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

- Describe the style, format and aim of persuasive legal writing.
- Distinguish between the types of persuasive writing.
- Engage in persuasive writing by employment of identified methods of persuasion.

PERSUASION – THE ULTIMATE OBJECTIVE

NB! STUDY:
Study the following extracts on persuasive writing from Palmer and Crocker\(^1\) and Marnewick.\(^2\)

\(^1\) 2011:45-49,52-53.
\(^2\) 2007:392,463-469.
5.5 Planning persuasive legal writing.

There are three essential steps in the planning of any type of persuasive writing:

**Step 1 Identify and list your objectives**

What aims are you trying to achieve with the piece of writing? Any subsidiary objectives must also be identified and listed.

**Step 2 Identify and list your strategy and tactics**

Your "strategy" is your overall plan to achieve your objectives, and your "tactics" are the steps within this overall plan.

**Step 3 REPOV - "Recipient's Point of View"**

Finally, read your completed draft from the intended recipient's point of view, in order to see whether your objectives are likely to be achieved. Then make the necessary alterations to your writing.

We shall now illustrate these three steps with examples:

Amy, a 20-year old student, has been going out with Ben, a fellow student, for a year, and now wishes to end their relationship by sending him a "Dear John" letter:

**Step 1 Main objective:** To end the relationship with Ben.

**Subsidiary objective:** To remain on friendly terms with Ben after the relationship is ended.

**Step 2 Strategy and tactics:** Strategy: Orally raise her need for "space" with Ben over a period of two weeks, and then hand deliver the "Dear John" letter to him via his sister.

Tactics: In the letter, make it absolutely clear that their relationship is ended, but place all blame on herself in order to maintain Ben's self-esteem. Maintain a neutral but friendly tone in the letter. Not to give false hope of the possible resumption of the relationship.

**Step 3 REPOV:** Read the draft letter from Ben's point of view (that is, "putting herself in Ben's shoes"). Make the necessary alterations.
Note that if Amy's only objective had been to end the relationship she could have done it in a very business-like way, as follows:

Ben Larkin
Room 174
Men's Residence
Durban

1 September 2001

END: ENDING OF RELATIONSHIP BETWEEN A. RADEBE AND B. LARKIN: 20 JULY 2000 TO 1 SEPTEMBER 2001

Please note that this relationship is hereby ended.

Your faithfully,

[Signature]

AMY RADEBE

This letter will achieve the main objective of ending the relationship, but will certainly not achieve the subsidiary objective of maintaining a cordial relationship with Ben.

A letter that comes closer to achieving the identified objectives is the following:

Ben Larkin
Room 174
Men's Residence
Durban

1 September 2001

Dear Ben,

You will have realized by now that for a while, I have just not been myself. I think I have reached a stage in my life where I need some space to think and discover myself again.

As hard as this is, I think it would be best for both of us if we no longer see each other. I realize that you are not, in any way, to blame for this situation – it is my problem and I have to deal with it.

Although our relationship is at an end, I hope we can still remain on good terms. Thank you for all you've done for me, and for the good times we've had together.

Your faithfully,

[Signature]

AMY RADEBE

5.7 Methods of persuasion: Logic, information and emotion

You may attempt various approaches to persuade the recipient of your writing to accept your point of view. The three most common methods of persuasion are, firstly, ensuring that your argument is logical; secondly, giving the recipient sufficient information to make an informed decision; and thirdly, using emotion as a tool of persuasion. We shall now briefly consider each of these methods in turn:
5.7.1 Logic

Logic is vital to your argument. The various methods of logical persuasion are fully discussed in chapters 2 and 6.

5.7.2 Information: 5 Ws and an H

Always give your reader sufficient information to enable him or her to make an informed decision. Remember to apply the mnemonic, "Five Whiskies and a Hotel" (5Ws + H), that stands for:

(i) Who?
(ii) Where?
(iii) When?
(iv) What?
(v) Why?
(vi) How?

To ensure that your piece of writing contains all the information your reader may require to make a decision.

