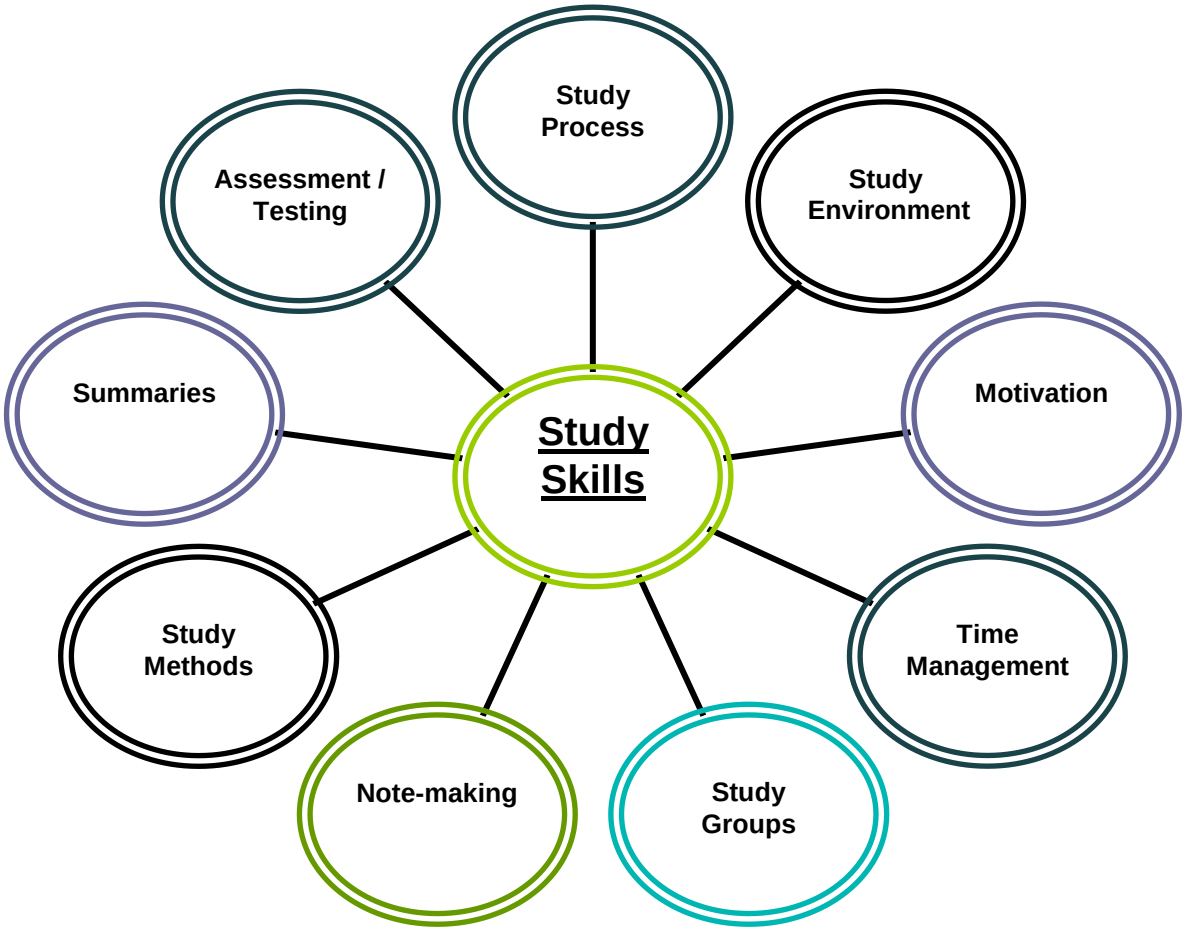
STUDY UNIT 1 STUDY SKILLS



THE STUDY PROCESS

To understand study process: go back to concept "LEARNING"

Learning → active process & a lot of activities

→ Learner must actively (as subjective being):

→ get involved / participate in the process / have responsibility

- Participation Involves:
  - Questioning Info – if necessary: change/reinterpret it
  - Get new ideas & info : make it your own
  - Relate info to your own life & apply it in relevant situations
  - Interact/discuss with fellow students/teacher
  - Share ideas

Phases:

Exploration	**Fixation**	**Testing**
Generalising of activities where you try to get info on the topic - get background info to familiarise yourself with the work. Start by: 1. Planning& managing your time 2. Put yourself to ease for later study THINGS YOU'D DO: * contact students to solve problems * Discuss topic-lecturer.. * Identify& clarify difficult concepts * Get an overview of learning material's content * Identify questions- you need to answer *Summarise- for later study	Stage where you get to grips with the content -intensive reading (fully concentrate on detail to be able to report back) THINGS YOU'D DO: * consolidation of facts- to understand the material * summarising facts – most important facts * Memorising/ rehearsal – absorb facts	To assess your understanding of the material you have studied. NB- know action words: they tell you what & how to answer questions.

STUDY ENVIRONMENT

→ Environment forms the basis for our inspiration to achieve

→ NB to ensure that the environment around us is suited to studying and learning.

The following elements can be helpful:

- Good relationships with people around you

→ Know the kind of people / social space - master it & know how to get the best out of it.

- Physical space (advantages)

→ have particular place where you study: makes you calm / easier to settle / not easy distracted

→ it will help you to get in a working mood & you will know where your materials are at

- Be comfortable
- Lighting and ventilation

→ enough lighting (not causing eye strain): Study lamp (no shadows) & Fresh Air

- Temperature control

→ Not too cold (loose focus) or too warm (you'll slumber)

- No interruptions

→ extended periods of studying – no phones / people

- No distractions

→ Quiet Place – Might adjust study time table for quiet times

MOTIVATION

There are 2 types of motivates that will shape you as student: Internal & External Motivation

External Motivation:

→ Springs from the outside individual & weaker than internal motivation

→ 2 Types of external motivation → Positive & Negative

- Positive External Motivation → If you pass your 1st year courses you get a bursary.
- Negative External Motivation → If you don't pass your 1st year, you'll **not** get a bursary.

Internal Motivation:

→ Internal to individual (you push yourself to do well) / goals you set for yourself

→ 2 Types of goals → Long term & Short term Goals

- Long term Goals → Shapes you as student : Long period (month / year)
  Example: Aiming to pass LLB degree / exam
- Short Term Goals → also called objective
  → targets to achieve in short period (minute / day)
  Example: Read text / unit
  → help in motivation when actively engaged in study process
  → encourages you to keep going

Learning Contract → whereby you practically write an agreement and put up to remind yourself about your goals and commitments.

→ By making this pact / agreement you make it possible for yourself to stay motivated / focused on your studies.

HINT: When you are self-motivated, have the right attitude to your work &the necessary confidence about your work/studies, you can practically deal with many factors or challenges that your environment may pose to you.

TIME MANAGEMENT

A key element in time management: the ability to prioritise your work / activities

Time management is divided into 2 categories → prioritising & time planning

Prioritising

→ the practice of setting your priorities / deciding what is NB & what is not

→ You sacrifice your "wants" for your "should do's"

→ To deal with conflicts→ a Full Time Plan is NB

(1) List NB tasks

(2) Draw time table (it will urge you to start studying)

Time Planning

Time Tables helps you to deal with the following problems:

→ procrastination — when you cannot get started

→ working only when under pressure

→ imbalance in time allocation to various subjects / activities

→ must have breaks / gaps between activities

Points to consider when planning a time table:

→ Fit your study times around maximum performance times

→ Time to give friends and family after studying

→ Time to work and/or perform chores

→ If you're able to keep all your hobbies and interests going

→ Time for rest and relaxation

STUDY GROUPS

We learn from others & relate to them.

Being part of a group helps us develop our thoughts / social skills & behavioural patterns.

Why Study Groups?

→ One day you'll be a lawyer that may be part of a group / partnership / Bar of Advocates

→ Conversation/argumentation shows gaps in knowledge & abilities and can force you to work out conclusions / implications / applications which you were not aware of previously.

What makes a Study Group work?

→ Key feature of functional groups: respect / integrity.

→ Members of group must respect one another.

→ NB characteristics of a group → GROUP MEMBERS MUST:

- Understand their *common objective*.
- Observe the *basic house rules →1* speaks at a time / on time & prepare for meeting
- Have their *roles defined* → who'll be the chairperson / time-keeper / organiser
- Have confidence and *trust* in each other.
- The group must be *manageable*.
- Everyone must *contribute* to discussion
- Work *co-operatively &* preparedness
- *Constructive criticism* to the benefit of the whole group→ must be meant well & to help group

Benefits study group:

→ Serve as a pool of motivation → idea of ''not alone'' can inspire you.

→ Give you confidence to actively engage / participate in discussions.

→ Forced to prepare something → not to be embarrassed

→ Hearing discussion about issues / concepts → you only read on your own

→ Different dimensions / perspectives to how you understood
→ new ideas are introduced & you can compare meaningful notes.

→ Compare notes & exchange views → clarify issues / get better under-standing of matter

→ When you prepare / present something → become almost expert on topic

→ Add a social / interactive element to the study process → don't make social club

Disadvantages of study groups:

→ Some may not work hard enough → "back-ride" on those who do

→ Some may be arrogant / bully others to ''show'' off

→ Domination

→ Some may become silent / passive → not participating

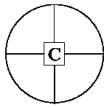
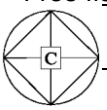
→ Some may not be prepared

→ Logistics problems → availability of venues

Ways in which a group can function:

Groups can function in 3 ways by means of 3 models:

→ Central figure / decentralised groups / free flow + chairperson

Central figure	Decentralised groups	Free flow of communication + chairperson
		
→ middle person: responsible for flow of communication. → suitable for simple tasks. Disadvantages: → central figure overloaded with info ≈can block the flow of info Used: → in most meetings where all members address comments through chairperson. For success: → leadership abilities of person in charge	→ communication flows freely between the group members. → suitable for small groups. Disadvantages: → can lead to ''talk shows'' ≈ while nothing gets done.	→ members talk to each other → leader/chairperson also available & sees that decisions are implemented → Biggest success.

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Note-making

To take & make notes: you must know what is NB & leave out irrelevant points.

Therefore you must should have good reading skills & understand the material you study / have read.

NB to know these reading techniques: *speed-reading, skimming, scanning & study reading*.

Reasons for note-making:

→ to have a *ready record* of important things when we may need

For notes to be useful, they have to be:

→ *adequate* and *effective*

→ ensure they have: *main ideas*, *details & illustrations / examples*.

Points about Notes / Note-making Process:

→ Good notes develop from effective reading & listening strategies.

→ It's an active process & promotes learning.

→ It helps you sustain your concentration when studying

→ write in own words & phrase-like format.

→ leave enough space between: margins / words / sentences / paragraphs

→ serves as a way of reinforcing what we are reading / have read.

→ serve as record for future use

→ Various formats can be used: indenting / headings / bullets / numbers

→ write as quickly as possible to save reading time: abbreviations / shorthand

→ After reading: go over notes / edit them /

→ Use (A4) size paper / notebook / Separate into sections & write neat

Note-making styles

Ways in which we make notes can be categorised into Visual & Narrative Notes.

