**
Revise and resubmit chapter 5–8	**30 October**
Submit for examination	**30 November**

Obviously, the details above will change depending on the degree you have registered for, but the format and concept remain the same.

For your purposes in LME3701 your projected timescale will relate to the submission of the final research proposal and not to chapters of a thesis.

Learning unit 10

Description of research method

LEARNING OUTCOMES

Once you have completed this learning unit you should be able to

- identify and discuss the nature, scope and content of research method
- draft your preferred research methodology for your research proposal based on the research problems presented in Tutorial Letter 101

In this part of the proposal, you will explain your research method and design (refer back to part A of this document for an explanation of both concepts if necessary). If you choose a comparative method, you are required to explain which countries you are using to compare and why you have chosen those countries. If you have chosen a historical method, you must indicate the time period you will be researching and explain why that particular period in history is important. In the case of a pure historical study, you will concentrate on one jurisdiction. If you combine the historical and comparative method (in other words, if you explain the historical development of a particular aspect of law in more than one country) you must indicate the time period, the countries and the reason for your choice of time frame and jurisdiction.

The function of this stage is to indicate the means by which the research objectives will be achieved and to indicate the sources of data to be used.

Here you need to explain how you will obtain the information necessary to write your research paper. You are required to:

- explain what sources you intend to use
- give some details on exactly how you will obtain your information

As a law student, you will probably rely on documentary sources, that is, information that already exists in some form, for example journal articles, case reports, legislation, treaties, or historical records. You may need to say a little about how you will access these sources (keeping in mind that as a student at Unisa you have access to massive legal databases).

Your research method will more than likely be desktop (i.e. you will use written sources to construct your argument). Here you will use a qualitative approach to research. Your sub-method can be primarily historical (i.e. show how particular legal concepts developed) or comparative (show how South African law compares to another jurisdiction).

Learning unit 11

Preliminary research

LEARNING OUTCOMES

Once you have completed this learning unit you should be able to

- identify the nature, scope and content of preliminary research
- draft a list of preliminary research for your research proposal based on the research problems presented in Tutorial Letter 101

The function of this stage is to list all references you intend to use or have already consulted in the research proposal. You may use the bibliography format provided in section C of the study guide followed by a brief description of each source. At LLB level, you are expected to provide at least 10 sources consulted in preliminary research on the topic provided to you in Tutorial Letter 101.

Learning unit 12

Evaluating your research proposal

LEARNING OUTCOMES

Once you have completed this learning unit you should be able to

- determine whether your research proposal meets the required standard as per table 9 and make the necessary amendments to bring it in line with the required standard.
- use the checklist in table 10 below to evaluate whether your research proposal is ready for submission.

The following are indicators used in the School of Law when examining whether a research proposal meets the required standard:

TABLE 9

Research proposal: self-assessment rubric

1. TITLE

Descriptors	Comments (if necessary)	Yes/No
The title captures the scope of the research		

2. CONTENTS

Descriptors	Comments (If necessary)	Yes/No
The problem statement is clear and defines the parameters of the outcome (LLB research report, mini-dissertation, master's dissertation or thesis).		
The hypothesis, points of departure and assumptions are reasonable and valid according to the topic.		
The nature and extent of the preparation for the research for the proposal is explained.		
The relevance of the study is indicated.		
The scope of the study is reasonable.		
Framework of proposed research is provided.		
List of preliminary resources is provided.		
Projected time scale is included.		

3. RESEARCH METHODOLOGY

Descriptors	Comments (if necessary)	Yes/No
*The research methodology is indicated.		
The chosen research methodology is appropriate for the proposed research.		

* School of Law – usually a literature study

4. ETHICS (where applicable)

Descriptors	Comments (if necessary)	Yes/No
Procedures prescribed have been complied with.		
Ethical clearance certificate from CLAW ethics committee is attached as required.		

5. CLAW CITATION METHODS

Descriptors	Comments (if necessary)	Yes/No
The proposal uses proper referencing according to the CLAW preferred method.		

You may also refer to the following rubric to determine if you research proposal is ready for submission and consideration before you submit to your supervisor.

TABLE 10

Research proposal: pre-submission checklist

Checklist	Yes	No
Front page of proposal		
• Is all the required information on the front page?		
Title		
• Is the title brief and descriptive? • Is the title not too wide? • Does the title capture the essence of the study?		
Problem statement		
• Is the problem clearly stated? • Does your research problem reflect your title? • Is the problem sufficiently outlined and defined? • Is it clear where the problem occurs in the field of mercantile law, private law, constitutional and international law, criminal law and procedure or jurisprudence – or possibly covers more than one field? • Is the problem important to research? • Is the problem relevant to the legal field?		