Newspaper reporters are taught to include the 5Ws + H in the first paragraph or two of their reports, thereby ensuring that their readers get the most important information ("Must know") as quickly as possible. Further information ("Should know") and ("Nice to know") may be added thereafter. When this information is edited to fit the available space on a page of a newspaper, the editor will cut from the bottom; thus, the "nice to know" information will be cut first, followed by the "should know". What the reader "must know", however, has to remain. This approach is depicted in the so-called "Reporter's Triangle":

<table>
<thead>
<tr>
<th>PART OF DOCUMENT</th>
<th>TITLE</th>
<th>READERS' NEEDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opening paragraph or paragraphs</td>
<td>SW + H</td>
<td>Most know</td>
</tr>
<tr>
<td>Middle paragraphs</td>
<td>Further important details</td>
<td>Should know</td>
</tr>
<tr>
<td>Least important details</td>
<td>Least important details</td>
<td>Nice to know</td>
</tr>
</tbody>
</table>

Figure 5.3 The Reporter's Triangle

5.7.3 Tone and emotion

The tone of the writing may strengthen or undermine its persuasive force. Tone refers to the writer's attitude towards the reader and the subject-matter of the writing. For example, a rude, aggressive tone may induce anger in your reader, thereby lessening the chances of persuasion. Other emotions that may be deliberately (or unintentionally) evoked by the tone of the writing are sympathy, empathy, irritation, compassion, sadness, amusement, and pity. The following reputedly authentic letter, for example, contains an unashamed
emotional appeal to gain sympathy. It also – unintentionally – evokes amusement. It was written in 1915 by the station master at Londiani, Uganda, to his supervisor at Nairobi, requesting permission to travel to India to get married:

Most Honoured and Respected Sir,

I have the honour to humbly and urgently require Your Honour's permission to relieve me of my onerous duties at Londiani so as to enable me to visit the land of my nativity and transact my matrimonial business.

This is no small matter, for I have for long been cherishing the heart's desire of my soul. She is of surpassing beauty and enraptured of the thought of becoming my wife.

She is beautiful and has long been waiting for my arrival. And now I am fearful of further delay as it may deprive me of her ladyship.

Therefore, I pray Your Honour, allow me to hasten to India and contract the marriage without which I am not. I will return to Londiani to resume my official duties and perform my matrimonial functions. It is a duty and a need to solve my problem.

If Your Honour will so far be so kind as to release me, I shall pray for ever to be happy in the absence of Your Honour's lifelong prosperity, everlasting happiness, and promotion of my humble affairs.

If, however, for reasons of State or other extreme urgency, the request cannot be acceded to, I shall seek the permission of this humble petition and I pray Your Honour to grant me this benighted favour for Jesus Christ's sake, a gentleman whom Your Honour very much resembles.

I have the honour to be, Sir, Your Honour's most humble and dutiful, but terrified, mortal ward, servant.

(Signed) BA, (Doctor of God's misfortune) Bombay University, and now

Station Master, Londiani.

The request for leave was granted notwithstanding the writer's failure to consider his request from the recipient's point of view ("REPIV"). For example, the writer makes no mention of any arrangements made to ensure the smooth running of the Londiani railway station in his absence, nor does he stipulate the duration of leave for which he is applying.

Next, we consider a case study in which some of these methods of persuasive writing are illustrated in a legal context.

5.8 Case study: A dispute between neighbours – Abel Achebe v Ben Baxter

5.8.1 The facts

Abel Achebe is a 21-year old university student who has been renting a house, situated at 1 Devon Road, Berea in Durban, for two years. One of his neighbours is Ben Baxter, who lives at 3 Devon Road. Ben is a 30-year old car salesman.

Abel had a habit of parking his car, a 1988 Nissan Sentra, in his yard, under the branches of a tree growing in Ben's yard. These branches jutted into Abel's yard and provided welcome shade for Abel's car.

On 4 July 2001, Ben decided to trim this tree. In the course of trimming the tree, he cut a branch that fell onto Abel's car. The branch smashed the windscreen, dented the bonnet and cracked the dashboard. Abel and a water-meter inspector (who happened to be an Abel's property at that time) also saw Ben cut the branch, and saw the branch fall onto Abel's car. Up to that stage, Abel and Ben had been on good terms.
Abel's car was not insured, and he obtained three quotations for the repair of the damage to his car. These were the quotations he received:

- Ace Panelbeaters: R2 600.00
- Blake Panelbeaters: R3 000.00
- Charlot Panelbeaters: R2 850.00.