Visual notes:

→ more schematic / diagrammatic

→ Examples: mind maps, spider-grams, branching notes, tables, flow charts

Narrative notes:

→ These are more textual & engage a lot of written work

→ Examples: linear notes, lists, time-line notes, keyword & paragraph method, the question method and, segmenting & labelling

Note making style depend on:

(i) *individual learning style*

(ii) *the kind of subject matter you are reading*

(iii) *whether you are far from examinations*

(iv) *whether it is the first time you study that particular topic*

→ A combination of the various styles will help you succeed.

Study methods

Our Study method choice influences the study process & should help us to learn.

Learning → active process: it entails getting involved / participating /taking responsibility for learning

Mnemonics/memory strategies

→ The purpose in reading / studying: not only to *store* facts /details

→ The key point for you: 'think' through ideas / arguments you are reading.

→ To deal with a topic / idea / argument: you must recall / remember certain words, figures, keywords. It is useful and relevant to you as a student.

Various memory strategies:

→ Acronyms

→ Acrostics

→ Keyword method

→ Linking/chain method

→ Association

→ Imagery

Acronyms

→ To remember certain facts→ know *keywords: 1st Letter = cue* to item / idea / word

→ An acronym: a combination of letters used to memorise a list of words / phrases ect

→ Example: BODMAS→ (**B**rackets, **O**f, **D**ivision, **M**ultiplication, **A**ddition and **S**ubtraction)

Classification:

→ Rearrange info in our material to make it easier to remember

→ Info relating to same topic: brought together & given name / heading / subheading

→ Example: (1) Find all modes off transport (2) Group: Road / Sea / Air Transport

Summaries

→ A summary: a short representation of the original text.

→ Only main NB ideas are used.

→ Do summaries: so in future we get what text is about without wasting time.

→ AVOID: quotations / repetitions /examples / illustrations are avoided.

→ Summaries SIZE: $1/10^{th}$ of original text.

Note: If material are too complex→ may include examples to make it easier to understand.

To write summary Start by:

→ reading original text thoroughly to understand

→ be able to tell in a sentence or so what text is all about

→ can go back to look at specific points / keywords / key ideas

→ Highlight as you read & don't deviate from original text.

Summaries encourage you to look at various ideas / facts & give an outline of the author's main ideas.

Benefit: SAVES TIME

Hints on making good summaries

- Don't change content & ideas of original text
- Read whole text: to grasp main idea(s) → may write statement briefly outlining this
- Find key points /details : the writer use to illustrate /support idea / argument
- Identify keywords
- Include definitions of key principles / theories / procedures
- Write in plain language
- Be objective and factual
- Make sure points in summary are coherent.
- Summary: not a replacement for original source

Dealing with assessment/testing

(Relates to the testing phase)

Assessing / testing learnt subjects: whether content have been mastered: Tests / Exam / Assignments

→ NB points to help you in dealing with this area of the study process:

- Writing of assignments / how to prepare for examinations & writing the examinations.

Writing assignments

Points to consider when preparing for assignments:

→ Read assignment question : know what to do (Action Words)

→ Start in time: so you have time for research / group discussions / revising notes

→ don't copy a friend's work.

→ Purpose of assignment: to make sure you go through work & forced to go through sections

→ It will determine if you proceed to the next level / not

→ Complete & send assignment before due date.

→ Submit the correct format: mark reading sheets / problem-type / short / one-word questions

→ In a problem / discussion-type questions: stick to required length of the essay

→ Assignment must have 3 sections: an introduction / a body / a conclusion

- Introduction: short / outlining main argument / focusing on question
- Body: longest part / develop argument→ supply details/ examples & support claims by stating relevant facts / Write in paragraphs (one idea per paragraph)
- Conclusion: summarise main argument / focus on question / be brief

Preparing for examinations

→ Physical & mental preparation: enough sleep / eat well / exercise

→ Understand why tested: attitude will be more positive & approach exam with confidence

→ Start in advance with studies: Summarise / Understand before memorising / Test yourself

→ go through previous exam papers.

→ Assignments & Tutorial letters: part of study material for the exams

→ Be on time: make travel arrangements in time

Writing exams

→ Dress neatly: more confident

→ Believe in yourself

→ Don't take notes into exam hall

→ Read exam paper: to get idea what is asked.

→ Plan your answers. Note time limit!

NB: SCL1014 is a 2 hour paper. You'll have to write VERY fast to finish! DO NOT WASTE ANY TIME!

→ Do answers you know best first / then go back to those which require more time.

→ Write neatly!

STUDY UNIT 2 READING SKILLS

When are you an effective reader?

An effective reader: can read fast & effectively.

This means that he / she can:

→ apply different reading techniques

→ understand purpose of reading a text & act accordingly

→ while reading: see both the bigger picture & detail

→ identify structure of different kinds of texts

→ see text as & link it to known facts

→ correctly assume what is not directly said / implied

→ evaluate text for its purpose / content / usefulness / objectivity & scientific correctness

→ interpret & understand the text

To interpret & understand the text→ the reader must:

→ Skill to read

→ Broad general knowledge: understand the meaning of words & expressions

→ Understand literal & figurative speech

→ Not read: word for word→ but read for meaning

→ Recognise most NB facts

→ Understand nature & 'message' of specific article

To read and understand an Act of Parliament

When you read an Act reference will be made to the:

→ (a) text

→ (b) context

→ (c) presumptions

Signed by the President

 b(1)

(a)

Short title: the Electronic Communications Act, 2005.

Act approved:
11 April 2006

(b)

(English text signed by the President)
(Assented to 11 April 2006.) (b)

ACT

To promote convergence in the broadcasting, broadcasting signal distribution and telecommunications sectors and to provide the legal framework for convergence of these sectors; to make new provision for the regulation of electronic communications services, electronic communications network services and broadcasting services; to provide for the granting of new licences and new social obligations; to provide for the control of the radio frequency spectrum; to provide for the continued existence of the Universal Service Agency and the Universal Service Fund; and to provide for matters incidental thereto.

(c)

Long title:
It explains **the purpose of the act**.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

ARRANGEMENT OF SECTIONS

Sections

CHAPTER 1

INTRODUCTORY PROVISIONS

1 Definitions
2. Object of Act

CHAPTER 2

POLICY AND REGULATIONS

3 Ministerial Policies and Policy directions
4. Regulations by Authority

CHAPTER 3

LICENSING FRAMEWORK

5. Licensing
6 Licence exemption
7. Prohibition of provision of service without licence
8. Terms and conditions for licences
9 Application for and granting of individual licences
10. Amendment of individual licence
11. Renewal of individual licence
12 Surrender of individual licence
13 Transfer of individual licence or change of ownership
14. Suspension or cancellation of individual licence
15. Effect of suspension, cancellation, surrender or expiry of individual licence
16. Class licence
17. Registration for class licence

CHAPTER 14

UNIVERSAL SERVICE AND ACCESS AGENCY OF SOUTH AFRICA

80 Continued existence of Universal Service Agency
81 Functions of Board
82 Functions of Agency
83 CEO and staff of Agency
84. Financing of Agency
85 Banking account
86 Annual and other reports
87 Continued existence and control of Universal Service Fund
88. Application of money in Universal Service and Access Fund
89 Contributions to Universal Service and Access Fund
90 Competitive tender for universal service and access projects
91 Accounts of Universal Service and Access Fund

CHAPTER 15

TRANSITIONAL PROVISIONS

92 Existing licences
93 Licence conversion
94 Conflicts
95 Existing regulations
96 Application of Act
97 Repeal and amendment of laws
98 Short title and commencement

SCHEDULE

CHAPTER 1

INTRODUCTORY PROVISIONS

Definitions

(d)

Definitions / Definition Clause: Technical & difficult terms / comprehensive phrases contained in the Act are explained.

1. In this Act, unless the context indicates otherwise—

"**affiliate**" means with respect to any person, any other person that, directly or indirectly—

(a) controls the first mentioned person;

(b) is controlled by the first mentioned person, or

(c) is under common control, with the first mentioned person,

"**Agency**" means the Universal Service and Access Agency of South Africa established by section 80;

"**Authority**" means the Independent Communications Authority of South Africa established by section 3 of the Independent Communications Authority of South Africa Act, 2000 (Act No 13 of 2000);

"**broadcasting**" means any form of unidirectional electronic communications intended for reception by—

(a) the public;

(b) sections of the public; or

(c) subscribers to any broadcasting service,

whether conveyed by means of radio frequency spectrum or any electronic communications network or any combination thereof, and "broadcast" is construed accordingly;

"**Broadcasting Act**" means the Broadcasting Act, 1999 (Act No 4 of 1999);

"**broadcasting service**" means any service which consists of broadcasting and which service is conveyed by means of an electronic communications network, but does not include—

(ii) inviting interested persons to submit written submissions in relation to the policy direction in the manner specified in such notice in not less than 30 days from the date of the notice,

(c) must publish a final version of the policy direction in the *Gazette*

(6) The provisions of subsection (5) do not apply in respect of any amendment by the Minister of a policy direction contemplated in subsection (2) as a result of representations received and reviewed by him or her after consultation or publication in terms of subsection (5)

(7) Subject to subsection (8), a policy direction issued under subsection (2) may be amended, withdrawn or substituted by the Minister

(8) Except in the case of an amendment contemplated in subsection (6), the provisions of subsection (3) and (5) apply, with the necessary changes, in relation to any such amendment or substitution of a policy direction under subsection (7)

(9) The Authority may make recommendations to the Minister on policy matters in accordance with the objects of this Act

Regulations by Authority

Subsection

(f)

Sections

(e)

4. (1) The Authority may make regulations with regard to any matter which in terms of this Act or the related legislation must or may be prescribed, governed or determined by regulation Without derogating from the generality of this subsection, the Authority may make regulations with regard to—

Paragraphs

(g)

(a) any technical matter necessary or expedient for the regulation of the services identified in Chapter 3,

(b) any matter of procedure or form which may be necessary or expedient to prescribe for the purposes of this Act or the related legislation,

(c) the payment to the Authority of charges and fees in respect of—

Sub paragraphs

(h)

(i) the supply by the Authority of facilities for the inspection, examination or copying of material under the control of the Authority,

(ii) the transcription of material from one medium to another;

(iii) the supply of copies, transcripts and reproductions in whatsoever form and the certification of copies;

(iv) the granting of licences in terms of this Act or the related legislation;

(v) applications for and the grant, amendment, renewal, transfer or disposal of licences or any interest in a licence in terms of this Act or the related legislation, and

(d) generally, the control of the radio frequency spectrum, radio activities and the use of radio apparatus

(2) Different regulations may be made in respect of different—

(a) licences granted in terms of this Act; and

(b) uses of radio frequency spectrum

(3) Any regulation made by the Authority in terms of subsection (1) may declare a contravention of that regulation to be an offence, provided that any such regulation must specify the penalty that may be imposed in respect of such contravention taking into account section 17H of the ICASA Act

(4) The Authority must, not less than thirty (30) days before any regulation is made, publish such regulation in the *Gazette*, together with a notice—

(a) declaring the Authority's intention to make that regulation; and

(b) inviting interested parties to make written representations on the regulation

(5) The Authority must, not less than 30 days prior to making regulations, inform the Minister in writing of its intention and the subject matter of the regulations

(6) The Authority may conduct public hearings in respect of a draft regulation

(7) The provisions of subsection (4) do not apply with regard to—

(b) for the use of the radio frequency spectrum granted by the Authority in terms of this Act

(11) Despite section 8, existing licences remain subject to all terms and conditions associated with such licences that are not inconsistent with this Act until such licences are converted and re-issued in terms of this Chapter.

