

**Tutorial Letter 102/3/2013**  
**Research Skills for Law**  
**SCL1502**  
**Semester 1 and 2**

**Departement of Jurisprudence**

This tutorial letter contains the study  
material for this module



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# Introduction

Dear student

This tutorial letter contains the study material you need to complete this module. If it looks a bit thin to you, that is because a lot of the time we will be referring you to other sources, mostly on the internet. You will have to do a lot of work yourself!

**However, this means that you must have access to a computer and to the internet in order to be able to complete this module!**

We will show you later on how to access the relevant material.

## 1.1 Introduction

Most of you completed your high school education fairly recently, other some time ago. But you all probably remember how things were done at school. Mostly the teacher taught you by giving you information which you then learned by rote (like a parrot!) and in the exam you simply recalled the information from memory and wrote it down word-for-word. In fact, in most cases the better your memory was, the higher marks you got. In a nutshell – you were expected to act like an organic memory stick!



For those of you who like this method, we have bad news. For those who didn't, we have good news. This is the news:

### **UNIVERSITY EDUCATION IS NOT LIKE THAT!**

More importantly, we are training you to be lawyers and lawyers do not think, work or act like that. So here is the rest of the news:

**LEGAL EDUCATION IS NOT  
ABOUT MEMORISATION!**

**IT IS ABOUT PROBLEM SOLVING.**

Of course, you will have to remember some things, but mostly it is about:

- knowing basic things;
- finding out the rest and
- applying it to the problem you have.

Let us show you the difference between what a lawyer does and what an ordinary person does by telling you a story that should be familiar to most.

Your mum drags you along to your great-aunt Flora's seventieth birthday. You suffer through the cheek-pinching and the "but you're so thin/fat/weird" and the "when are you getting married" routine. And then you get involved in an argument with cousin Fred (there's always a cousin Fred and he's always intoxicated). The thing is, great-aunt Flora doesn't have a will and she has no intention of getting one. You think that's a bad idea, but Fred disagrees. He thinks it would make things easier as the family can then just decide who gets what.

As a law student, what is the most dangerous thing you can do at this point? You can say:

I KNOW THE RIGHT  
ANSWER!

The truth is: you probably don't. You need to study much more to be able to give advice on something like this.

The second most dangerous thing you can do is to whip out your fancy phone and try to find an answer on Google. Google is fantastic, but not for complex questions on South African law! The reason for this will become clear later on.

As simple as questions like these might seem to cousin Fred, you should know that it is never that simple. In this module we are going to teach you why it isn't simple and how you can answer the really complex question that is hidden behind your disagreement with Fred.

## **1.2 Our approach to the module**

We have already said that university study is very different from school. If a law lecturer (or a client) gives you a problem, they don't also give you the answer and/or tell you where to find the solution. They expect you to use your knowledge of the law, supplemented by other information and your own insights to solve the problem. To be able to do that, you need to be able to do research.

Doing research is very much about practical skills. You will only learn how to do it, by practising and doing. The emphasis is therefore definitely on practical aspects. You will see that every study unit has a similar structure: first we give a brief overview of what we do, then we direct you to the sources you need to access and then we let you practice your skills. You can probably get away with not doing the activities, but what would be the point? If you do this right, you will learn important skills that you will be able to use the rest of your life. It will make you a better student and a better lawyer!

## **1.3 First things first**

Legal research these days are not the same as it was in the old days. Traditionally legal research involved the use of real books, articles, legislation, etc. Fortunately for you most of these sources are now available online and are easily accessible to law students at Unisa. But for you to be able to access them, you first need to register on myUnisa. myUnisa is the university's virtual campus and all your study material, for example, can be accessed on the site. You now need to register your account with myUnisa so that you can start using it. This is how you do it:

- Go to <https://my.unisa.ac.za>
- On the left-hand side, click on "Claim myLife Email"
- Follow the steps required.
- Then click on "Join myUnisa" and follow the steps required.

Congratulations! You have now joined myUnisa and have access to almost everything you need to complete this module!

Please note: Your lecturer will correspond with the whole class via announcements and the discussion forum on myUnisa. If we need to contact you individually, we will use the myLife email account. You can, however, set up the myLife account so that it automatically forwards any emails to your regular account.

#### **1.4 Study plan**

The rest of this tutorial letter consists of 3 more study units. In **study unit 1** we give an overview of the research process. Not all of this will be immediately relevant, but please keep it to hand all during your studies – it will assist with any research project. In **study unit 2** we will show you how to find legal sources. This is probably the most important part of the study material and you should practise this and use it in all other modules. In **study unit 3** we will concentrate on legal writing. This section contains important information on plagiarism and referencing that is very important for your whole study and future career.