Aims of the research		
• Are the aims of the research clearly formulated? • Do the aims reflect the intentions of the research?		
Purpose of the research		
• Is the purpose of the research clear? • Is the purpose focused on addressing the research problem?		
Research question(s)		
• Are the research questions formulated to address the research problem? • Are the research questions formulated in such a way that the information obtained will resolve the research problem?		
Research hypothesis		
• Does your hypothesis derive from your research problem? • Does your hypothesis direct your thinking towards the solution of your problem? • Did you make sure that your hypothesis statement is in a negative **OR** positive format?		
Key theoretical concepts		
• Are all the concepts used in the research defined to prevent any misunderstanding? • Are the descriptions of the key concepts limited to terminology?		
Value of the research		
• Will the study add value? • Will the study demonstrate a measure of research competence or problem-solving ability? • Will the study add to the body of knowledge in your chosen field? • Did you explain why you are doing the research? • How will the results or output be used? • What will the impact of the research be? • Who will benefit from your research?		
Preliminary literature review		
• Does the literature reflect the recent and authoritative viewpoints in the field of study? • Does the literature review indicate your knowledge of the research area? • Did you determine what has been written on the same topic? • Did you determine what has not been written on the topic? • Did you identify the methodologies that are used in this field? • Did you conduct an overview of the latest publications and websites in this field? • Did you find evidence of a need for this research?		
Time frame		
• Do you have a time frame? • Is your time frame realistic? • Did you take into consideration your work and personal responsibilities?		
References		
• Did you check your list of references together with the guidelines for referencing outlined in section C?		

SECTION C

SCHOOL OF LAW REFERENCING STYLE

Below you will find the referencing style prescribed in the School of Law. You are required to use the style when constructing your footnotes and bibliography for this module and eventually when writing up your research report in the fourth year of study.

1.1 CLAW REFERENCING STYLE

The most important way to ensure that your work passes the test of academic integrity is to indicate where you found the information. This shows that what you are saying is not your own ideas, but you found them or read them somewhere else. Conversely, anything without a reference is regarded as being a claim that this is your own idea. Therefore, if you make a statement that is not your own idea but without giving a reference, you are committing plagiarism. That is why it is so important to get this right. It is the most technically challenging part of your studies and it is important that you adhere to the rules set out below.

1.2 BASIC RULES OF REFERENCING IN THE SCHOOL OF LAW

(a) The method of referencing set out below is applicable to ALL documents produced for research work in the School of Law. Deviation from this is only allowed in exceptional circumstances and then the deviation must be consistent throughout the document.

(b) **The School of Law does not use the Harvard method of referencing where the source is given in the text, such as (Karels & Pienaar 2015; 57). This is because references are usually long and would interrupt the argument.**

(c) The School of Law does not use the method of referring to *ibid*, *id*, *supra*, *infra* and so forth. Nor does it use the method of referring by using [note 13 above] as this makes it almost impossible to keep track of footnotes.

(d) All references must be in footnotes and not in endnotes.

(e) A footnote is always followed by a full stop.

(f) **When citing your sources in footnotes, provide the full reference to the source the first time you refer to that source and then use the shortened version in the rest of the work.**

(g) Your work must be supplied with a bibliography in which you give the complete reference to the sources you cited.

(h) The footnote number is always in superscript and follows the full stop or other punctuation mark and not the other way around.

1.3 SPECIFIC RULES FOR DIFFERENT TYPES OF SOURCES

1.3.1 Books and contributions in books

Your bibliography should have long and short references. The first time you refer to a source in a footnote, use the long reference, thereafter use the short reference. Always indicate page number where you found a piece of information in your footnotes.

The basic form of reference to a book is:

Smith C *The law of insolvency* 3rd ed (Butterworths Durban 1988) 3.

Your bibliography should have long and short references. First time refer to source in footnote, use long reference, thereafter short reference. Always indicate page number where you found a piece of info only in FN.

The shortened form would be:

Smith *Insolvency* 3.