Conflicts

94. In the event of any conflict between the provisions of this Act, the related legislation or any other law relating to the regulation of broadcasting or electronic communications, the provisions of this Act prevail

Existing regulations

95. (1) Within twenty-four months of the coming into force of this Act, the Authority may, if the Authority considers it necessary, repeal or amend the regulations made under—

(a) section 119A of the Post Office Act, 1958 (Act No. 44 of 1958);
(b) the Telecommunications Act;
(c) the Broadcasting Act;
(d) the IBA Act;
(e) the Radio Act, 1952 (Act No. 3 of 1952); and
(f) the Sentech Act,

which were in force immediately prior to the commencement of this Act.

(2) The regulations referred to in subsection (1) remain in force until they are amended or repealed in terms of this Act

Application of Act

96. This Act binds the State.

Repeal and amendment of laws

97. The laws referred to in the first column of the Schedule are repealed or amended to the extent indicated in the third column

Short title and commencement

98. This Act is called the Electronic Communications Act, 2005, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

Short title: the Electronic Communications Act, 2005.

(a)

(Following from the Example)

(a) <u>Text</u>

You approach an Act by reading the **signed text**.

→ English text: signed by the President (see (b)(1))

→ Act approved: 11 April 2006 (see (b))

→ Act published in *Government Gazette:* 18 April 2006 (see (b)).

NOTE: Sometimes an Act becomes effective on the same date as published in the Government Gazette, but at other times it is indicated in the Act when it will be effective (see sec. 98 of the Act).

→ **Signed text:** Before an Act can be published; it has to be signed by the State President after Parliament has approved it.

→ The **president signed the English copy** of the Act: This means→ whenever there's a dispute concerning any part of the Act, the English version will be the official version.

→ **Short title:** the Electronic Communications Act, 2005. (see (a) and sec 98 of the Act).

→ **Long title:** the piece printed in bold under the word ACT (see (c)).
The long title of an Act explains **the purpose of the act**.

→ After the long title of the Act you will find the ''**contents''** of the Act: in which it's indicated per chapter which topics will receive attention.

→ Chapter 1, the **Definitions** (see (d)): Not ALL the words in the Act are explained.
Technical & difficult terms / comprehensive phrases contained in the Act are explained.

→ Acts are divided into Sections / subsections / paragraphs & sub paragraphs (see (e)(f)(g)(h))
This is to help you understand the Act better & to help you with referencing.

When you reference it might read like this:
Sec 4(1)(a)(i) of Act 36 of 2005

How does one refer to an Act?

Any Act in South Africa has a name (the short title) + a number & the year of publication.
→ For example: the Road Safety Act 29 of 1989.
This comprehensive reference is usually used the first time reference is made to the Act.
When you refer to the same Act later you can simply refer to ''the Act''.

(b) <u>Context</u>

Apart from the text of an Act, you will have to consider the context which gave rise to the Act as well.

Section 39(2) of the Bill of Rights in the Constitution says:
→ that a court, in interpreting any Act, has to take cognisance of the spirit, purport and objects of the Bill of Rights.
→ The courts therefore sometimes recognise external circumstances in explaining the reason the Act came into being.
→ They will investigate the reasons why the Act was necessary. They might therefore also consider the socio-economic and political or historical scenario in which the Act was formulated.

(c) <u>Presumptions</u>

Apart from the rules concerning the interpretation of Acts, certain presumptions must also be taken into account→ For example:

→ Legislation does not contain meaningless sections, every word & phrase has meaning.

→ Legislation doesn't want to change existing laws unnecessarily.

→ Unreasonable / unfair consequences are not envisaged.

→ Legislation only applies in future and not retrospectively.

Latin terms

(The following terms can be tested as short questions in the examination.)

a fortiori	→	the more so
a quo	→	whench / from which (e.g. court *a quo*)
ab initio	→	from the beginning/start
ad hoc	→	for a specific occasion; for the present purpose
ad hominem	→	relating to the person
ad idem	→	of one mind; unanimous
ad infinitum	→	for ever, without end
amicus curiae	→	friend of the court (an advocate requested by the court to appear in a certain case).
Animus	→	intention
animus iniuriandi	→	intention to injure
animus testandi	→	intention of making a will
audi alteram partem	→	to give a person the chance to state his/her side of the matter; both sides of the story are heard
bona fide	→	in good faith (and honest intention)
boni mores	→	good morals
causa	→	cause; consideration; inducement; motive; reason for doing something
contra bonos mores	→	against good morals
culpa	→	fault; neglect; negligence
cur adv vult (curia advisari vult)	→	the court wishes to consider its verdict; reserves judgement
curator ad litem	→	person appointed by the court to assist another in litigation
curator bonis	→	curator of property
de facto	→	in fact; in deed; as a matter of fact
de iure	→	of right; in law; judged by the law
de minimus non curat lex	→	the law does not concern itself with trifles
de novo	→	afresh; anew
diligens paterfamilias	→	reasonable person
ex contractu	→	from a contract
ex delicto	→	from a delict
ex lege	→	by force (operation) of law; as a matter of law; according to the law
id est	→	it is; namely
in absentia	→	in his/her absence
in camera	→	behind closed doors; in chambers; in private; eg a court that is not open to the general public

in casu	→	in the present matter
infra	→	below
in re	→	in the case of
inter alia	→	amongst others
interim	→	meanwhile
inter partes	→	between the parties
ipso facto	→	within the powers/competence of ...
ipso iure	→	by the law as such
ius	→	a right; the law
locus standi	→	right to be heard
mala fide	→	in bad faith
mutatis mutandis	→	with the necessary amendments, changes
nomine officio (NO)	→	in official capacity
obiter dictum	→	a remark in passing
pendente lite	→	pending the case
per se	→	by himself; on its own
postea	→	afterwards
prima facie	→	at first sight; on the face of it
pro Deo	→	literally ‘‘for God’s sake’’; defence at state expense of an accused lacking the means of briefing counsel
pro non scripto	→	as if it has not been written
pro rata	→	proportionally
quantum	→	amount (eg of damages)
ratio decidendi	→	reason for the court’s ruling
spes	→	hope; expectation
stare decisis	→	abide by decided decisions
sub iudice	→	a trial that is still pending
sui generic	→	peculiar to itself ; distinctive
subpoena	→	summons; eg in a criminal case a witness is subpoenaed to give evidence in the court
supra	→	above
ultra vires	→	exceeding authorisation
verbatim	→	word for word; literally
versus	→	against
vice versa	→	the other way round
viva voce	→	verbally eg oral evidence
volenti non fit iniuria	→	to one consenting no wrong is done
vide	→	view

How to read a court case

There are three types of reported court decisions: civil / criminal / constitutional cases.

The following cases are used as examples:

(1) *S v Makua* 1993 (1) SACR 160 (T)

→ This is a criminal case.

(2) *Molefe v Mahaeng* 1999 (1) SA 562 (SCA)

→ This is a civil case.

(3) *Ex Parte Addleson* 1948 (2) SA 16 (E)

→ This is a motion application where only one person/party is involved.

CASE NAME

Reference to a case will always start with the name of that case (names of the parties/ persons involved in the case). "v": versus / against

- Criminal Cases → State v Accused
- Civil Cases → Plaintiff v Defendant / Appellant v Respondent

NOTE:

→ In earlier criminal cases (cases heard by our courts before 1961) the letter ''R'' was used instead of ''S''. The ''R'' stands for the (royal) crown.

→ The prosecutions during that period (before SA became a Republic in 1961) were instituted on behalf of the King or Queen of England. → This is because the King or Queen of England had sovereignty over South Africa.

→ Also: that ''R'' refers to Latin ''Rex'' (meaning King) / ''Regina'' (meaning Queen).

(1) ***S v Makua***

→ The parties are: State v Accused → Criminal case: state is involved

(2) ***Molefe v Mahaeng***

→ The parties are: Appellant (Molefe) v Respondent (Mahaeng) → Heard on Appeal

→ On Appeal because case is heard before the SCA (Supreme Court of Appeal)

→ Civil case: a case between citizens→ An action proceeding was used

In action proceedings: the name of the plaintiff given 1st followed by the defendant's.

→ If matter on appeal: the name of the appellant will appear 1st followed by the respondent's.

Procedure in action proceedings: started by way of a summons.

→ This procedure (action proceedings) used: when there's a fundamental difference between the parties as far as the facts of the case are concerned.

(3) ***Ex parte Addleson***

→ The parties are: Applicant and/or Respondent if any (Mr Addleson)→ Civil case

→ Application proceeding has been used

In application proceedings: the Latin words ‘‘*Ex parte*’’ appear before the applicant’s name.
The person who is bringing the application follows these Latin words.
Procedure in application proceedings: started by way of notice of motion.

→ This procedure (application proceeding) used: when there’s no fundamental difference between the parties as far as the facts of the case are concerned. The parties, in other words, more or less agree on the facts of the case.

→ If there is another person who wants to object to the application, then that person would be indicated as the respondent.

YEAR AND VOLUME

This relates to the books / bundles in which publishers report cases every year. (“reports)

→ Case name & year (volume of the report)

(1) *S v Makua* **1993 (1)** SACR 160 (T)
→ This case can be found in the first volume of 1993.

(2) *Molefe v Mahaeng* **1999 (1)** SA 562 (SCA)
→ This case can be found in the first volume of 1999.

(3) *Ex parte Addleson* **1948 (2)** SA 16 (E)
→ This case can be found in the second volume of 1948.

SERIES OF LAW REPORTS

Law reports are identified by the abbreviations of the different names given to them.

→ Case name & year (volume) & (Abbreviation of name of law report)

(1) *S v Makua* 1993 (1) **SACR** 160 (T)
→ SACR: *South African Criminal Law Reports*. (Only criminal law cases reported here)

(2) *Molefe v Mahaeng* 1999 (1) **SA** 562 (SCA)
→ SA: *South African Law Reports*. (Covers SA criminal, civil & constitutional cases)

(3) *Ex parte Addleson* 1948 (2) **SA** 16 (E)
→ SA: *South African Law Reports*.