# Study unit 1

## Legal research

### 2.1 What is research?

Most people have a very specific picture in their mind when they hear the word "research". For most this brings to mind serious people in white laboratory coats doing complicated things with microscopes, tubes and Bunsen burners. On the other hand, sometimes people will use the term in a completely non-academic way, for example: "Before a bought my new car, I did a lot of research." Neither of these two uses captures what we mean by the term "research".



If you are going to, for example, buy a new car and you read magazines, talk to your friends, listen to salespeople and so forth, you are gathering information, but you are not doing research. The reason why we say this will become clearer when we discuss the elements of research below. But at the same time, not all researchers wear lab coats and do mathematics. Researchers in education, history, accounting, information science and law are far more likely to have a book in the hand than a microscope! Just like the natural sciences (geology, physics, chemistry, etc) tell us more about the natural world, so the human sciences (of which law is one) tell us more about humans and human society.

### Activity 2.1

The Free dictionary<sup>1</sup> defines research as: "the systematic investigation to establish facts or principles or to collect information on a subject".

Do you think this definition is correct? Does it include all of the things you regard as part of research? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Feedback:** There is not necessarily a correct answer to this. But do have a look on the internet to see how many different definitions there are for research.

## 2.2 What is legal research?

### 2.2.1 Definition of legal research

At its most basic, a lawyer is a problem-solver. During your studies you will have to master a large body of legal rules, but much of that you will not remember or it will become outdated. What you will remember and retain, however, are the principles that underlie the operation of the law. This includes knowledge of the sources of law and the relationship between these sources, the way in which the system of precedent works, 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 rules has faded. And this is the basis of legal research.

When it comes to legal research, there is very little difference between what a practising attorney or advocate does and what a law professor, legal advisor or a student does. Although the form in which this research is eventually presented may differ, the basics remain the same. So 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 basically the same. You should, therefore, be able to use the same basic techniques in all your legal research.

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<sup>1</sup> <http://thefreedictionary.com> (Date of use: 4 September 2012).

In essence then, legal research can be defined as the method and approaches used by lawyers (and law students!) to solve complex legal problems within a changing and evolving social and legislative setting.

### 2.2.2 Elements of research

On the basis of this very broad definition, we can now look at the elements of research. We can identify eight elements:

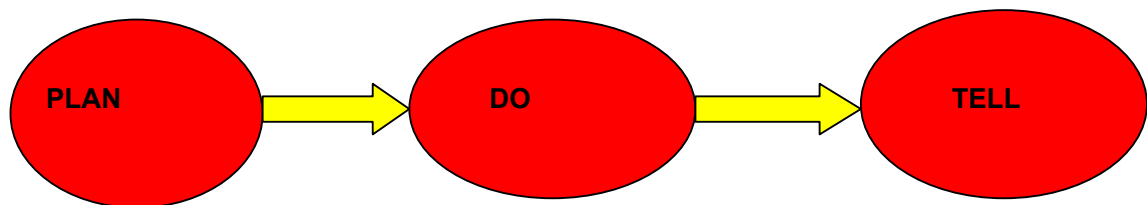
- Research is a **human** activity. It is something that we as humans, with all our faults and preconceptions and influences undertake. That is why it is quite normal for researchers to find different solutions for the same problem.
- Research is a **communal** activity. In order to successfully do research we interact with lecturers, with other scholars through their work, with what has been written and decided in the past and so forth. The researcher forms part of a conversation between the past, the present and the future.
- What is regarded as **acceptable** research is very different in law than it is, for example, in physics or psychology. As you work through your research, you will learn what is acceptable and what is not. But a good indication can be found in articles written by law professors or other subject specialists.
- The **purpose** of legal research is the study of legal problems and issues in order to better our understanding of how the law functions and how it can be improved.
- Legal research involves **creative**, **systematic** and **original** work that explains how the law functions. In addition, it embraces the critical evaluation of this functioning.
- At the most basic level, *legal research is critical engagement with an intellectual tradition.*

### 2.2.3 The three stages of research

From what we have said above, you will realise that research is never a simple matter. But to make it a little bit more practical, we have broken the research process down into three steps:

- Planning of research
- Doing the research
- Reporting on your research

In other words, what you will be doing is:



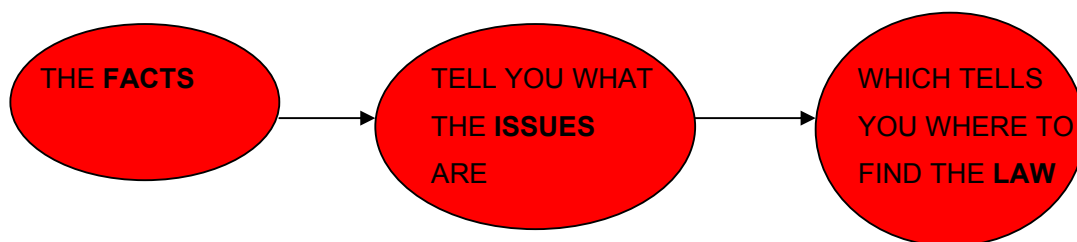
We will now look at these steps in detail.