Note the following:

(a) There are no commas, full stops, colons or semi-colons anywhere.
(b) The surname is given first and then the initial(s). This is followed by the title of the book in italics, then the edition and then the publisher, place of publication and date of publication. The last number is the page of the book you consulted.
(c) As a general rule always use the **latest edition** of a book unless there is a good reason to refer to an older edition.[49]
(d) There are different forms used if there is one author or more than one. See the examples below.
(e) Normal capitalisation is used in the titles of books and contributions in books.

Examples:

Below we provide a table with examples of various kinds and permutations of books and contributions in books. **Please note** that while these are in a table here, you cannot use a table in your work. It is merely for ease of reference. These are the long and short references used in FNs.

Full refrence	Shortened version
One author	
Smith C *The law of insolvency* 3rd ed (Butterworths Durban 1988) 3.	Smith *Insolvency* 3.
Two or three authors	
Church J, Schulze C and Strydom H *Human rights from a comparative and international law perspective* (Unisa Press Pretoria 2007) 237.	Church, Schulze and Strydom *Human Rights* 237.
More than three authors	
Corbett MM *et al The law of succession in South Africa* (Juta Cape Town 1980) 225.	Corbett *et al Succession* 225.
Contribution/chapter in book[50]	
Pound R "The passing of mainstreetism" in Sythoff AW (ed) *XXth Century comparative and conflicts law* (Brill Leyden 1961) 3–14.	Pound *Mainstreetism* 12.

49 For example, in legal historical research, the oldest available edition of the work should be consulted.

50 In the long form the page numbers of the whole contribution are given. In the short version only the page(s) consulted.

Contribution/chapter in book where the author is also the editor	
Zweigert K "Rechtsvergleichung" in *Rechtsvergleichung* (Darmstadter Verlagsansalt Darmstadt 1978) 1–9.	Zweigert in *Rechtsvergleichung* 6.
Translated books	
Kelsen H *General theory of norms* (translated from the original German by Hartney M) (Clarendon Press Oxford 1991) 114.	Kelsen *Norms* 114.
Published contribution at a conference	
Kahn E "Crime" in *Criminal law* (Papers delivered at the Third Annual Congress of the South African Association of Criminologists 21–26 July 1961 Juta Cape Town) 221–228.	Kahn "Crime" 224.
Dissertations and theses	
Kindiki K *Humanitarian intervention: the role of intergovernmental organisations* (LLD thesis University of Pretoria 2002) 209.	Kindiki *Humanitarian intervention 209.*
Later editions of a book written by new authors	
Scott TJ and Scott S *Wille's Law of mortgage and pledge in South Africa* 3rd ed (Juta Cape Town 1987) 334.	Scott and Scott *Wille's Mortgage and pledge* 334.

1.3.2 Journal articles

The basic form of reference to a journal article is:

Stander AL "Die eienaar van die bates van die insolvente boedel" 1996 *THRHR* 388–399.

The shortened version is:

Stander 1996 *THRHR* 385.

Note the following:

(a) The **title of the article** is not italicised, is in **lower case** (except where capital letters must be used) and is followed by the date of the journal.
(b) The **titles of journals** are, wherever possible, **abbreviated** with an explanatory list of abbreviations supplied. The abbreviation is italicised.
(c) **Newspaper reports** are cited similarly to contributions in law journals except that the exact date of the newspaper is given. For example: Ngqiyaza B "Socio-economic rights must be enforced in South Africa – Pityana" 1997-09-19 *Business Day* 4. The shortened form is: Ngqiyaza 1997-09-19 *Business Day* 4.

1.3.3 Old authorities

There are very specific ways of referring to old Roman and Roman-Dutch sources. If you are doing this type of specialised research, please consult your supervisor on the correct method.

1.3.4 Internet sources

The basic form of reference to an internet source is:

Mamoepa B "The Act on Higher Education" http://www.star.hsrc.ac.za/nche.html (Date of use: 16 November 1997)

The short version is:

Mamoepa http://www.star.hsrc.ac.za/nche.html (Date of use: 16 November 1997)

Note the following:

(a) If the author is not clear or there is no author (such as with institutional websites) the full reference is merely the URL and the date of use. For example: http://www.nipccreport.org/ (Date of use: 17 September 2015). This will also be the short version.
(b) Legal academic journals that are published on the internet, such as the *Potchefstroom Electronic Law Journal*, are cited in the same manner as normal journal articles and not as an internet source.

1.3.5 Law reports

The full version of a reference to a court case is as follows:

Hoffmann v South African Airways 2001 1 SA 201 (CC) [23].

There is no shortened version for case law, but see the notes below.