Other specialist law reports:

→ CLR: *Commercial Law Reports*

→ SALLR: *South African Labour Law Reports*

→ BCLR: *Butterworth’s Constitutional Law Reports*

NOTE:

→ not all civil and criminal cases are reported: **Only the NB ones**

→ no magistrate’s court cases are reported

→ only certain decisions of the higher courts are reported

→ all constitutional cases are reported

THE PAGE WHERE THE REPORT STARTS

(1) *S v Makua* 1993 (1) SACR **160** (T) → This case starts on page 160.

(2) *Molefe v Mahaeng* 1999 (1) SA **562** (SCA) → This case starts on page 562.

(3) *Ex Parte Addleson* 1948 (2) SA **16** (E) → This case starts on page 16.

THE COURT WHERE THE CASE WAS DECIDED

The letter(s) appearing after page number is the abbreviation of the name of the court.

→ ''the court of first instance'': used to refer to the court which heard the case for the first time

→ ''the court *a quo*'': the court where the case was heard before it came to the court on appeal.

(1) *S v Makua* 1993 (1) SACR 160 **(T)**

→ This case was heard in the Transvaal Provincial Division **(T)** of the High Court.
The Transvaal Provincial Division is in Pretoria

(2) *Molefe v Mahaeng* 1999 (1) SA 562 **(SCA)**

→ This case was heard in the Supreme Court of Appeal.
The Supreme Court of Appeal is in Bloemfontein.

(3) *Ex Parte Addleson* 1948 (2) SA 16 (**E**)

→ This case was heard in te Eastern Cape Provincial Division of the High Court.
This Division is in Grahamstown.

List of some of the most common abbreviations used to indicate specific courts:

→ CC/KH: Constitutional Court (Johannesburg)

→ SCA/HHA: Supreme Court of Appeal (Bloemfontein).
Replaces the Appellate Division which was abbreviated by ''A''

→ C/K: Cape Provincial Division (Cape Town)

→ E/OK: Eastern Cape Provincial Division (Grahamstown)

→ SE/SOK: South East Cape Provincial Division (Port Elizabeth)

→ N: Natal Provincial Division (Pietermaritzburg)

→ D/D+C/D+K: Durban and Coast Local Division (Durban)

→ NC/NK: North Cape Division (Kimberley)

→ O: Orange Free State Provincial Division (Bloemfontein)

→ T/TPD/TPA: Transvaal Provincial Division (Pretoria)

→ W/WLD/WPA: Witwatersrand Local Division (Johannesburg)

THE STRUCTURE OF A REPORTED DECISION

Structure of a decision / case:

(1) Judges' Names

The name(s) of the judge(s) appear(s) under the name of the court where the matter was heard.

The letters appearing after the names of the judges indicate the title of the judge.

→ ''J'' stands for ''Judge''.

Up to November 2001, the titles of the judges in the different courts were indicated as follows:

Constitutional court	**Supreme Court of Appeal**	**High Courts**
P: President	CJ: Chief Justice	JP: Judge President
DP: Deputy President	DCJ: Deputy Chief Justice	DJP: Deputy Judge President
J: Judge/Justice	JA: Judge of Appeal	J: Judge
	AJA: Acting Judge of Appeal	AJ: Acting Judge

In November 2001, an amendment to the Constitution changed the titles of the judges of the Constitutional Court and the Supreme Court of Appeal.

The titles of the judges of these courts are now indicated as follows:

Constitutional Court	**Supreme Court of Appeal**
CJ: Chief Justice	P: President
DCJ: Deputy Chief Justice	DP: Deputy President
J: Judge/Justice	JA: Judge of Appeal
	AJA: Acting Judge of Appeal

(1) *S v Makua* 1993 (1) SACR 160 (T)

→ Goldstein J and Mahomed J: both Goldstein & Mahomed were judges

(2) *Molefe v Mahaeng* 1999 (1) SA 562 (SCA)

→ Hefer JA & Zulman JA: both judges of appeal

→ Melunsky AJA: acting judge of appeal

(3) *Ex Parte Addleson* 1948 (2) SA 16 (E)

→ Pittman JP: judge president

→ Gardner J: judge

(2) Date on which the case was heard

The date on which the matter was heard appears under the name(s) of the judge(s) who presided over that case.

(1) *S v Makua* 1993 (1) SACR 160 (1).

→ 3 November 1992

(2) *Molefe v Mahaeng* 1999 (1) SA 562 (SCA)

→ 15, 25 September 1998.

(3) *Ex Parte Addleson* 1948 (2) SA 16 (E)

→ 5 February 1948

(3) Catch Phrases (Flynote) *(NB: Know difference between Flynote & Head note!!!)*

→ It is the most important points with which the judgement is concerned.

→ The catch phrases are put in point form and are separated by dashes.

→ You use the catch phrases of a case to get a rough idea of what the case is about.

→ Compiled by publishers & has little value

(4) Headnotes

→ It is written by the editor of the law reports, who is employed by the publishers.

→ The headnote is a summary of the case.

→ It includes all aspects of the case that the editor considers to be important.

→ It usually includes the area of law the case is concerned with as well as the *ratio* of the case.

→ Some sentences start with the word ''*Held*'': it indicates a finding of the court.

→ The headnote is useful: as it gives you an idea of what the case is all about.

→ Don't only rely on the headnote: the editor's summary may be incomplete / inaccurate.

(5) Legal representatives

→ The persons who represented the parties in court, appear after the headnote.

→ Legal representatives: advocates / attorneys

(6) Summary of heads of argument

→ It is a summary of the arguments & authorities the lawyers presented to the court.

→ does not always appear in all cases

(1) ***S v Makua*** 1993 (1) SACR 160 (T)

→ This case does not have a summary of heads of argument.

(2) ***Molefe v Mahaeng*** 1999 (1) SA 562

→ In this case only a short list of cases cited (or quoted by) the lawyers are given:

→ *Banderker v Marine & Trade Insurance* 1981 (2) PH J54 (A)

→ *Buckman v SA Railways & Harbours* 1941 EDL 239 at 241 …

(3) ***Ex Parte Addleson*** 1948 (2) SA 16 (E)

→ The summary of the argument put by Mr. Addleson's advocate is given:

→ The language on which the decision in *Ex parte Ormonde* (1940, C.P.D. 287) was based is that of Act 16 of 1873 sec. 20; the language of the present Act, 39 of 1946, sec. 1, is different and would justify a distinction. In the Orange Free State the language of the relevant legislation is different with the result that Ormonde's case ... and Act 39 of 1946, sec. 1

(7) Date on which judgment is given

A case may be heard on one day & judgement given the same day or the judge may give the judgment on another day.

→ When judgment is given on a different day as on which the case was heard:

→ the words ''*Cur adv vult*'' will appear. (short for *curia advisari vult)*

→ It means: ''the court wishes to consider the verdict''.

Followed by cur adv vult→ the word "*postea" (* Latin for ''afterwards'')

→ After *postea* you will see a date.

That is the date on which the judgment was given.

(1) *S v Makua* 1993 (1) SACR 160 (T)

→ The words *Cur adv vult & postea* do not appear in this case.

→ because judgment given on same day case was heard.

(2) *Molefe v Mahaeng* 1999 (1) SA 562 (SCA)

→ *Cur adv vult*, (means that the court wishes to consider its verdict)

→ *Postea* (September 25) → judgment given afterwards on 25 September

(3) *Ex Parte Addleson* 1948 (2) SA 16 (E)

→ The words *Cur adv vult & postea* do not appear.

→ judgment given on same day case was heard.

(8) Judgment

If the word *postea* appears, the name of the judge will appear again below it.

→ It is the point at which the judgment starts.

→ The name of the judge is given to indicate which judge gave judgment, if more than one judge hearing the case.

(1) *S v Makua* 1993 (1) SACR 160 (T)

→ **Mahomed J**: The appellant was found guilty in the magistrate's court at Middelburg on a charge of contravening ...

(2) *Molefe v Mahaeng* 1999 (1) SA 562 (SCA)

→ **Melunsky AJA**: At about 11:00 on 11 August 1991 the appellant and the respondent were driving their respective motor vehicles in opposite directions ...

(3) *Ex Parte Addleson* 1948 (2) SA 16 (E)

→ **Pittman JP**: This is an application for admission as an advocate and the provision of the law, on which it is based, is sec. 1 of the Admission of Advocates Amendment Act, 39 of 1946 ...

<u>Judgements often take the following form:</u>

(a) First, the facts are given.

(b) Second, there is a discussion of the relevant legal principles.

(c) Third, the existing law is applied to the facts of the case.

(d) Fourth, a decision is given in the light of the relevant legal principles.

(e) Fifth, an order is given.

(f) Finally, an order regarding costs is made.

Different kinds of judgments:

Majority judgments / minority judgments / separate judgments / concurring judgments

Majority judgment

→ the majority judges who heard a case give the same judgment based on the same reasons.

→ One judge gives the judgment & the others concur (agree) with it.

→ The *ratio decidendi :* creates the precedent to be used in future cases & and is binding.

→ Authoritative

Minority judgment

→ the judge disagrees with the majority and reaches a different conclusion.

→ differs from majority as far as the **judgment & reasons for the judgment** are concerned.

→ No precedent: can have persuasive force in the future

→ Another judge may concur / agree with the minority judgment of another judge.

Separate judgment

→ a judge **does not disagree** with the conclusion of the other judges

→ **but has different reasons** for his/her judgment.

→ Any reasons added by the judge do not establish a **precedent**.

(1) ***S v Makua* 1993 (1) SACR 160 (T)**

→ In this case there were two judges who heard the matter, Mahomed J handed down judgment and Goldstein J concurred.

(2) ***Molefe v Mahaeng* 1999 (1) SA 562 (SCA)**

→ In this case there were three judges who heard the matter. Melunsky AJA handed down judgment and Hefer JA and Zulman JA concurred.

(3) ***Ex parte Addleson* 1948 (2) SA 16 (E)**

→ In this case there were two judges who heard the matter. Pittman JP handed down judgment and Gardner J concurred

(9) Order of the court

(1) ***S v Makua* 1993** (1) SACR 160 (1)

‘‘In the result I would make the following order: …

(2) ***Molefe v Mahaeng*** 1999 (1) SA 562 (SCA)

‘‘The result is that the appeal fails and is dismissed ...’’

(3) ***Ex Parte Addleson*** 1948 (2) SA 16 (E)

‘‘The application, consequently, must be refused ...’’

(10) Order as to costs

After a case has been completed, the costs must be paid.

→ The costs: the expenses involved in the case→ the attorney / advocate account.

→ The presiding officer (judge / magistrate) makes an order.

→ This order will stipulate which party has to pay which costs.

(11) Attorneys

The names of the attorneys of the parties involved in the case appear after the judgment.

(1) *S v Makua* 1993 (1) SACR 160 (T)

→ Appellant's Attorney: Mike Mphela, Groblersdal.

(2) *Molefe v Mahaeng* 1999 (1) SA 562 (SCA)

→ Appellant's Attorneys: *Du Randt & Louw*, Kroonstad; *Schoeman, Maree Inc*, Bloemfontein. Respondent's Attorneys: *Jac S Kloppers & De La Rey*, Welkom; *EG Cooper & Sons Inc*, Bloemfontein.