## 2.3 Planning research

### 2.3.1 The systematic approach

When you start your research, it is easy to feel overwhelmed by the prospect of trying to find a solution to a legal problem. Like with any other big project, the secret of success lies in proper planning and a systematic approach. In the case of law and legal problems, we suggest a three-step system. It is easy to remember with the acronym **FIA (Facts-Issues-Applicable law)**. In your research you will therefore first establish the FACTS, then identify the legal ISSUES involved and then find the APPLICABLE LAW.

Remember that they follow on one another:



Note that this helps you **limit** your study. You don't have to study the whole legal system – only the rules applicable to your issues and your facts.

1. The first step is to **establish the facts**. By this we mean that you should first of all look at all the legally relevant facts that you are provided with. Just like a judge in a court case, you first have to set out the facts that will influence your final conclusion. You will have to use the knowledge you have acquired during your studies to decide which facts are relevant and which are not.
2. The second step is to analyse these facts to get to the **legal issues**. This means that you need to decide what the legal problem is that the facts expose. For example, are you dealing with an issue of contract or one of delict? The facts you established in step 1 will help you to decide this question.
3. The final step is to determine what the **applicable law** is. For this you will also have to call on knowledge acquired over your years of study. For example, if you have determined that you have a contractual problem, you will have to deal with the common law, but there might be legislation on this specific issue. You need to have quite a bit of background to determine this.

### Activity 2.2

You are an attorney and have a client who came to see you regarding an injury sustained by her son during a ritual circumcision. She wants to claim compensation from the traditional authority that oversaw the initiation ceremony. She also wants this tradition to be stopped. You have to write a legal opinion setting out what her chances of success are.

Now use the FIA approach and answer the following questions:

1. What are the **relevant facts**? Is this a private law or public law matter? Is it relevant that she or her son consented to the initiation? Is it relevant that they live in a traditional area? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

2. What are the **legal issues**? Will you consider the requirements for personal injury compensation or is this a criminal case of assault? Are there constitutional law issues here? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

3. What is the **applicable law**? Delict, criminal law or constitutional law? And what is the role of indigenous law? How would the Constitution<sup>2</sup> be relevant? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Feedback:** You will probably not be able to answer all of these questions fully. But do consult your study guide for ILW1501 (Introduction to Law) for more information on the various parts of the law.

### 2.3.2 *Keeping track*

You will immediately realise that already you will have a lot of information at hand. The problem is how to keep track of everything. There is nothing more frustrating than finding important information and then forgetting where you found it! So, it becomes important to keep track of all the sources you are using. This has the added benefit that if you keep track, your bibliography will be easier to compile at the end of your report. There are various ways of keeping track and you will have to decide which best suits your way of thinking and way of working. Here are three suggestions:

- You can make use of old-fashioned index cards. These have the advantage that they are inexpensive and simple to use. The disadvantage is that you will have to re-type all the information on them once you get to the final phase of your research.
- Most word-processing programmes (like Microsoft Word) have a function where you can type in a source once and the programme then compiles a

<sup>2</sup> Constitution of the Republic of South Africa, 1996. Hereinafter referred to as the Constitution.

bibliography for you. It is really simple to use, but like most electronic resources require that you make regular back-ups of all your work. A computer malfunction could result in losing all your hard work.

- There are also a number of web-based resources that will keep an electronic copy of your sources. Programmes like *EndNote* and *RefWorks*<sup>3</sup> can be accessed on the internet and have the advantage of not being dependent on your computer's hard drive. There are also free computer software that can help with this, like *Mendeley*.

### Activity 2.3

Make a list of the advantages and disadvantages of the various methods of keeping track. Then decide which one you prefer and why. \_\_\_\_\_

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**Feedback:** This will itself require you to do some research. Have a look on the internet (yes, we're talking about Google!) and investigate some of the available options for this.

