At the end of this study unit you must be able to:

- Demonstrate an understanding of the importance of legal writing within the scope of the legal profession.
- Employ source citations in strict accordance with the instructions as set out by *The Journal of Juridical Science*.
- Employ the proper format and style guidelines for assignments and legal documents.
- Define and describe plagiarism and misconduct within the academic sphere.
- Avoid plagiarism in your academic and legal writing.

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**THE IMPORTANCE OF LEGAL WRITING**

*Do you have the goods to make a good lawyer?*

It takes many skills to be a good legal practitioner. Perhaps the most essential of all required skills is the art of using words. Words are to the lawyer what the scalpel is to the surgeon. To be a good lawyer, you must be a thorough researcher and a clear, precise writer. Most legal practitioners, especially professional assistants, candidate attorneys and judicial clerks, spend more time on researching and writing than on any other professional task. They research and write letters, memoranda, and briefs. They draft pleadings, contracts, wills, trusts, and numerous other types of documents. Inadequate and imprecise research and writing can lead to lost cases, malpractice claims, and court-imposed sanctions.
Your first priority is to become competent in the use of words. You cannot hope to achieve professional success in the legal sphere without refining your writing skills.\(^1\) Writing skills can be acquired through the careful study of various aspects of language, including vocabulary, grammar and semantics. When these aspects have been mastered, they can then be effectively employed in reasoning, reading, speaking and writing.\(^2\)

*Legal writing* is a type of technical writing used by legal practitioners, presiding officers, legislators, *etcetera*, to express legal analysis, rights, duties, opinions and advice. Some documents must be drafted in a specific format, like heads of argument, but regardless of the format or type of writing, the content of legal writing must always be in plain language.

The objective of legal writing is not to entertain, to be fun or interesting. The objective of legal writing is to fulfil the writer’s goal – to *inform or persuade the reader*. It must therefore be *informative and/or persuasive*. When the *purpose* of legal writing is to inform the reader (for instance, by way of memorandum or legal opinion) and it does not, in fact, inform the reader properly, it is simply not good writing. Should the intent of writing be to persuade (for example, heads of argument or letter of demand), and the reader is not persuaded, it cannot be said that the document was well-written.\(^3\)

Other essential requirements that legal writing must always comply with:

- **Proper legal writing is clear.**\(^4\)

  What is written cannot be misunderstood. The reader immediately grasps what the writer intended to say.

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\(^1\) Palmer and Crocker 2003:3.  
\(^2\) Palmer and Crocker 2003:3.  
\(^3\) Osbeck 2011:10-11.  
\(^4\) Osbeck 2011:16.
If the reader, whether it is a principle in a law firm, a judge or magistrate, an illiterate client, or another legal practitioner, does not understand or misunderstands the message that the writer wants to convey, the writer’s objective has not been fulfilled and good legal writing would not have been achieved.\textsuperscript{5}

\textbf{Good legal writing is concise.}\textsuperscript{6}

It is not ‘padded’ with fancy words and expressions. Sentences are not burdened with unnecessary words, but it is also not merely ‘brief’. It is simply \textit{efficient}. It does not mean that the writing is devoid of detail. It means that the detail is not superfluously described.

\textbf{Good legal writing is engaging.}\textsuperscript{7}

No matter how sound your reasoning, if it is presented in a dull and turgid setting, your hearers – or your readers – will turn aside. They will not stop to listen. They will flick over the pages. But if it is presented in a lively and attractive setting, they will sit up and take notice. They will listen as if spellbound. They will read you with engrossment.

- Lord Denning 1981\textsuperscript{8}

These three vital features of good legal writing will be discussed in later study units.

\textbf{CITATION, FORMAT AND STYLE – THE FOUNDATIONS OF CREDIBLE WRITING}

All typed assignments submitted in fulfilment of the RPK 214 module, as well as typed documents produced in legal practice \textit{must adhere to the following style, format and citation requirements.}

Failure to do this will result in severe mark penalties in assignments and reduced credibility and efficiency in practice.