(3) *Ex Parte Addleson* 1948 (2) SA 16 (E)

→ Applicant's Attorneys: *Nailand & Green*.

(11) Letters of the alphabet

Along the side of every page of the judgment are consecutive letters of the alphabet.

These letters help lawyers / magistrates /judges to refer to specific parts of a judgment.

Reading and understanding a journal article

If you have the name of an article & the author you can find the article in the library.

Before you start reading it, consider these aspects:

→ When was the article published?

→ Was it published before or after the new Constitution?

→ Who is the author/writer of the article? Is he/she an authority on the topic? Has he/she written other articles in the same field as well?

The structure of a good article consists of a: title / abstract / introduction / arguments / conclusion

Reading an article: Read the title & abstract / Skim-read article / Read again for detail & footnotes

Think about the article and answer the following questions in your head: Which aspects is the author addressing and why? Which solutions are given? Is it relevant information that can make a difference? Which sources are referenced and are they authoritative?

STUDY UNIT 3 RESEARCH SKILLS

Legal Research: Finding Sources & present correctly→ don't be guilty of plagiarism.

Plagiarism: Taking the words / ideas / thoughts of another person and present them as your own.

It is a form of theft which includes a number of academic activities.

Examples of plagiarism:

→ the direct repeating or copying of paragraphs / sentence(s) / a meaningful part of a sentence

→ the repeating of thoughts / research results / statistics / designs etc without giving recognition to the original designer or researcher.

→ the paraphrasing of another's work, with small changes, but the essence kept

→ to base your arguments on a specific idea or interpretation which is not yours without giving recognition to the person whose idea it is

→ to copy and paste from numerous sources and present it as your original work;

→ to pretend that you have done the work alone whereas you did it with someone else;

→ to submit a part on the whole piece of work of another student;

→ if you submit an original piece of work with the correct references for two different subjects;

→ to be dishonest in an exam by either using crip notes or to copy from a fellow student.

Sources of the law are divided in two main categories: primary & secondary sources.

- Primary sources: Common law / legislation / court cases / custom
- Secondary sources: Textbooks / journal articles & Internet

Finding PRIMARY SOURCES

→ important→ they are the law at any given moment.

→ authoritative in value

→ common law, legislation, court cases and custom.

Finding legislation

Legislation includes: → National legislation (Parliament) Provincial legislation (Provincial legislatures) & local legislation (City Councils)

Legislation / Act / Statute: published in the *Government Gazette*

→ Certain publishers: Juta & Butterworths→ also publish legislation.
The Butterworths publication: a loose-leaf publication which is updated frequently.
The Juta publication: *Juta's Statutes of South Africa*, is published annually. Volume 1 is the index to the legislation published for a particular year.

→ The index is divided into three sections: alphabetical list of titles / subject list /chronological list of acts:

- If you know the short title of an Act you may look for it in the title section
- If you know the number and year of publication of the act you could use the chronological list for the relevant legislation. In this chronological section acts are arranged according to their number per year

You can also find legislation electronically.

JUTASTAT: is an electronic database available from the publisher, Juta) you can type in key words and the relevant legislation will appear on the screen.

Finding court cases

When you do research it is not sufficient reading only the Act.

You will have to find out whether there are court cases in which the courts interpreted the Act.

It is therefore very important to know where to look for relevant court cases.

Finding common law

South Africa does not have one specific book / code containing a list of all the possible crimes.

→ Therefore, South African law is not codified.

To determine whether a crime has been committed you cannot only look at legislation or court cases. You will have to consult common law as well.

You will find the common law in: the writings of the old authors from Roman and Roman-Dutch times.

Finding secondary sources

REMEMBER: Secondary sources have persuasive authority only.

Secondary sources are influenced by personal arguments & views which are not necessarily correct.

Books

Content of law books can easily become outdated.

NB to note the date of publication.

→ The date of publication appears on the title page / on the back of the title page.

Also NB to look at the place of publication to know which legal system is applicable.

Info in books to help you find info without paging through the whole book

→ **contents page:** in front of the book & gives indication per chapter what info you can find on which page in the book.

→ **register / index**: at the back of a book. It's an alphabetical list of topics & the page number on which they appear in the book.

Journal articles

→ Academic publications

→ Academics who've done research on certain topics publish their results from time to time

→ Majority of journals have an annual index. These indexes contain an alphabetical list of the names of the authors of articles as well as articles per subject.

→ Another way of finding a journal article is by using ISAP *(Index to South African Periodicals)*. This is an online database which is made available through SABINET.

Presenting research results

Do not memorise the following! You should be able to apply the knowledge only!

Footnotes and bibliography

Books

→ always use the latest edition of a book unless there's a good reason to refer to an older edition.

→ The basic form in the bibliography is:
Delport HJ and Olivier NJJ *Sakereg Vonnisbundel* 2nd ed (1985).

→ Write the author's name and the title of the book exactly as it is given on the title page of the book.

→ In the footnotes a short form should be used: example, Delport and Olivier *Vonnisbundel* 34.

→ more than one author, a maximum of three authors is given fully, and where there are more authors, only the first author's name is given followed by *et al.*

→ The title of the book is italicized. The first letter of each keyword of the title is written with a capital letter, while, for example, conjunctions, prepositions and adverbs are written in lower case.

→ The edition is given directly after the title in the form 2nd ed, 4th ed, etc, and not between brackets

→ Where the author who is being cited is the author or editor of a collected volume, the name is not repeated

→ Where more than one source by the same author is cited, the author's name is given each time with the source

→ Theses and dissertations are cited similarly to books but the fact that it is a minidissertation or dissertation must also be mentioned

→ The items in a bibliography must be in alphabetical order taking the surnames of the authors/first authors as a point of reference.

Journals

→ The same general rules apply here as for books but the basic form changes to Stander AL ‘‘Die eienaar van die bates van die insolvente boedel’’ 1996 (59) *THRHR* 388–399.

→ The title of the article is not italicized but in inverted commas, in lower-case (except where capital letters must be used), and is followed by the date and the volume number (in brackets, if available) of the journal.

→ The titles of journals are, wherever possible, abbreviated. The abbreviation is italicized. Note that law journals mostly prescribe, on their editorial pages, how the journal title should be referred to in abbreviated form. Such prescriptions have to be complied with.

→ Newspaper reports are cited similarly to contributions in law journals

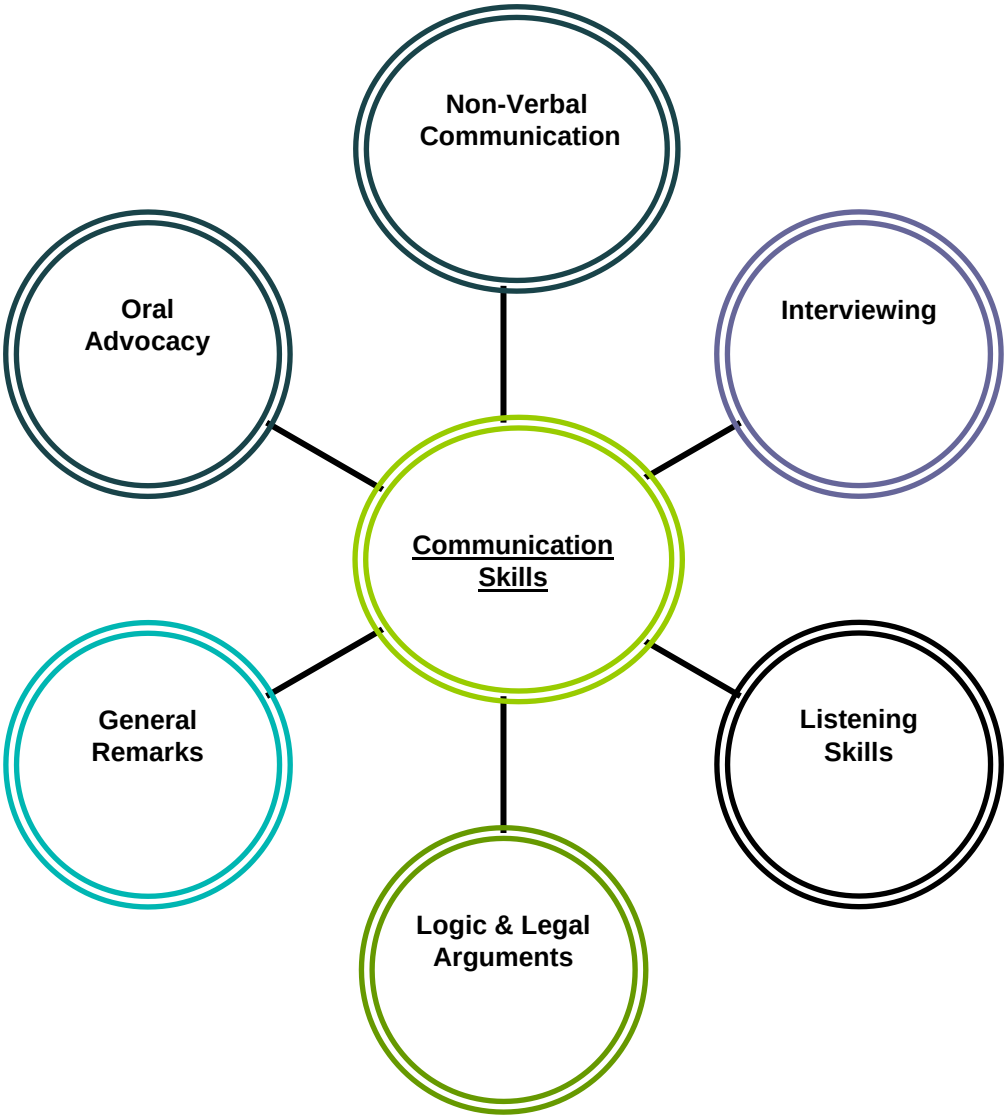
Internet

Information obtained on the reference:

→ website, date when the website was visited.

Example: Mamoepa B ‘‘The Act on Higher Education’’ http://www.star.hsrc. ac.za/ nche.html [Date of use: 16 November 1997]

STUDY UNIT 4 COMMUNICATION SKILLS



Non-verbal communication

What is non-verbal communication?

The ''language'' you speak without using words (sounds): your attitude / your face / your clothes → also send out their own messages.

The importance of non-verbal communication for a lawyer

Your body language / attitude / clothes etc can help you on your route to success or it can be the reason for your failure as a lawyer.

→ Verbal communication: usually transfers information / facts

→ Non-verbal communication: transfers feelings, emotions and attitude.

Examples of non-verbal communication

Clothes:

→ Dress professionally. Dress for success!

→ Attorneys, who have to wear a gown in court, should be dressed neatly under the gown.

→ If you are an advocate you should wear only black and white under your gown and bib.

Body language:

→ You body language must complement your professionalism. Act with confidence.

→ Never lie on your backside during a consultation / interview / court→ Sit up straight.

→ In court, stand up straight→ pull your shoulders back to create a dynamic look.