### 2.3.3 The problem statement

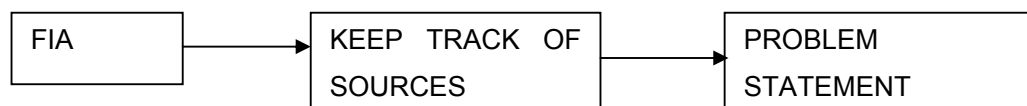
Now that you have established what the problem is, which sources you need to consult and have a system of keeping track of your sources in place, you can proceed with writing your problem statement. A problem statement can be short (one paragraph) or very long (35 pages) depending on what you're busy with. Typically for an assignment, you will start by setting out the problem in one paragraph. This does two things: it shows your lecturer that you understood the problem and it will guide you through the rest of the process of answering the question. In essence the problem statement is the culmination of the **FIA** process.

Your problem statement should therefore include the following:

<sup>3</sup> Training for and access to *RefWorks* can be obtained through the Library website: go to <http://www.unisa.ac.za> and click on library.

- A brief summary of the facts. If you have to look at various cases, this section will be a summary of what the cases are about. Where you are required to analyse a problem, this section will be your understanding of what the problem is about and what the relevant facts are.
- An exposition of the issues that you will be addressing. Where you read a number of cases, you need here to indicate what they all have in common and where they differ from one another. Where you deal with a problem, this will be an indication of the central question you will be researching.
- Then you need to indicate what law is applicable to your problem. This can be very simple and basic. However, if you can already at this stage give a preliminary bibliography, that will assist you.
- Finally you need to provide a "road map" to the eventual answer. By this we mean that you need to say how you will deal with the problem and in what order. This will usually be in the form of something like this: "This study will firstly analyse the relevant case law before moving on to a study of common law principles. This will then be critically evaluated against the background of new developments in the law."
- It is important to remember that at this point you already have to make use of the correct system of referencing. We will deal with this later. That is why you need to read through the whole of the tutorial letter before you start working.
- Students often want to know how many sources they should refer to. This question is difficult to answer with any degree of certainty. But you need to show that you have read enough to be able to at least understand what the problem is.

To repeat: you need to have taken the following steps:



Once you understand the problem you have to deal with, you can move onto the next step.



## 2.4 Doing the research

At this time you now have a clear understanding of what the problem is and you also have collected quite a bit of information. But just like a pile of bricks is not a house, a collection of facts is not research. You now need to evaluate, understand and organise these facts.

### 2.4.1 Sources of law

Legal research is almost always document-based. By this we mean that legal research almost always involves reading, analysing and comparing various documents and sources of law. Your research will therefore be mostly about finding the sources of law, reading, analysing and evaluating them and then synthesising your findings into one coherent report.

We will deal with this aspect in detail under study unit 2. For now we are going to look at the various sources of law and their status. You have dealt with this in ILW1501 (Introduction to Law) and SCL1501 (Skills course for law students). The next activity is intended to help you revise this knowledge.

#### Activity 2.4

Go to the Unisa website (<http://www.unisa.ac.za>) and click on *library*. Then click on *library training* under library services. Now click on *research skills* and then on *finding legal information*. Then go to myUnisa and click on *law library*. Under *additional resources*, click on *Researching South African law*. Read both these documents. Using this information and your knowledge from other modules, make a brief summary indicating (a) the difference between primary and secondary sources and (b) which legal sources fall under the various headings. \_\_\_\_\_

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**Feedback:** Once you have a list of possible sources, it is important to know what their significance is and which is more authoritative. This implies that you must fall back on your knowledge of the hierarchy of legal sources.<sup>4</sup> From your first year you already learned about, for example, the difference between primary and secondary legislation; and the difference between authoritative sources (common law) and those that have persuasive weight. It would be a grave mistake to use a source for an argument that is not authoritative.

You also need to make sure that, when you use a textbook or specialist source, that you use the right edition. Here the rule is fairly simple: if you use a book with multiple editions, you must always refer to the newest edition. This will provide you with the most up-to-date information.

A final word on internet sources: when it comes to the internet, not all websites are created equal! You should be very careful of using web pages without a thorough investigation. In general sites from universities are acceptable, as is the *Google Scholar* site. Research has shown that information on *Wikipedia* is as reliable as most other encyclopaedias. But you should never refer to an encyclopaedia in a legal research report – it is too general. You should stick to the specialist and authoritative sources of legal information.