On 10 July 2001, he went to Ben's house with the quotations to discuss the damage to his car. Ben received him in a friendly fashion, and told Abel to leave the quotes with him as he "wanted to think about the matter".

After two weeks, Abel had still not heard from Ben, and decided to approach his friend, Cathy Chetty, a law student, for advice on what to do next.
5.8.4 The letter of demand

(a) Planning the letter of demand

Step 1. Objectives

(1) To issue a formal demand for payment in the amount of R2,000 in order to repair Abel's car.

(2) To attempt to persuade Ben to pay this amount.

(3) To ensure that the letter of demand complies with the Small Claims Court Act

(Note that maintaining a good relationship with Ben is no longer an objective.)

Step 2. Strategy and tactics

(1) Ensure that all the elements of the delict committed by Ben are covered in the letter of demand.

(2) Use a formal tone - ensure that the salutation, body of the letter and its ending match in tone.

(3) Give Ben sufficient information to enable him to make a settlement offer.

Note that the letter of demand may become an item of evidence at the Small Claims Court hearing. Ensure, therefore, that the contents of the letter are consistent with the contents of the first "friendly" letter, and also ensure that not too much information is divulged (for example, the letter may mention that an independent witness saw the incident, but the name of the witness should not be disclosed - this would be tactically unwise, as Ben may approach this witness prior to the day of the hearing).

Also, do not indicate anywhere on the letter of demand that you intend to proceed to the Small Claims Court as the fear of incurring legal costs in the Magistrate's Court may be sufficient to persuade Ben to pay the R2,000 claimed by Abel.

Step 3. \( \text{REBGE} \)

Read your draft from Ben's point of view to ensure your three objectives have been met.

---

22 Nothing in the Small Claims Court Act requires you to indicate in your letter of demand that you intend to proceed to the Small Claims Court, should your demand not be complied with.
(b) The final letter of demand

BY HAND

3 Devon Road
Berea
Durban
4001

22 September 2001

Mr B Bastin
3 Devon Road
Berea
Durban
4001

Dear Sir,

DEMAND FOR PAYMENT: R2 600 LOSS INCURRED DUE TO DAMAGE CAUSED TO MOTOR VEHICLE ND 113 189

I refer to the incident that occurred on 4 July 2001, when the branch of a tree fell on my car, ND 113 189, causing extensive damage to it.

The damage caused to my car was entirely your fault, as you were negligent in not taking proper care when cutting the branch.

The branch you cut badly damaged the front of my car, also smashing its windscreen and cracking its dashboard.

On 7 July 2001, I obtained three quotations for the repair of the damage caused by the branch to my car. These quotations are attached to this letter. As you can see, the lowest quotation is for an amount of R2 600 (two thousand six hundred rand). I have also attached to this letter an affidavit from an expert motor assessor, Mr Sello Motlhokpe, in which he assessed the pre-collision market value of my car to be R12 000. It is clear that the market value of the car far exceeds the reasonable cost of repair of R2 600.

I, therefore, demand that you pay me the amount of R2 600 (two thousand six hundred rand) within 14 days of receipt of this letter. Should you fail to do so, I shall proceed, without further notice to you, with legal action against you to recover this money.

Yours faithfully,

(Signed) 

ABEL ACHERE

Should Ben still refuse to pay, Abel will take the letter of demand to the Clerk of the Small Claims Court and arrange for a summons commencing legal action to be served on Ben.

Abel will now have to convert the contents of the letter of demand into "particulars of claim". The "particulars of claim" are a new document in which the details of the legal claim are set out in a specific format. The pages containing the particulars of claim will then be attached to the summons form (that contains Ben's address, at which the summons will be served, and the time and date of the hearing), and this document will then be served on Ben (that is, delivered to Ben in terms of section 29(2) of the Small Claims Court Act).

Finally, we shall see how Abel's particulars of claim will look when drafted.
Litigation Skills for South African Lawyers
Second Edition

CG Marnewick SC
BJur (PU for CHE) LLB (Unisa) Dip Maritime Law (Natal)
LLM (Natal) PhD (Natal)
Advocate of the High Court of SA
Barrister and Solicitor of the High Court of New Zealand
Legal Practitioner of the Supreme Court of New South Wales

LexisNexis Butterworths
DURBAN
21.4.5 Heads of argument

There are few things as helpful to a judge in reaching a decision as well-drafted heads of argument. They can be used as a framework for the judgment, even if the judge does not accept every submission counsel has made. They also serve as a handy reminder of the main points of counsel’s argument and the authorities relied upon. Yet, too few advocates make full use of this simple device to make their trial advocacy more persuasive. A skeleton argument is an invaluable device for the assistance of counsel in the presentation of a closing argument.