→ If you stand with your hands behind your back, the message is that you think you are better than the rest.

→ If your hands are on your hips, you are aggressive.

→ If you fold your arms in front of you, it signals that you are on the defence and are closing in.

Eye contact:

→ Look the judge / magistrate in the eye when you make your submissions.

→ Do not fidget with papers while speaking — be prepared!

→ Look the accused / witness in the eye when you ask them questions.

→ Show respect to everyone

Facial expressions:

→ Be careful what your face tells about your feelings

→ Do not make the right sounds but look bored.

→ Use your face to your advantage. People can see whether you care or not.

→ Show sympathy and interest: your client wants to see that you are involved in his/her case.

→ Never look at your watch while interviewing a person!

Tone of voice:

→ Vary your tone of voice. Speak loud enough so that everyone can hear you.

→ Speak louder: to emphasise something & a little bit softer to create atmosphere.

→ Repeat a person's words if you want to stress a particular point.

Interviewing

Non-verbal communication, interviewing, listening and logic together will make you a good lawyer!

Why interviewing skills?

→ As a lawyer: need interviewing skills→ you act for someone else (your client).

→ 1st *get your client's story* before taking any action to advance his/her interest.

→ you will need these skills when you, consult with *witnesses*, *experts / other role players*

NB to know:

what kind of questions to ask / how to ask these questions / how to conduct yourself when interacting with these people in order to obtain the *information relevant* for your case.

Functions of an interview:

→ To establish the interpersonal dimensions of the *lawyer-client* relationship;

→ To identify the *issues* & obtaining sufficient detailed *information* to advance the matter;

→ To determine the client's *objectives* & as far as possible, advise accordingly;

→ To prepare the way for further *action* on behalf of the client

Preparing for interviews

This will make you 'know what you want' from the interview.

Take note of the following:

→ Know the kind of information you will need for the file: personal details, addresses, employment, contact numbers, marital status, identity documents, birth certificates etc.

→ Research the applicable law.

→ Jot down the relevant facts / aspects you consider essential to the case / which you think you might need to prove your case. These will inform the type of questions that you have to ask.

→ Write down the relevant questions for the information you want to obtain from the person you are going to interview.

→ Think of the possible questions that your opponent may ask your client. You will find this strategy useful when you ultimately frame your questions during the interview.

The actual interview

→ When meeting the client / witness: try to make him/her feel at ease.

Make them feel that they are *welcome*, and that you are willing to help them. In this regard you should note the following:

→ start off by showing interest in the client / witness.

→ Don't rush into the main issue that has necessitated the interview. Allow them to relax.

→ Enquire about his/her name & and how he/she would prefer to be called.

Establish whether he/she would like to be called ''Mr. Nkhwashu'' or ''Richard''.

→ Talk about general things: like sport; his/her hobbies, where he/she lives, general information about his/her background.

→ If possible do offer him/her tea, coffee or a soft drink.

→ If you are interviewing a witness, you need to tell him/her who you are acting for

→ Reassure the witness about the confidentiality of the discussion or interview.

When the client / witness seems relaxed, you may get to the ‘‘real’’ questions relating to the matter. Make sure that you get what you want from the interview→ you may start of by saying:
‘‘*We are preparing a court case regarding the collision that happened on the Lydenburg Road on 03 January 2007, and would like to get more information from you. We got your details from our client, Mr. Peu, whose car was one of the cars involved; and he said you witnessed the collision and that you were willing to assist the court in the matter.’’*

Thereafter you may get into asking the questions that require the more specific details regarding the matter. In this respect you should consider the following points:

→ ask the client / witness to give a short outline of what happened.
To get the general sense of the ‘‘story’’.

→ Take notes as he/she speaks: so you have the necessary information.

→ You may stop the witness if he/she speaks too fast or if you want something clarified.

→ After this initial run, you may politely ask him/her to start the ‘‘story’’ from the beginning (that is, he/she should give an outline of the events again).

→ Check inconsistencies, and whether there are any deviations.

→ Be free to stop him/her and politely ask him/her to clarify such deviations. Take notes.

→ Remain focused on the facts or the ‘‘story’’. In this way you should be able to sift away his/her emotions or opinions, and stick to the facts.

→ Ensure that the client or witness gives you the information that is relevant to the questions you considered before the consultation and that such information will help you develop your argument as far as the ‘‘issues in dispute’’ are concerned.

Listening skills

Why listening skills?

→ Failure to listen to the client’s story will limit the accuracy of your information gathering and advice & may damage your ability to build up a rapport and gain the client’s confidence.

→ In instances where you consult with a client / contact witnesses & other colleagues / your activity in the courtroom where you have to communicate with the magistrate / judge / prosecutor / your opponent and witnesses: you should listen effectively in order to engage in effective communication.

What is a good listener?

A good listener: → understands why he/she has to listen to something

→ knows what he/she wants from the context in which he/she is listening.

Points that characterise a good, and effective, listener→ a good listener:

→ is empathetic.

→ keeps eye-contact & responds accordingly.

→ listens with his/her eyes.

→ participates in the interaction: nodding

→ encourage the speaker: use both receptive language (''I see'') & non-verbal cues (nodding)

→ seeks clarification where there's misunderstanding: ask questions if not sure of what said

→ cares about the speaker & other role players & value of the messages

→ pays full / genuine attention to what is said: does not fake attention.

→ shows interest in & commitment to the interaction: taking notes.

→ must be open-minded to new ideas / criticisms & be comfortable with ideas disagreeing with.

Ways of listening

Listening may be passive or active.

You can listen in two ways: → listening for facts

→ listening while taking cognisance of feelings / emotions

Listening for facts:

→ Here you listen for what is being said.

→ This is shown by, for example: When listener paraphrases or reflects on what is or was said.

→ This way of listening is applied, for example: When attending a lecture.

You listen for facts& analyse what you hear

To benefit from lectures / **interview** you should:

→ *Think* about topic before attending lecture/conducting an interview.

→ *Read* about the topic before attending the lecture.

→ *Listen* for main arguments.

→ *Note* which *arguments* supports the main ideas

→ Try to *remain objective*.

→ *Take notes*.

→ *Ask* questions for clarification.

Listening while taking cognisance of feelings:

→ This way of listening is extremely NB for a lawyer.
→ This is an even MORE active process: you listen for what is being felt.
→ You reflect on what is said **&** on the feelings.

Guidelines on how to listen successfully in this way:
→ *don't judge* the speaker
→ *Use non-verbal communication* to help speaker relax & to trust you
→ *don't interrupt* speaker
→ *Avoid disturbances*: phone ringing
→ *don't quote* examples from your own life.
→ *don't give advice* unless asked for it.
→ when person *finished*: make a *summary* of what he/she said.
→ *Ask questions* if you need clarification.

Logic and legal arguments

→ Argumentation: forms the basis of all forms of legal argumentation / oral advocacy.
→ Being a lawyer you'll have to solve problems by applying relevant laws: to persuade courts about the validity of your argument.
→ To argue effectively depends on how logically your ideas are organised with reference to sequence / combination / reaching acceptable conclusions.

Legal argumentation: this activity by a lawyer to apply relevant law to a particular legal problem.

What is logic?

→ The ability to solve problems by argumentation.
→ it gives guidance on how to argue & to get to grips with issues of argumentative nature.
→ Meaningful & correct thinking is NB in the legal world.
→ The focal point of traditional logic is the argument.

An argument: is a network of statements in which one statement is made on the strength of the rest.

Example:	→	'The garden is wet because it rains'	→ simple argument
	→	'it rains'	→ ground / reason (called premise)
	→	'the garden is wet'	→ conclusion
	→	Thus P→ C	→ (Premise→ Conclusion)

The relation between the premise & the conclusion may be of different forms:

→ Deductive Reasoning / Inductive Reasoning

Deductive reasoning (Deduction)

→ The conclusion follows directly & fully from the premise:

→ All humans are mortal → Socrates is human → Socrates is mortal

→ The premise 'forces' the conclusion on us→ conclusion does not contain new knowledge (perhaps a new insight)

Three NB aspects:

- Form and content

→ Argument form: P1 + P2 → C.

→ It carries certain contents: Socrates / humanness / mortality, which are linked to give the above form.

→ In deduction, the form determines the validity of the argument.

- Truth

→ For an argument to be true & not only valid, the premises have to be true: meaningful facts.

→ From these a valid conclusion which will be true too can be deduced.

- Meaning

→ It neither gives new knowledge nor does it guarantee truth.

→ It provides clarity of meaning & of the knowledge we have.

Example of deductive reasoning in legal context:

Example 1

THE RAPE CASE

Abel is charged with the rape of Barbara. He denies the charge, stating that he has never had sexual intercourse with her. The prosecutor calls an expert medical witness who testifies that he found traces of semen in Barbara's vagina (Sample A) and that a DNA analysis of this semen sample exactly matched DNA of a semen sample obtained from Abel (Sample B). The expert evidence further establishes that it is impossible for two strangers to have identical DNA characteristics.

Using **deductive reasoning**, the court may conclude as follows:

Premise 1 Semen sample A was taken from Barbara's vagina. [True]

Premise 2 Semen sample B was taken from Abel. [True]

Premise 3 The DNA of Sample A was an exact match of the DNA of Sample B. [True]

Premise 4 It is not possible for two different people to have identical DNA. [True]

Premise 5 Both semen Sample A and semen Sample B came from Abel. [True]

Conclusion Therefore, Abel had sexual intercourse with Barbara. [A must!]

Inductive reasoning

→ Same form as deduction but conclusion contains something new / more, beyond premises.

→ On the ground of some observations, scientists make claims that cover ALL future instances,

Example: → 'Water boils at 100 degrees centigrade' / 'All objects gravitate to the centre of the earth'/

The problem: how premises can still be seen as grounds for the conclusion.

Number of possibilities:

- Argument from a (so-called) law

→ This is what scientists usually do: They try to formulate a law which they then argue further.

→ Lawyers usually argue from / on the basis of laws: then it has to be shown that a particular instance is one covered by that law / or the other way round show why the law does not apply.

→ Also where people's behaviour is under scrutiny this strategy is often relied on: if an action can be seen as part of a law-like pattern it's often not seen as a conscious decision = pardonable.

- Connectedness or correlation

→ It is not claimed / assumed that there is a law but that two different occurrences / aspects often go together; or that there is an established correlation between the two.

→ Thus, ''because a therefore b''. This may also be a form of an excuse.

- Causality

→ Strongest form of connection between 2 events

→ This is a general argument form in the legal world, as causality is what often has to be proven.

→ The conclusion does not follow from the premises: only rely on them for support

→ Inductive conclusions are always more or less vulnerable: any case argued in this manner should be built up to provide a strong a conclusion as possible.

→ Premises should be formulated & combined in such a way that the conclusion derived from them will in the end be more acceptable than any other possible conclusions.

When the object is to discredit an argument these are the places to look for weak points.