#### 2.4.2 *How to summarise a case*

Because of the nature of South African law, case law is an important source. It is therefore crucial in the research process to read and summarise cases. This by no means implies that you can merely summarise a case and think that your research is done. On the contrary! This is a way of keeping track of what was decided in which case and is a great way of summarising cases for other purposes. This section briefly indicates how cases should be summarised. In general the summary should contain the following elements:

- A summary of the facts: Judges usually include a fairly detailed discussion of the facts before the court in the judgement. Your summary should not be nearly as detailed. Students tend to "get lost" in the detail and it is an art to stick to only the most relevant facts. What is included in the facts is also dependent on the subject field you are addressing. If you are dealing with the

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<sup>4</sup> If you can no longer remember the hierarchy of sources of law, you can consult one of the following textbooks: Maisel P *Introduction to law and legal skills* (Durban Butterworths 2001); Du Plessis LM *An introduction to law* (Cape Town Juta 1999); Kleyn DG ea *Beginner's guide for law students* (Cape Town Juta 2010). These books are all available in the library.

contract law aspects of a case, you need not necessarily also address possible constitutional law implications. In general, your summary of the facts should not exceed one paragraph.

- The legal question: You need to move away from the facts now and concentrate on what the legal question is that the case focuses on. This will usually only be one line such as: Can a written contract be amended verbally?
- The court's reason for its decision (*ratio decidendi*): This will be the biggest part of the summary because legal research is interested in the reasoning of the court and not so much as the outcome in this one particular case. Because of the system of precedent, this is the part of the judgement that will be used in other cases. You will need to find the essence of the argument used and summarise that. You need not include the various parties' arguments as well – you are interested in what the judge decides and how he decides it.
- The finding/judgement: This will also be a one-line summary merely stating for example that "the court found in favour of the plaintiff" and so forth.

The temptation for most students is to not read the whole case, but to only read the head note or summary. This is a big mistake! You might be able to get the facts and the finding from that, but you will not be able to get the *ratio*. For that you will have to do the hard work and read the whole case.

### Activity 2.5

In the module SCL1501 you were referred to the case of *Molefe v Mahaeng* 1999 (1) SA 562 (SCA). Read the case and then summarise the case in the manner set out above.

**Feedback:** Make sure you have included all four aspects set out above in your summary.

You are now ready to get to the final stage of your research.

## 2.5 Reporting on research

### 2.5.1 Contextual differences

The most important part of your research is the report you write to set out your findings. After all, if no one ever knows what you have discovered, what is the point of doing the

research? However, you should keep in mind that the way in which you report will differ depending on who you are reporting to. An office memo is different from a legal opinion and a first-year assignment is different from a postgraduate dissertation. So keep that in mind when you write. You will learn how to write other kinds of reports once you are in a specific environment.

For now you can use the structure set out below as a general guideline.

### *2.5.2 Basic structure*

In most of the English-speaking countries of the world, legal research is presented in an almost universal way known by the acronym **IRAC**. IRAC indicates what should be in your research report and it stands for **Issues**, **Rules**, **Application** and **Conclusion**.

- Your research finding should start with an analysis of the **ISSUES** at stake in the study. In essence this will be a refinement of the problem statement we discussed under 2.3.3 above. So, if you did your problem statement correctly and thoroughly, you will have completed part of the report already.
- This should be followed by a summary of the legal **RULES** applicable to the issues at hand. This can take the form of common law principles, legislation, case law, indigenous law and any combination of these. This needs to be set out in an integrated fashion to show that you understand how they relate to one another. In essence therefore, this is a summary of the work you did as discussed in 2.4 above and study unit 3 below. If you kept proper summaries of what you were reading, that part of the report should also be more or less completed.
- The crucial part of **APPLICATION** must now be undertaken. You now need to apply the rules you identified to the issues at stake. This is the aspect of the report that students find most difficult. Remember to make sure that the rules are indeed applicable to your specific problem, otherwise it makes no sense to discuss them. At all times, you need to give reasons for your applications.
- Finally you need to come to some kind of **CONCLUSION**. It is important to remember that you need not solve the problem at hand. If the only conclusion you can come to is that there is a problem that has not been resolved by case law or legislation, that is a legitimate conclusion. Pointing out problems is a

large part of the work of any researcher – it helps other researchers to know where to focus their energies on.

This concludes study unit 2.



# Study unit 3

## How to find legal sources

### 3.1 Introduction

We said above that you must be able to find legal sources in order to do legal research. This is easier said than done. In this study unit we will show you how to find the relevant legal sources

### 3.2 Where to find sources of law<sup>5</sup>

If you are confronted with a legal problem, you need to find the correct sources of law in order to give an answer. This study unit will show you how to find the authoritative and persuasive sources of law.

What are authoritative or persuasive sources of law?