Draft heads or main points of argument should be prepared as the final stage in your trial preparation. By preparing an argument in draft form at that stage, you are able to check that your theory of the case is a tenable one. You can even ask a colleague to consider it and give you constructive criticism. The draft heads can also be updated each day during the trial to accommodate the evidence actually given by the witnesses so that, as soon as the evidence stage of the trial has been completed, you are able to place helpful heads of argument before the court. Every opportunity to be of assistance to the court is an opportunity to sway the court in your client’s favour.

Heads should be short. They are not supposed to be a written argument. A written argument proceeds on the basis that there will be no opportunity for oral argument. The heads are not supposed to take the place of your final or closing argument. They are meant to be a summary of the main points of your argument. Points dealt with briefly in the heads are usually elaborated upon in the oral argument. Conversely, points that are covered in detail in the heads may be dealt with more tersely in the oral argument.

The structure for heads of argument differs from case to case, but generally counsel would cover each of the steps set out in Table 21.1. It is also a good idea to ensure that your heads comply with the general principles set out in Supreme Court of Appeal Rule 10(3). (See Chapter 25.)
25.6 Preparing heads of argument

Preparing heads of argument for an appeal inevitably requires counsel to prepare for the appeal itself as the heads of argument are a summary of the argument to be addressed to the appeal court. Preparing an argument is rather a personal process. Every lawyer has his or her own way of doing this. However, there are certain formal requirements for heads of argument that could influence the way counsel prepares the argument and consequently the heads.

The importance of the heads of argument to the process of persuasion should not be underestimated. This is your first opportunity to bring the judges around to your client’s side. The heads allow you to bring the issues and the points for oral argument into sharper focus for them. You have an opportunity to direct their attention to the best points in your client’s favour and also to any weaknesses in the other side’s case. The argument in the heads should therefore be structured so that it is persuasive. Whether the appeal turns on the facts or points of law, you should arrange the facts and the points of law in such a way that the conclusion in your client’s favour is inevitable. In short, you must try to make your argument irresistible. Written heads of argument have an intimidating value, they cannot be ignored! The Romans said, “Litterae scriptae manent”, meaning that the written words remain. This is another reason why it is a good idea to provide the court with written heads of argument even in trials where they are not called for by the rules; a written argument is hard to ignore.

Leaving aside the formal requirements for the moment, the process of preparing an argument for an appeal would usually involve the following stages:

- An analysis of the record of the case for the purposes of a complete fact analysis, with the record of the case serving as the sole basis for establishing the facts;
- The identification of the issues as they appear from the record;
- The isolation of the evidence which is relevant to each issue;
- An assessment of the reliability of that evidence for the purpose of determining whether the standard of proof required on each issue, has been achieved;
- An examination of the judgment to determine in what respects the judgment is wrong (or, if you act for the respondent, in what respects the judgment can be supported);
- The construction of an argument to support your contentions with regard to the correctness of the judgment; and
- The formulation of appropriate heads of argument to pursue that argument.

The heads of argument will be shaped by a number of factors, including: (a) the test on appeal; (b) any restrictions imposed by the order granting leave to appeal; (c) whether the appeal is directed at findings of fact or law; (d) the general approach of the court to appeals against findings of fact; and (e) the provisions of the rules. The test on appeal is whether the judgment appealed against is wrong, the court will not reverse the judgment if it merely has a reasonable doubt about the correctness of the decision. It must be satisfied that the judge was wrong. The appellant’s heads would therefore explain why the judgment is said to be wrong. Nothing short of that will do. The respondent’s heads, on the other hand, would concentrate on defending the judgment.