Example of inductive reasoning in the legal context:

Example 2

THE BAIL HEARING

Abel was arrested on suspicion of raping Barbara and now applies to court for bail ('bail' is a court procedure whereby the judge/magistrate may release an arrested person from custody on payment of a sum of money). The test the court will use to decide whether to 'release' Abel on bail or not, is the interest of society. The presiding officer (judge/magistrate) will consider factors such as:

- will Abel return to court to stand his trial, if released on bail?
- will Abel interfere with state witnesses?
- will Abel be a danger to society if he is released on bail?
- will Abel's own life be in danger? (Barbara's relatives might want to kill him)

In order to decide whether Abel should be released on bail, the court will look at evidence supporting the above. After hearing evidence and argument the court will ask:

- If Abel is released on bail, is it probable that he will stand his trial?
- If Abel is released on bail, is it probable that he will interfere with State witnesses?
- If Abel is released on bail, is it probable that society will be in danger?
- If Abel is released on bail, is it probable that his own life will be in danger?

If, for example, evidence is led that a mob of 30 armed men is waiting outside the courtroom, threatening to kill Abel as soon as he is released on bail, the court may reason as follows:

Premise 1 A group of 30 armed men is outside the courtroom. [True]

Premise 2 Many members of this group are uttering threats to kill Abel. [True]

Conclusion It is therefore probable that Abel's life will be in danger if he is released on bail.

Note: The court does not know for sure what will happen, but there is a probability that Abel could be killed and therefore he should not be released on bail.

General remarks

The nature of premises

→ Premises in arguments are different in nature.

→ They can be perceived / acknowledged facts / assumptions / history / words / expressions etc

→ They can also be conclusions of earlier arguments: a long argument (in court) often has the nature of a series of arguments strung together and which leads to a final comprehensive conclusion. Here an important principle applies: relevance

→ Everything which is put forward in an argument should be relevant to the main point: thus, do not deviate, stick to the point!

Two common forms of irrelevance in arguments:

(a) *argumentum ad hominem*→ attacking the arguer instead of the argument.**

→ Whatever is said about a person it does not affect his/her argument.

(b) Argue from authority→ to introduce a name in an attempt to strengthen the argument.

→ There is a correct way of using authority: the name stands for an argument / an accepted view.

→ To rely on a name to bolster a weak argument cuts no ice.

Beware of arguing in circles

→ This happens when a conclusion (wished-for-conclusion) is introduced (usually camouflaged) as a premise.

→ This results in a valid but unacceptable argument which starts from what has to be proven.

Criticism

→ In criticising an argument one can focus on the premises / the conclusion.

→ The conclusion may be valid but not acceptable (not strong enough) or not even valid.

→ Premises may be rejected as untrue / irrelevant.

Note: any form of criticism has to be argued in its turn / can & has to be treated / evaluated as such.

Non sequitur

→ The rules of logic should be thoroughly mastered to ensure that the logical sequence almost leads us to very sensible results / final conclusion.

→ Without sensible / valid inferences: we cannot arrive at valid conclusions.

→ To ensure that we arrive at sound conclusions: avoid ***non-sequiturs*** (conclusions that don't follow the premise that they are supposed to be derived from).

Example:

Premise 1 My dog has a tail **Premise 2** All horses have tails **Conclusion** My dog is a horse [False!]

Situations where Logical reasoning may be challenged:

- The argument is based on false, weak, ridiculous or unacceptable premise,
- Inferences / assumptions made from the premise(s) are flawed,
- Where the final conclusion made doesn't follow the premise it's supposed to *(non sequitur)*.

Example:

Premise Brazil is the home of soccer. **Conclusion** All Brazillians play soccer.

→ The conclusion: can be challenged→ on basis of a *non sequitur*.

Oral advocacy

Appearing in a court of law is a substantial aspect of a lawyer's life. You will acquire much of what is needed with practice.

Important points to consider

Key points / guidelines a lawyers has to consider when handling a case:

(1) Preparation

→ Preparation starts with getting your mind & attitude right for the work you do.

→ To avoid unnecessary embarrassment in court, make sure you are thoroughly prepared.

To be prepared:

- Do research on the relevant law
- Be conversant with the contents of your file.
- Make necessary arrangements with your clients & other NB role players (example, witnesses).
- Formulate questions you will have to ask & prepare your witnesses and client for the trial.
- Do not take anything for granted, as you may lose even the most simple of cases.
- Punctuality: NB to arrive early to get the time to establish which magistrate will hear the case. It is helpful to arrive early to avoid unnecessary anxiety resulting from having to look for the right court in the last minutes. Remember that late-coming creates a negative impression. If you are early you would have the opportunity to introduce yourself to the magistrate in his/her office before the start of the trial. This is necessary if you had not previously represented a client before that magistrate.

(2) Summary of procedural steps / stages in a trial→ (Civil matter)

OPENING ADDRESS:

Plaintiff's legal representative

Defendant's legal representative

PLAINTIFF'S CASE:

Examination in chief (plaintiff's lawyer)

Cross-examination (defendant's lawyer)

Re-examination (plaintiff's lawyer)

Close the case (plaintiff's lawyer)

;

DEFENDANT'S CASE:

Examination in chief (defendant's lawyer)

Cross-examination (plaintiff's lawyer)

Re-examination (defendant's lawyer)

Close the case (defendant's lawyer)

;

CLOSING ARGUMENTS:

Plaintiff's legal representative

Defendant's legal representative

STAGES IN DETAIL:

Opening address

→ Purpose: to introduce the matter to the presiding officer (magistrate / judge) briefly and simply.

→ Should not give any arguments / evidence.

→ Your evidence should be presented during examination-in-chief, and your arguments are made after the evidence has been led.

An opening address has the following segments:

- Address the magistrate: ''Your worship''
- State your name: ''My name is Joe Makolobe''
- State for whom you act: ''I act for the plaintiff (or defendant etc)''
- State what the matter is about: ''This is a claim for damages resulting from a motor collision that occurred on 31 December 2006 on the Lydenburg Road between Sasekani and Lenyenye''
- State the issue in dispute: ''The parties differ on the quantum of the claim''
- State what evidence you will present: ''I will call Prof Duvenage, an expert in reconstruction of accidents, as well as Mr Papenfous, a panel beater, as witnesses''.

Examination-in-chief

→ May only be conducted after the witness has been sworn in.

→ The objective is to make sure that the witness tells the story logically / fluently / coherently.

→ NB to ensure that your client /or witness is relaxed & focused on the facts: observe witness' body language as you go on with the examination-in-chief.

→ To encourage witness to relax & tell his/her story, take care of your manner of questioning.

→ Although you need to be formal: make the whole communication friendly, easy and purely conversational.

→ Ensure your way of framing questions will only prompt the witnesses to provide information that is relevant for your purpose.

→ Avoid asking leading questions: In court you & your opponent are entitled to object if either of you asks leading questions.

→ Leading Questions: information that has not yet been given & the question leads the witness to a particular answer, which usually favours your case→ ''yes'' or ''no''.

Note: not all leading questions may be objected to. Instances where you / your opponent may not object to include situations where that question is meant to elicit facts that are not in dispute. (facts which may simply be regarded as ''common course'': both parties are in agreement as to the truthfulness of those facts.)

→ **Example:** Is your name Matome Letsoalo? And you stay at Lephepane?

→ Or where the two opposing sides are in agreement on the date / place / time of occurrence of a particular event: opponent may not object to this ''leading question'':

→ Tell the court where you were on the 2nd of January 2006.
But, ''Were you in hospital on 2 January 2006?'' will be leading.

→ **Examples of leading questions:**

1. ''How long have you been an industrial psychologist, Mrs Roberts?''

→ If info that Mrs Roberts is an industrial psychologist has not yet been given by Mrs Roberts: the above question would be a leading question & opponent would object.

Therefore approach it as such:

→ 1st question: ''What is your name?'' → Answer: ''Mrs Roberts''

→ 2nd question: ''What work do you do?'' → Answer: ''I am an industrial psychologist.''

→ 3rd question: ''How long have you been an industrial psychologist?''

2. ''So, Mr Roberts, you shot Mr Kitchen with a shotgun?''

→ You are presupposing certain info: that he shot someone (Mr Kitchen) & he used a shot gun. This becomes a leading question.

→ To ensure that you don't ask leading questions: where, when, why and how?

Example of how the above question can be asked:

→ 1st question: ''Do you know why you're in court today, Mr Roberts?''→Answ: ''Yes.''

→ 2nd question: ''Why are you in court today?'' → Answer: ''I killed Mr Kitchen.''

→ 3rd question: ''How did you kill Mr Kitchen?'' → Answer: ''I shot him.''

→ 4rth question: ''With what did you shoot him?'' → Answer: ''With a gun.''

→ 5th question: ''With what kind of a gun did you shoot..?'' → Answ: ''With a shotgun.''

Cross-examination

→ Done by opponent after you have finished your examination-in-chief.

→ Be careful not to strengthen your opponent's case: Stay focussed

→ You have to be aggressive when you cross-examine so that you shake the witness to a point where his/her version of the events is tested & possibly exposed.

Re-examination

→ Conducted after your witness has been cross-examined.

→ Purpose: to repair the damage done during cross-examination.

Closing argument

→ Meant to *persuade* the court to follow your line of argument & hopefully to find in your favour.

→ Presented by the opposing sides after all the evidence has been presented to court.

→ Where possible, you should prepare typed *heads of argument* to support your argument.

Heads of argument→ written presentations whereby you briefly outline:

(i) the facts / background of the case

(ii) the evidence

(iii) applicable law & sources

(iv) ask the court for a specific order or orders.

These orders are sometimes referred to as ''prayers'' or ''remedies''. You will orally present these heads of arguments as your closing statement.

STUDY UNIT 5 NUMERIC SKILLS

Addition and subtraction of numbers

Assets: what you possess→ your car / house / policies / cash… **Liabilities:** your debt

Example 1

Thembu and Paul decide to form a partnership and to combine their **assets** and **liabilities**. Thembu's assets are worth R120 000 and his liabilities are R3 500. Paul's assets are worth R168 000 and his liabilities are R54 000. Determine the value of the partnership assets.

Assets:	R120 000	+	R 168 00	=	R 288 000
Liabilities:	R 3 500	+	R 54 000	=	R 57 000

Assets minus liabilities:

	R288 000	–	R 57 000	=	R230 500

The total value of the partnership is therefore R230 500.

Example 2: **Addition**

→ Adding numbers = sum of

→ sum of 12 and 13 = 25. → 12 + 13 = 25 /or 13 + 12 = 25.

Example 3: **Subtraction**

→ minus / subtract = difference

→ 9 - 3 - 2 = 4 / or→ (9 - 3) - 2 = 4 → **BUT 9 - (3 - 2)** = **8**

→ Calculation in brackets done first!

Multiplication and division

Example 1: **Multiplication**

→ Multiply = product of

You have three secretaries employed in your company. Each one earns R8 800 per month. What are your monthly expenses to pay them?

R 8 800	x	3	=	R26 400

The three secretaries will cost you R26 400 per month.