You learned about sources of law in ILW1501: Introduction to Law. You should know that when we talk about “authoritative sources of law”, we are referring to sources that contain the legal rules and principles applicable to your research topic. The authoritative sources of law in South Africa include:

1. Legislation
2. Case law
3. Common law
4. Custom
5. African indigenous law

When we talk about “persuasive sources of law”, you should know that we are referring to sources that are not considered as authoritative but have persuasive value where there are no authoritative sources available. These include:

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<sup>5</sup> Sections 4.2 to 4.5 was compiled by Ms H du Plessis from the Department of Private Law in the School of Law at Unisa.

1. Other modern legal systems (foreign law)
2. Modern legal writers (law textbooks, articles in law journals)

Note: Can you see that "Wikipedia" does not fall under any of these categories and should not be used as a source in your research paper?

### 3.3 List of databases where you can find authoritative and persuasive sources of law

Although many authoritative and persuasive sources of law can be obtained freely over the internet, this is not the case with all of them. Some of these sources can only be accessed by subscribing to the specific law database containing these sources. As a student at Unisa, you do have access to some of these subscription databases. Below is a list of the most important South African law databases that you should use when researching your topic. There are many other databases available that you may encounter and use when doing research. You will also notice that some of these databases contain more sources and information than listed below. If you have questions about them, you are welcome to post them in the myUnisa discussion forum for this module or you can ask your lecturer for assistance.

**Please note:** In all cases there is training on how to use these databases on myUnisa. All you have to do is to log on to myUnisa, then select "Law library", and click on "Resources" and then on "Training resources". Please use this throughout your studies to help you find the right sources.

LEGISLATION	
Acts Online	Full-text
Jutastat	Full-text
My LexisNexis	Full-text
Sabinet	Full-text



<b>CASE LAW</b>	
Court websites	Full judgments / court documents
Jutastat	Full judgments
My LexisNexis	Full judgments
SAFLII	Full judgments
<b>TEXTBOOKS</b>	
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 it to you.
<b>JOURNAL ARTICLES</b>	
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).

### 3.4 How to access the law databases listed above

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

Law database	Link / where to find
Acts online	<a href="http://www.acts.co.za">http://www.acts.co.za</a>
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 <a href="http://www.constitutionalcourt.org.za">http://www.constitutionalcourt.org.za</a> . (You can search for other court websites on the internet.)
Google Books	<a href="http://books.google.co.za">http://books.google.co.za</a>
Google Scholar	<a href="http://scholar.google.co.za">http://scholar.google.co.za</a>
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 open 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	<a href="http://www.saflii.org/">http://www.saflii.org/</a>
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”.

### 3.5 How to use these law databases

Most of these databases are user friendly and contain instructions on how to use them. You can also refer to the PULP Guide on “Finding legal information in South Africa” that can be downloaded from the Pulp website at <http://www.pulp.up.ac.za>. If you have any questions about these databases you are welcome to post your questions in the myUnisa discussion forum for this module or you can ask your supervisor to assist you.

#### Activity 3.1

Using the databases given above, you now need to find certain sources. In each case give the full detail required in this activity.

- Find 3 (three) Acts (legislation) dealing with the protection of children. In each case give (a) the name of the Act; (b) the number of the Act; and (c) the year of the Act.
- Find 3 (three) court cases dealing with the protection of animals. In each case give (a) the names of the parties; (b) the court in which the case was heard; (c) the year in which the case was decided.
- Find 3 (three) **legal** books/textbooks that deal with the crime of rape in South Africa. In each case give (a) the surname and initials of the author(s); (b) the title of the book; (c) the publisher of the book; (d) the place of publication and (e) the year of publication. (Please do not use books by non-lawyers!)
- Find 3 (three) journal articles from **legal** journals dealing with the role of *ubuntu* in South African law. In each case give (a) the surname and initials of the author(s); (b) the title of the article; (c) the name of the journal in which it was published; (d) the year in which it was published; and (e) the pages on which the article can be found. (Once again, stay away from non-law journals).

**Feedback:** These are the most important pieces of information you need for every source you use. You will see in the next section why this is important!

# Study unit 4

## Legal writing

### 4.1 Academic integrity and plagiarism

#### 4.1.1 Introduction

Research is in essence a collaborative enterprise. In the natural sciences this can be seen by researchers working in groups and publishing their results in groups. In legal research that is not usually the pattern, but legal researchers do collaborate by reading each other's work, using each other's information and building on previous insights and solutions. And most researchers are happy to share such information and resources. In a very real sense legal research can be regarded as an ongoing conversation with other researchers past and present.

But this places an obligation on researchers to acknowledge where they get their information and insights from. And this is what we mean by academic integrity: the duty on all researchers to acknowledge their sources in footnotes. It does not matter whether you are a first year student doing an assignment or a doctoral student writing a ground-breaking thesis or a professor publishing a law article – all researchers **MUST** acknowledge their sources. Failure to do so constitutes plagiarism!