\textsuperscript{5} Osbeck 2011:17.
\textsuperscript{6} Osbeck 2011:28.
\textsuperscript{7} Osbeck 2011:34.
\textsuperscript{8} Osbeck 2011:34.
GENERAL:

- It may be presented in either English or Afrikaans.
- Your work must be typed and printed on side of a page only.
- Use **1,5 line spacing**.
- **Justify** all paragraphs.
- Use **Ariel font and 12 font size only**. **Avoid** the use of curly or strange font types, and do not print headings in excessively large fonts.
- Use **bullets** carefully and only when it can enhance your writing product.
- **Avoid using abbreviations** in your written work. Where you elect to use acronyms (for example, SAPS), write the acronym out completely the first time you use it and follow with the acronym in brackets. Thereafter you can only use the acronym. (For example: The South African Police Service (SAPS) is the entity responsible for law enforcement).
- **Never use common abbreviations.** Use ‘for example’ instead of ‘e.g.’
- Always add page numbers to your work.
- It is inappropriate to use symbols in your writing instead of actual text. For instance, rather use the word ‘or’ than to use the symbol ‘/’.
- When referring to numbers under twenty, it should be typed out in words. Numbers of 21 and higher may be written out in numbers.
- In South Africa, currency is expressed as: R20 000,00. **Not** as R20 000.00 or R20 000-00.

HEADINGS:

Headings can add to the value, structure and persuasive character of your essay. The following rules are important when using headings:

- Only certain punctuation marks may be used in headings, for example, question marks, commas and hyphens. NO full stops.
- **Print headings in BOLD font.**
- **If electing to resize headings to a slightly larger font, do this consistently.**
- **If electing to use capital letters in headings, do so consistently.**
Reading a heading must give the reader a hint as to what is to follow. Do not make headings cryptic or too lengthy.

**FOOTNOTES:**

- Both *source references* and *real footnotes*\(^9\) must be contained in footnotes at the bottom of each page.
- The position of the footnote references must be in the text, in superscript in Arabic numbering.
- The footnote number must preferably be at the end of a sentence, after the full stop. Where it follows a word and comma, it should be right behind the comma, not in front of it.
- Source references should be done in the style according to the *Journal of Juridical Sciences* as indicated below.
- A footnote is used for a number of purposes.
  - Primarily, it indicates the authority for a statement you make in the main text.
  - Secondly, a footnote may be used to elaborate on what is written in the main text (a so-called *real footnote*).
  - Thirdly, a footnote may be used to comment or compare arising issues, also from different authors. The best illustration of how a footnote may be used would be to take any of your textbooks and to read and see how the footnote is employed.

**STANDARD FORMS OF USING FOOTNOTES**

**Standard form: BOOKS AND ARTICLES**


\[\begin{array}{c}
\text{1 X TAB} \\
\text{No space} \\
\text{Full stop}
\end{array}\]

\(^9\) Real footnotes refer to additional information, definitions or explanations of words or concepts in your text.
NAME IN TEXT
According to Van der Walt,\(^2\) the correct …

TWO AUTHORS
3 Nel and Brink 1987:23.

MORE THAN TWO AUTHORS

MORE THAN ONE SOURCE
5 Brink 1978:33; Venter 1970:34.

MORE THAN ONE SOURCE PER AUTHOR

COURT CASES IN SOUTH AFRICA AFTER 1947
7 \textit{Standard Bank v Neugarten} 1987 3 SA 695 W:703C-D.

Avoid any unnecessary mention of claimants and defendants such as \textit{Standard Bank of SA Ltd v Neugarten} …. Note the colon after the reference in order to align the page reference system with that in other references. No space follows the colon.

CRIMINAL CASES
For criminal cases, only the last name of the accused or abbreviation is used:

COURT CASES PRIOR TO 1947
For judgments delivered and reported prior to 1947, the traditional English abbreviations are used:

10 Baker v Baker 1945 AD 708:710.

SECOND REFERENCE TO COURT CASES
At a second reference to court cases, only the name of the relevant case and the pages are referred to – do not use ibid or supra:


12 Tsutso:670.

LEGISLATION

If it is material to the discussion, reference may be made to amendments: Close Corporations Act 69/1984 (as amended by Act 21/1997). If reference is made to a particular section, it is done in the following manner:


At a second or further reference in the footnotes to an act, it is not necessary to state the number and year of the act:

15 Close Corporations Act: Sec 56.
If it is evident from the text which act is referred to, it is sufficient to refer only to the relevant section:

16  Sec 58.

PROCLAMATIONS AND GOVERNMENT NOTICES


The reference to the *Government Gazette* must be provided (volume 103 number 4157). A second or further reference may be made in the following manner:


OLD WRITERS AND SOURCES

Roman-Dutch authors and old sources are referred to in the bibliography (see below). In footnotes, only the following references are made:

20  Voet 37 6 1.

21  Van der Linden 1914: 1 8 1.

22  Van der Linden 1806: 1 9 10.

23  D 29 2 51.

If there is no more than one source by an author in the bibliography, there is no need to refer to the relevant year.

INTERNET SOURCES

General remarks on footnotes:
- Source references to authors must contain only the last name of the author without initial, except if there is more than one author in a given year with the same last name.
- Refer to pages and not to chapters as far as possible.
- Source references should preferably be placed at the end of a sentence or at the end of a quote.
- Avoid excessive references and authority or an excessive number of sources in one reference, BUT REMEMBER THAT EVERY IDEA THAT IS NOT YOUR OWN MUST BE REFERENCED.
- If a reference becomes too long, the text to which it relates should be reconsidered.
- Expressions such as “my emphasis” should only be placed after the page reference.

True footnotes, meaning footnotes containing additional information or explanatory notes to the main text should be kept to a minimum. Comments should preferably be contained in the main text. Inconsequential remarks should be considered for complete elimination. Endnotes and end-remarks should be kept to a minimum.

Cross-references: use English terms (“see”; “see above”; “see below” or “see also”) and not the Latin terms such as “vide” or “supra”.
Where any Latin terms are used, they must be typed in *italics*.

BIBLIOGRAPHY:

- The inclusion of *court cases* and *legislation* in the bibliography depends on the purpose of writing, specific requirements and the preferences of the specific reader or audience.
List all bibliographical sources together without any categorisation, alphabetically, according to author (including institutions). The only exception to this rule is legislation and court cases, which should be categorised under their own headings.

Use the following format:

STANDARD FORMS OF BIBLIOGRAPHIES:

BOOKS

Bibliographical information on books should be presented in the following manner:

AUTHOR SURNAME, INITIALS


For example:

COETZEE JS AND BRINK L


DRUCKER PF


ARTICLES

Bibliographical information should be presented in the following manner:

AUTHOR INITIALS

Year of publication. Title of the article. *Name of the journal in which it is published* volume (number):pages.
For example:

JOHNSON HJ


Note that the full name of the journal should be supplied and that upper case or capital letters are used in the name. **Also note that the volume and number of the article must always be included:** 36(2).

**CONTRIBUTIONS IN COMPILATION WORKS**

Contributions that form part of a collection of contributions must be listed separately with a reference to the collective work as such. Refer to the editor/editors as ed/eds.

SNYMAN AL, VILIKAZI X (eds)


VAN RENSBURG CD (ed)


**DISSERTATIONS AND PAPERS**

JAMES AP


BRINK JL


**GOVERNMENT PUBLICATIONS**

REPUBLIC OF SOUTH AFRICA

**OLD WRITERS AND CLASSICAL SOURCES**

CUJACIUS J


KRUGER P and MOMMSEN T (eds)


VAN DER LINDEN J


VOET J


When referring to the old sources, Roman numerals may be provided if the author is uncertain. If the publisher is unknown, this may be omitted and only the place of publication provided.

**THE INTERNET**

Internet sources are cited as follows in lists of reference or bibliographies:

MACDONNELL, H


Sharp brackets enclose web address

Underline web address

Full stop after complete web address
QUOTATIONS:

When less than 50 words are quoted in your study, the quoted sentence must simply be enclosed in quotations marks in the normal text and the author cited. For example:

Some authors are of the opinion that “the quality of legal writing is worse today than it has ever been.”

However, when typing a quote of more than 50 words, the paragraph must be quoted as follows:

Thuto delivered strong criticism on the proposed Secrecy Bill:

It is in the best interests of all South Africans that the public, as well as members of the media at large, fiercely object to the proposed Bill that will silence the media on important aspects of national governance. Where state employees insist on conducting themselves in secret and the media has been burdened with censorship, the truth dies and democracy with it. It happened in Apartheid South Africa. It happened in Zimbabwe. It’s happening here now.