Note the following:

(a) If the work makes repeated reference to a case, a shortened form can be used. However, it must be clearly stated that this is the abbreviated form that will be used, for example: *Hoffmann v South African Airways* 2001 1 SA 1 (CC) (hereinafter the *Hoffmann* case).
(b) Specific **sections** of a case are referred to with reference to either the page(s), for example 263H, where it is indicated in the reported volume, or a paragraph(s) of the judgment (as has become customary in judgments). The paragraph is identified by way of square brackets, for example [137].
(c) In all cases, the reference to the court will be the one used in the specific law report.
(d) Foreign case law and regional or international case law must be referenced in the manner in which the specific law report states.

1.3.6 Legislation

The basic form of reference is:

Patents Act 57 of 1978.

There is no shortened form for legislation, but see the notes below.

The correct form of reference to the Constitution is:

Constitution of the Republic of South Africa, 1996.[51]

Note the following:

(a) If the work makes repeated references to an act, a shortened form can be used. However, it must be clearly stated that this is how it will be used. For example: Patents Act 57 of 1978 (hereinafter referred to as the Patents Act).
(b) If the work only deals with one act in some detail, the reference would be: Patents Act 57 of 1978 (hereinafter referred to as the Act).
(c) This is particularly true if the Constitution will be dealt with in any depth. For example: Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the Constitution).

1.3.7 International and regional instruments/documents

Note the following:

(a) The most important international and regional documents may be found on the official websites of international and regional organisations. The *PULP Guide* also provides internet websites where international treaties and documents can be accessed.
(b) The *United Nations Documents: Research Guide* on the official website of the United Nations (http://www.un.org/Depts/dhl/resguide/) gives an overview of the different types of documents and publications issued by the United Nations and provides guidance to researchers on how to work with these documents.
(c) *International Legal Materials* (*ILM*) is a bimonthly publication of the American Society of International Law. Each issue contains *inter alia* the full texts of treaties, judicial and arbitral decisions and documents of international and regional organisations.
(d) There are also some other useful works that contain the texts of international and/or regional documents, for example: Mtshaulana PM, Dugard J and Botha N (eds) *Documents on international law: handbook for law students and constitutional lawyers* (Juta Kenwyn 1996); Heyns C and Killander M (eds) *Compendium of key human rights documents of the African Union*. 2nd ed (PULP Pretoria 2006).

1.4 SUMMARY

Source	Full reference	Short version
Books	Rowlands M *The philosopher at the end of the universe: philosophy explained through science-fiction films* (Ebury Press London 2003)	Rowlands *The philosopher at the end of the universe*
Chapter in book	Cover R "Violence and the word" in Minow M, Ryan M and Sarat A (eds) *Narrative, violence and the law: the essays of Robert Cover* (University of Michigan Press Ann Arbor 1992) 203–238	Cover "Violence and the word"
Articles	Schlag P "Law as the continuation of God by other means" 1997 *California Law Review* 427–440	Schlag 1997 *California LR* 427.

51 This is required by the citation of Constitutional Laws Act 5 of 2005.

Legislation	National Health Act 61 of 2003	None, but see comments in text.
Constitution	Constitution of the Republic of South Africa, 1996	None, but see comments in text.
Case law	*Hoffmann v South African Airways* 2001 (1) SA 1 (CC)	None, but see comments in text.
Internet	*Mamoepa B "The Act on Higher Education"* http://www.star.hsrc.ac.za/nche.html *(Date of use: 16 November 1997)*	Mamoepa http://www.star.hsrc.ac.za/nche.html (Date of use: 16 November 1997)

The above is long and short references for your bibliography. Note that in the bibliography there is no reference to the specific page that you found a particular piece of information on since you might have used various pages from that one source. Reference to the specific page where you found the information is only inserted and found in your footnotes.

SECTION D

MISCELLANEOUS

THIS IS THE CORRECT FORMAT OF THE FRONT COVER OF YOUR RESEARCH PROPOSAL

WHO WILL BE TRIUMPHANT OVER THE NEW USA REFUGEE LAWS: INTERNATIONAL LAW OR DONALD TRUMP?

By

OS SIBANDA
(528882098276)

Submitted in partial fulfilment of the requirements for the degree
LLB

In the

SCHOOL OF LAW

UNIVERSITY OF SOUTH AFRICA

SUPERVISOR: PROFESSOR JJ KORTJAS

(PORTFOLIO/ASSIGNMENT 03)

20 _ _

THIS IS THE ACADEMIC INTEGRITY DECLARATION THAT MUST BE INCLUDED IN ASSIGNMENT 2 AND THE PORTFOLIO EXAMINATION

ACADEMIC HONESTY DECLARATION

Declaration: .....