#### 4.1.2 What is plagiarism?

Plagiarism is a serious offence and is harshly dealt with in most circumstances. Briefly stated, plagiarism is committed when you take someone else's ideas, thoughts, words, insights or information and present them as your own. Therefore, in any research, if you use someone else's ideas and so forth and you fail to give a reference to that person, you are committing plagiarism. Not giving credit to someone is as bad as pretending that the relevant ideas are your own.

It does not matter where you get information from. Whether you are getting it from a website, a court case, legislation, articles **or your study guide** – you must ALWAYS give a reference to the relevant source. Failure to do so will be penalised and disciplinary action might be taken against you.

#### 4.1.3 *Forms of plagiarism*

- The simplest form of plagiarism is where you literally cut-and-paste information from a source into your assignment or dissertation. Usually this is taken from the internet, but you can also write things word-for-word from a book or article. This is the easiest form of plagiarism to detect. If you want to use someone else's words directly, you need to quote it in the prescribed manner and indicate where you found the quote.
- Linked to the previous it is important to point out that too many quotes in your work is also a form of plagiarism. If more than about 15% of your work consists of quotes, you are not really indicating that you understood the material well enough to put it in your own words.
- Sometimes individuals try to hide the fact that they are copying word-for-word by changing a word here and there. This is still plagiarism and most plagiarism detecting software packages will pick it up.
- Another form of plagiarism is referencing a source used in someone else's work and pretending that you have read the original source. If you haven't read the original source, your reference should be to the source you actually read. As a general rule, nothing should be in your footnotes that you haven't personally read.
- Additionally, every source in your footnotes should be in your bibliography and every source in the bibliography should feature somewhere in your footnotes. Making the list of sources appear more comprehensive than it really is, is also dishonest.
- As a general rule of thumb an essay, article, dissertation or thesis that contains NO footnotes is prima facie a case of plagiarism. By not adding any references the author is claiming that he/she alone thought of EVERYTHING in that paper. This is highly unlikely! The original part of such an essay will in all likelihood be minimal. In legal research we rely heavily on what the courts say (case law), what parliament decided (legislation), what the rules are/were in common law, what is done in other jurisdictions and so forth. ALL of these need to be properly referenced.

- Finally, handing in the same assignment or portfolio as another student will be regarded in a serious light. Even if students work together in a study group, they must hand in individual assignments or portfolios, showing that they have personally mastered the work.

#### **Activity 4.1**

Go to the search engine Google and type in "Is plagiarism always wrong?" You will find a number of hits regarding this question. Read a few of them and then write a short paragraph in which you deal with these opinions and in which you give your own opinion. \_\_\_\_\_

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**Feedback:** You might have realised in your life that the internet is full of differing opinions and the secret is to know which ones make sense and which ones do not. Look carefully at your answer and then think whether this is the opinion of a lawyer that the public can trust?

#### *4.1.4 Conclusion*

As you can see plagiarism is a very serious matter that impacts on the academic integrity of your work. It is as important in legal studies as it is in legal practice. If you want to know more about this, please consult the full discussion on plagiarism and copyright that you can find under "Additional resources" on myUnisa.

In the next section we provide a short version of the prescribed referencing style in the School of Law at Unisa.

## **4.2 Prescribed style of referencing**

### *4.2.1 Introduction*

As we said in the previous section, referencing is extremely important in order for work to have academic integrity. In the School of Law there is a **prescribed** manner for referencing

sources. This format **MUST** be used for all assignments, portfolios, dissertations, theses and articles. This section is a summary of that prescribed method – a more comprehensive guide is available under "Additional resources" on myUnisa. Please refer to that if you are uncertain about a specific kind of source.

Note that there are two ways in which you can reference. *The first option* is to use the shortened version of a source throughout in your footnotes. In this case you **MUST** then attach a bibliography that gives both the shortened and the full reference. *The second option* is to give the full reference the first time you refer to that source and from there on only give the shortened version. This has the advantage that you need not add a bibliography, but the disadvantage that you need to update your references if you change your footnotes.

The rule of thumb is that you must provide all the information necessary so that whoever needs to find that source, can do so. Below is a summary of how you should refer to the various sources. We give both the long and the short versions – from this it should be clear why the short version is not enough but needs a bibliography. The bibliography is always in the full version.