Thus:

- **NO quotation marks where more than 50 words are quoted.**
- **Cite the author.** If the author (or presiding officer) is mentioned in the text, the citation must follow the surname of the author (or presiding officer) directly. If no author is stated, the citation must follow the actual quote.
- 1 x TAB before starting the quote.
- Single line spacing.
- 10 Arial font.

PLAGIARISM

The University of the Free State policy on plagiarism distinguishes between plagiarism and academic writing misconduct. The following excerpt on the definition of these terms was taken from the UFS policy document:

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10 Policy on the Prevention of Plagiarism and Dealing with Academic Writing Misconduct. The full policy document is available online at www.ufs.ac.za.
3. Definition

Plagiarism implies direct duplication of the formulation and insights of a source text with the intention of presenting it as one's own work. Plagiarism cannot be confirmed as a result of mere similarities of words between the source text and the borrowed text as in the case of terminology, commonly used phrases and known facts. If plagiarism is suspected it must also be provable. The source text and borrowed text must therefore be placed side by side. The mere suspicion of plagiarism cannot form the basis of an accusation. Plagiarism is distinguished from forms of academic writing misconduct such as:

3.1 cribbing in tests and examinations;
3.2 collusion and fabrication or falsification of data;
3.3 deliberate dishonesty;
3.4 purchasing assignments, dissertations and/or theses on the Internet and presenting such documents as one’s own work;
3.5 presenting the same work for more than one course or in consecutive years; and
3.6 the submission of another person’s work as one’s own original work.\(^\text{11}\)

Types of plagiarism\(^\text{12}\)

- **Self-plagiarism**
  Arises when an author re-uses his own material without acknowledgement.

- **Literal plagiarism**
  Involves the duplication of whole sections of text without acknowledgment.

- **Citation plagiarism**
  Occurs where credit for sources is not provided or using another’s references as shortcut.

- **Wholesale plagiarism (‘Piracy’)**
  Where an entire article or book has been duplicated.

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\(^{11}\) University of the Free State 2010:2.
\(^{12}\) Saunders 2010:279.
What is paraphrasing?

Paraphrasing entails the practice of writing published material in your own words without changing its original meaning. This can be done by either changing words in the original sentence, or by changing the original sentence’s structure.\(^\text{13}\)

Paraphrasing amounts to plagiarism when you fail to reference the information regardless of the fact that it was rewritten in your own words.

Paraphrasing can be used under the following circumstances:

- Reference the original source.
- The paraphrasing does not dominate your work.
- There is critical analysis of the paraphrased material.

How to avoid plagiarism

1) Whenever referring to another author’s ideas or statements, whether directly (quotes) or indirectly, it is vital to cite them in your work as authority for the statement used.

2) When quoting an author in full, word for word, you must enclose the quotation in inverted comas or quotation marks and cite the author (unless the quotation is more than 50 words, then quotation marks are not used). When rephrasing thoughts or statements or ideas of another author, you need not use quotation marks but the author should still be cited.

\(^{13}\) Study and Learning Centre 2005. [https://www.disweb.rmit.edu.au/lsu/content/4_writingskills/writing_tuts/paraphrase_ll/index.html](https://www.disweb.rmit.edu.au/lsu/content/4_writingskills/writing_tuts/paraphrase_ll/index.html).
3) **Never refer to a source you did not read yourself.** This applies to court cases as well. If you did not read the case, you should not refer to it and discuss it in your text. **Do not use footnotes of another author if you did not read each and every source yourself.**

4) When using strings of words from another author’s work, digest the information and rewrite it into your own words. If you do not do this, you should use quotation marks either side of the sentences. In both cases, thorough referencing should be used.

**BIBLIOGRAPHY:**

OSBECK, MK  

PALMER, R and CROCKER, A  

SAUNDERS, J  

STUDY AND LEARNING CENTRE (RMIT University)  
2005. What is paraphrasing?  
<https://www.dlsweb.rmit.edu.au/lsu/content/4_writingskills/writing_tuts/paraphrase_ll/index.html>-  

UNIVERSITY OF THE FREE STATE  