1. I understand what academic dishonesty entails and am aware of Unisa's policies in this regard.
2. I declare that this assignment is my own, original work. Where I have used someone else's work, I have indicated this by using the prescribed style of referencing. Every contribution to, and quotation in, this assignment from the work or works of other people has been referenced according to this style.
3. 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.
4. I did not make use of another student's work and submitted it as my own.

NAME: ……

SIGNATURE: ……

STUDENT NUMBER: ……

MODULE CODE: .....

DATE……

1.1 NOTES ON ACCESSING RELIABLE SOURCES OF LEGAL INFORMATION

1.1.1 Dangers of the internet as a source of information

Without doubt, internet sources such as Wikipedia, Bing, and Google are the most convenient way of getting information. In fact, we have seen more and more students turning to unscholarly internet sources when doing their research, often to their detriment. Reliability and validity are often lacking in these net sources. Did you know, for example, that Wikipedia entries can be written and edited by *anyone*? The information is unsubstantiated and in certain cases inaccurate and outdated. In addition, the information is opinion and not factual, impartial and objective. The language used in some entries brims over with emotion and bias.

1.1.2 Reliable, authoritative and persuasive sources of law

There are many other databases available that you may encounter and use when doing research. The following are a number of databases you could consider for authoritative and persuasive sources of law.

LEGISLATION	
Acts Online	Full-text
Jutastat	Full-text
My LexisNexis	Full-text
Sabinet	Full-text
CASE LAW	
Court websites	Full judgments/court documents
Jutastat	Full judgments
My LexisNexis	Full judgments
SAFLII	Full judgments
TEXTBOOKS	
Google Books	Index of books, but also full access or limited access in some cases.
SACat	Index of books available in South Africa.
Unisa Library catalogue	Index of books available in the Unisa Library. All these books can be requested if needed for your research and the Unisa library will post them to you.
JOURNAL ARTICLES	
ISAP	Index of journal articles in South Africa. These articles can also be requested from the Unisa library.
HeinOnline	Index and full access to international law journals (including certain South African law journals).
SA ePublications	Index and full access to South African journals (including certain South African law journals).

Google Scholar	Index of journal articles internationally (including South Africa), but also full access or limited access in some cases.
Unisa e-journals	Links to electronic journals (by name).

Below is an alphabetical list of all the databases listed above and where to find them:

Law database	**Link / where to find**
Acts online	http://www.acts.co.za
Court websites	Certain South African courts have their own websites where they publish their judgments. For example, the Constitutional Court website can be found at http://www.constitutionalcourt.org.za. (You can search for other court websites on the internet.)
Google Books	http://books.google.co.za
Google Scholar	http://scholar.google.co.za
HeinOnline	Go to the Unisa library website. Click on the "subject databases" link under "Online collections". Click on "law" and then click on the "HeinOnline" link.
ISAP	Go to the Unisa library website. Click on the "subject databases" link under "Online collections". Click on "law" and then click on the "ISAP (Index to Southern African periodicals)" link.
Jutastat	Jutastat can only be accessed from a computer on any Unisa campus. Click on the "Wincdnet" icon on the desktop. When the window open click on "Law". A list of law databases will appear in the window on the right. Click on the relevant database.
My LexisNexis	My LexisNexis can only be accessed from a computer on any Unisa campus. Click on the "Wincdnet" icon on the desktop. When the window opens, click on "Law". A list of law databases will appear in the window on the right. Click on "My LexisNexis Law Library".
Sabinet	Go to the Unisa library website. Click on the "subject databases" link under "Online collections". Click on "law" and then click on the "Sabinet Legal Products (new search interface)" link.
SACat	Go to the Unisa library website. Click on the "subject databases" link under "Online collections". Click on "law" and then click on the "SACat" link.
SA ePublications	Go to the Unisa library website. Click on the "subject databases" link under "Online collections". Click on "law" and then click on the "SA ePublications" link.
SAFLII	http://www.saflii.org/
Unisa e-journals	Go to the Unisa library website. Click on the "e-journals" link under the heading "Online collections".
Unisa library catalogue	Go to the Unisa library website. Click on the "Find the library catalogue" link under the heading "Find information".

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