#### 4.2.2 Examples:

SOURCE	FULL REFERENCE	SHORT VERSION
<b>Books</b>	Rowlands M <i>The philosopher at the end of the universe: philosophy explained through science-fiction films</i> (Ebury Press London 2003)	Rowlands <i>The philosopher at the end of the universe</i> 33
<b>Chapter in book</b>	Cover R "Violence and the word" in Minow M, Ryan M and Sarat A (eds) <i>Narrative, violence and the law: the essays of Robert Cover</i> (University of Michigan Press Ann Arbor 1992) 203-238	Cover "Violence and the word" 204
<b>Articles</b>	Schlag P "Law as the continuation of God by other means" 1997 <i>California Law Review</i> 427-440	Schlag 1997 <i>California LR</i> 434.
<b>Legislation</b>	National Health Act 61 of 2003	None. Please see bullet 3 below.
<b>Constitution</b>	Constitution of the Republic of South Africa, 1996	None. Same applies as to legislation



<b>Case law</b>	<i>Hoffmann v South African Airways</i> 2001 (1) SA 1 (CC)	None. See bullet 4 below.
<b>Internet</b>	<i>Mamoepa B “The Act on Higher Education”</i> <a href="http://www.star.hsrc.ac.za/nche.html">http://www.star.hsrc.ac.za/nche.html</a> (Date of use: 16 November 1997)	Mamoepa <a href="http://www.star.hsrc.ac.za/nche.html">http://www.star.hsrc.ac.za/nche.html</a> (Date of use: 16 November 1997)

**Please note:**

- Any study guide is regarded as a book and should be referenced as such: Kroeze IJ and Smith SR *Study guide for legal philosophy (LJU4801)* (Unisa Press Pretoria 2012). Shortened version: Kroeze and Smith *Legal philosophy* 43.
- For books with multiple authors, please see the full style of referencing on myUnisa.
- There is no standard shortened form for legislation. If you need to refer more than once to legislation, quote the full reference the first time and add "hereinafter referred to as the Act/the Health Act".
- As with legislation there is not standard shortened form. You should use the full reference the first time and then add "hereinafter referred to as the *Hoffman* case".
- For all other references not covered by this summary, please refer to the more comprehensive discussion on myUnisa.
- If there is no prescribed style of reference for your source, you can choose how you will refer to it, but that then needs to be used consistently throughout.

### Activity 4.2

Go back to the answers you gave to Activity 3.1 above. Now use the information you gave there and give the correct references for the sources you found there. In some cases you might have to go back and find more information.

1. Legislation

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

2. Case law

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

3. Books

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

4. Journal articles

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

**Feedback:** This is one of the most important skills you will ever have to master! Make sure you have the right style of referencing and check it again and again.

### 4.3 Legal writing

#### 4.3.1 Writing/grammar

It should be obvious to most of you that writing for a research report is different from writing for any other purpose. A legal article simply looks and reads differently from a newspaper article, a novel, a sermon or an email to your best friend. It is virtually impossible to teach anyone how to do this – you have to learn by doing. The best we can do is to give you some ideas on how to write:

- It is often true that imitation is the sincerest form of flattery. In this context it is a good idea to try to write like your professors and academics you admire. The more you read of what they have written, the better will be your understanding of what is required.
- Keep your language impersonal and in the passive voice. Avoid using "I think" and "in my opinion" – this is the beauty of referencing: we assume that if there is no reference, it is your own opinion. It is better to keep to formulations like "the conclusion seems to be that" or "it seems clear that".
- Avoid long and complicated sentences. As a rule, every sentence should have only one verb. Long sentences tend to confuse your readers and you want to avoid that at all costs.
- Avoid bullets and lists as if they are poisonous. The point of a research report is to provide a narrative consisting of a coherent, logical and consistent argument. You are not doing the shopping list here! Write in full, simple sentences and keep to the rule of one idea per paragraph.
- Avoid overly complicated terms and vocabulary. Simplicity is the essence of style.
- The one way of making sure no one takes you seriously is to use email or sms language. Use proper spelling and grammar.
- Most word processing programmes have a built-in spelling and grammar checker. Use them! While they are not a substitute for proper proof-reading and editing, they can help to avoid the most basic errors.
- Finally, if you are unsure about your own language abilities, it is worthwhile to engage the services of a professional editor and/or proof-reader.

**Activity 4.3**

Go to Google once again and type in "bad legal writing". You will find an astonishing range of examples of bad writing. Using your own words, give at least five reasons why lawyers sometimes write really, really badly. \_\_\_\_\_

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**Feedback:** Sometimes people blame bad writing on the fact that they are second language speakers of English. But the fact is that most of us (your lecturers included!) are probably second language speakers. Is that really an excuse?

With that we've come to the end of the study material for this module. We hope you have learnt something and that this will stand you in good stead in the future.

Your lecturers