Example 2: **Division**

→ Divide = Quotient

A, B and C are members of a close corporation. They share equally in the profit of the business. The yearly profit is R300 000. How much will each one get?

R300 000 ÷ 3 = R100 000

Each one gets R100 000

Fractions, decimals and percentages

Fractions

Fractions → can be described as a number that is only part of a whole.

→ If you cut an orange in half you will have two halves: ½ + ½ = 1

→ ½ = fraction of 1 whole.

Numerator → The top number in a fraction is called a numerator

→ In ¾ = 3 is the numerator

Denominator → The bottom number in a fraction is called the denominator

→ In ¾ = 4 is the denominator.

NB: Fractions must always be written in their simplest form. $^{12}/_{36}$

(Divide the numerator & denominator by the biggest possible amount that both can be divided by.)

12 ÷ 12 = 1

36 ÷ 12 = 3

The simplest form $^{12}/_{36}$ → is therefore → $^{1}/_{3}$

Example:

A man has 4 children. He dies and left them R20 000. In his will he had said the 4 children were the only heirs and they had to inherit equally.

Four parts are therefore the whole and = R20 000

Each one will get a 1/4 of R20 000 = $^{1}/_{4}$ x $^{20\,000}/_{1}$ = R5 000

Therefore each child will inherit R5 000.

Decimals

Decimals: is written by using a comma, followed by numbers indicating tenths, hundreds, and so on.

Example:

$\frac{1}{10} = 0{,}1$ → $\frac{1}{100} = 0{,}01$ → $\frac{1}{1000} = 0{,}001$

In other words a decimal is another form of representing a fraction.

Percentages

→ Percentages are in essence a fraction of one hundred. VAT therefore is $\frac{14}{100}$

Example 1

If you got $\frac{13}{25}$ for TEST A, $\frac{32}{50}$ for TEST B and $\frac{34}{40}$ for TEST C; in which of the tests did you obtain the highest percentage?

TEST A: $\frac{13}{25} \times \frac{100}{1} = 52\%$ → TEST B: $\frac{32}{50} \times \frac{100}{1} = 64\%$ → TEST C: $\frac{34}{40} \times \frac{100}{1} = 85\%$

You did the best in TEST C.

But what is your average for this subject at this stage?

52% + 64% + 85% = 201 ÷ (the number of tests written) 3 = 67%

Example 2

Change ¾ to a percentage:

$$\frac{3}{4} \times \frac{100}{1} = 75\%$$

Example 3

If Bafana Bafana wins 15 soccer matches and they lose 5; what percentage of matches did they win?

Total number of matches played: 15 + 5 = 20

Matches won: 15

$$\frac{Matches\ won}{Matches\ played} \times \frac{100}{1} \quad \rightarrow \quad \frac{15}{20} \times \frac{100}{1} = 75$$

Thus they have won 75% of their matches.

Example 4

You earn a salary of R6 000 per month. Your employer indicates that he will give you a 20% increase. How much will your salary be after the increase?

Your salary of R6 000 = 100% → Increase = 20%

Thus your new salary is → 100% + 20% = 120%

6 000 + $(\frac{20}{100} \times \frac{6000}{1})$ → New salary

6 000 + 1 200 = R7 200

Your new salary will be R7 200.

Example 5

The distance between two towns is 175 km. When the highway, which is under construction is finished, the distance will be 12% shorter. What will the distance in km's then be?

New distance = 175 km – 12%

$175 - (\frac{12}{100} \times \frac{175}{1})$

175 - 21

= 154 km

The new distance between the towns will be 154 km.

Apportionment

→ The strength of a Pajero is 3 times higher than that of a Yaris → comparison: can be tested.

→ The strength of the Pajero in comparison to the Yaris is: 3 to 1 /or 3:1.

Example 1

You and your partner have to share R10 000 on the basis of 5:3. How will you determine how much each of you has to get?

SOLUTION:

Add the portions together 5 + 3	=	8
Divide R10 000 by 8	=	R1 250
Therefore one portion	=	R1 250

You get 5 portions thus	5	x	R1 250	=	R16 250
Your partner gets 3 portions thus	3	x	R1 250	=	R13 750
					R10 000

The apportionment can also be done as fractions: 5/8 and 3/8.

Example 2

Three friends, Tom, Dick and Harry invest money. The amounts invested by them are respectively R10 000, R12 000 and R6 000. At the end of the first year their profit is R14 350. Each one receives his share of the profit according to his contribution. How much does each one get?

SOLUTION:

TOM	:	DICK	:	HARRY
R10 000		R12 000		R6 000

→ make the amounts simpler by dividing the biggest number possible between all of them.

→ R2 000 seems to be the biggest amount that will divide in all of them

In other words: 5 : 6 : 3

Now calculate the three numbers: 5 + 6 + 3 = 14

Divide 14 in the total profit: R14 350 ÷ 14 = R1 025 (one portion)

Tom gets 5 portions	=	5	x	R1 025	=	R5 125
Dick gets 6 portions	=	6	x	R1 025	=	R6 150
Harry gets 3 portions	=	3	x	R1 025	=	R3 075
						R14 350

OR YOU COULD HAVE SAID:

Tom	gets	5/14	x	R14 350
Dick	gets	6/14	x	R14 350
Harry	gets	3/14	x	R14 350

Rate of exchange

→ Because all countries do not use one single monetary system it is necessary to know how to convert money from one currency to another: Rand to Dollar.

→ The rate of exchange differs daily & NB to get the latest rates.

Example 1

You have to go to London to investigate a case of fraud. You have R10 000 to spend on gifts for your children. How many pounds will you have if the exchange rate is R15,00 = 1 British Pounds?

R10 000 ÷ 15,00 = 666,67 British Pounds.

Interest

→ Institution lending you the money is entitled to charge interest in order to make a profit.

→ The interest rate is presented as a percentage: 12% or 17% interest

→ The amount borrowed / the amount you bought for (bought on credit): principal debt.

  → Interest is a percentage of this principal debt.

→ Interest therefore = principal debt x interest rate x time agreed upon.

  → The principal will always be in Rand.

  → The interest is always in a percentage.

  → The time will be in years: 2 months = 1/6 of a year, 3 months = 1/4 of a year etc

Example 1

You borrow R200 000 to buy a BMW. The interest rate at the bank for motor vehicles is 17,25%. You are going to repay the amount in 54 months. How much will you eventually pay for the car?

Interest	=	principal debt	x	interest rate	x	time
	=	200 000	x	17,25/100	x	4 ½ years
	=	200 000	x	0,1725	x	4,5
	=	R155 250				

Therefore the principal debt is R200 000 + interest of R155 250 = final amount paid for the car. The BMW will eventually cost you R355 250 after 54 months.

Example 2

If you invest R120 000 at a bank for a year and you earn 15% interest per annum, how much interest did you earn for the year?

R12 000 x 15%

R120 00 x $\frac{15}{100}$ = R18 000

You have earned R18 000 in interest for the year.

Tax

→ VAT (Value added tax) is tax everyone must pay to the government.

→ VAT is added to nearly all products bought or services rendered.

→ The VAT rate at this moment in South Africa (2008) is 14%.

→ In other words if you pay R114,00 for an item, R14,00 goes to the state.

Example 1

A Cooldrink costs R9,80 VAT inclusive. What is the price for the cooldrink VAT exclusive. In other words you have to take out 14% from R9,80.

STUDY THE FOLLOWING FORMULA:

$$\frac{100}{(100 + \text{VAT rate})} \times \frac{\text{amount inclusive of VAT}}{1} = \text{amount exclusive of VAT}$$

In order to work out the amount without VAT you have to put:

→ 100÷ (100 + VAT rate) x the amount inclusive of VAT

From example: → 100 ÷114 x R9,80 = R8,60

NB NOTE:

When you have to ADD VAT : simply take your pocket calculator and add 14% to the amount.

→ For example 1567 + 14% = 1786,38.

BUT if you have to subtract VAT you HAVE TO USE THE FORMULA!

Apportionment of damages

Example 1

A Jeep and a Polo collide at a crossing. The owner driver of the Jeep was found to have been 30% negligent and the owner driver of the Polo was found to have been 70% negligent. The damage to the Jeep amounts to R50 000. It was uneconomical to repair the Polo. The pre-accident value of the Polo was R150 000. The salvage value of the wreck is R10 000. Which driver must pay damage to which owner and what should be the amount of damages?

SOLUTION:

The owner (driver) of the Polo was 70% negligent: therefore has to pay 70% of the damage to the Jeep: $\frac{70}{100}$ x R50 000 = R35 000

The owner of the Polo has to pay the owner of the Jeep R35 000.

The owner (driver) of the Jeep was 30% negligent: therefore has to pay 30% of the damage to the Polo.

Pre-accident value	-	value of the wreck	=	total damage
R150 000	-	R10 000	=	R140 000

$\frac{30}{100}$ x R140 000 = R42 000

The owner of the Jeep has to pay the owner of the Polo R42 000.

It does not make sense that the owner both these owners pay separately: the greater amount can thus be subtracted by the lesser amount: R 42 000 – R 35 000 = R 7 000

→ The owner of the Jeep can only pay the owner of the R7 000.

Attorney's account

Keep in mind:

→ as an attorney you have studied hard & for a long time: therefore entitled to ask money for your services.

→ The Law Society & the Bar of Advocates release from time to time scales of the amounts you may charge your client.

→ A client never pays an advocate directly. An advocate always has to work with a brief from an attorney. The attorney pays the advocate and then recovers the amount from his/her client.

→ The advocate's fees are therefore an expense for the attorney and need to be listed as an expense inclusive of VAT.

→ According to tax legislation: attorneys & advocates have to charge VAT on all their accounts.

Example

Pretend you are a practising attorney. You and your client agree that you will invoice him monthly for services rendered. You agree on the following terms:

- R25 for every letter written.

- R8 postage for every written letter posted. All written letters need not be posted as it can be delivered by hand. (Postage is an expense for an attorney and the amount is VAT inclusive.)
- R10 for 5 minutes or part thereof for each telephonic enquiry (Note: the client pays for the making of the call & the actual costs to the service provider: Telkom / Vodacom / MTN)
- R250 per consultation of 30 minutes or any part thereof.
- R300 for a summons
- R280 for an affidavit
- VAT = 14%

During last month you did the following for your client:

- You wrote 5 letters and posted all of them.
- You made one telephonic enquiry for 18 minutes.
- You consulted twice for two and a half hours.
- You compiled a summons.
- You compiled an affidavit.
- You briefed an advocate. His fees were R850 VAT inclusive.

Draw up your clients' account.

Services rendered	**Fees (VAT excl)**	**Expenses (VAT incl)**
5 Letters written	R 125,00	
5 Letters posted		R 40,00
Telephonic enquiries (18 min)	R 40,00	
Consultations (5 hours)	R2 500,00	
1 Summons	R 300,00	
1 Affidavit	R 280,00	
Advocate's fees		R850,00
	R3 245,00	R890,00
Plus VAT 14%	454,30	
Plus expenses	890,00	
	R4 589,30	