The approach of the court on appeal depends to some extent on the nature of the judgment of the court a quo. Courts of appeal do not readily interfere with decisions based on the exercise of a discretion vesting in the court a quo. An appeal court may,
however, interfere if it can be demonstrated that the exercise of the discretion was influenced by bias, was arrived at capriciously or without substantial reasons, or was based on a wrong principle. Where the appeal turns on a point of law, the question is simply whether the trial court was right or wrong. Where the appeal turns on a question of fact, however, the appeal court applies the principles known as the "Dlamayo principles", from the case of R v Dlamayo 1948 (2) SA 677 (A). This decision has to be studied very carefully. The main Dlamayo principles are:

☐ The appeal court is generally reluctant to reverse the judgment of the trial court because the latter has advantages such as observing the witnesses and absorbing the atmosphere of the trial which the appeal court does not have.

☐ Even in drawing inferences from the evidence, the trial court may be in a better position than the appeal court, but this is not always so; there are some cases where the appeal court is in as good a position to draw inferences from the admitted facts and the facts found proved by the trial court.

☐ Where there has been no misdirection, the presumption is that the trial court was correct; the appeal court will only interfere if it is convinced the trial court was wrong.

☐ Where there has been a misdirection of fact, the appeal court may disregard the findings of the trial court and make its own assessment of the facts notwithstanding the difficulties arising from its not having had the opportunity to observe the witnesses.

The form and structure of the heads of argument depend on the case. The principles for heads of argument provided by SCA Rule 10(3) could be applied to appeals to the High Court, appeals to the Full Bench and even to opposed motions, stated cases and trials. The heads of argument in an appeal to the Supreme Court of Appeal have to follow the format and principles set out in SCA Rule 10(3). There are separate provisions in the High Court Rules with regard to the form and content of heads of argument in Magistrate's Court appeals and Full Bench appeals. If the requirements of SCA Rule 10(3) and the practice note are not adhered to, an application for condonation – notice of motion and affidavit – may be required. In Premier Free State and Others v Firechem Free State (Pty) Ltd 2000 (4) SA 413 (SCA) no proper practice note was filed and the heads of argument did not comply with SCA Rule 10(3) (page references were absent, no chronology was attached and copies of subordinate legislation were not attached). The court made a punitive costs order.

What constitutes heads of argument is best explained by reference to the decision in Caterham Car Sales & Coachwork Ltd v Birkin Cars (Pty) Ltd 1998 (3) SA 938 (SCA) at 955B-C. "The Rules of this Court require the filing of main heads of argument. The operative words are 'main', 'heads' and 'argument'. 'Main' refers to the most important part of the argument. 'Heads' means 'points', not a dissertation. Lastly, 'argument' involves a process of reasoning which must be set out in the heads. A recital of the facts and quotations from authorities do not amount to argument."
<table>
<thead>
<tr>
<th>Table 25.5 Heads of argument</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>What SCA Rule 10(3) requires</strong></td>
</tr>
<tr>
<td>(a)  The heads of argument shall be clear, succinct and without unnecessary elaboration.</td>
</tr>
<tr>
<td>(b)  The heads of argument shall not contain lengthy quotations from the record or authorities.</td>
</tr>
<tr>
<td>(c)  References to authorities and the record shall not be general but to specific pages and paragraphs.</td>
</tr>
<tr>
<td>(c)(i)  The heads of argument of the appellant shall, if appropriate to the appeal, be accompanied by a chronology table, duly cross-referenced, without argument.</td>
</tr>
<tr>
<td>(c)(ii) If the respondent disputes the correctness of the chronology table in a material respect, the respondent's heads of argument shall be accompanied by the respondent's version of the chronology table.</td>
</tr>
</tbody>
</table>

continued
<table>
<thead>
<tr>
<th>What SCA Rule 10(3) requires</th>
<th>How to comply</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(e)(i) The heads of argument shall be accompanied by a list of the authorities to be quoted in support of the argument and shall indicate the authorities to which particular reference will be made during the course of argument.</td>
<td>1. There should be some order to the list. 2. Cases should be kept separate from textbooks and statutes and arranged alphabetically. 3. Textbooks should be arranged alphabetically according to the author's surname. 4. Statutes should be arranged according to their year of enactment. 5. There should be a clear indication which authorities of the listed are to be further explored in oral argument.</td>
<td>A key at the head of the list of authorities should do the trick, for example, a note that authorities in bold print will be relied on for particularly references during the oral argument. (An asterisk (*) could be used to the same effect.)</td>
</tr>
<tr>
<td>(e)(ii) If any such authority is not readily available, copies of the text relied upon shall accompany the heads of argument.</td>
<td>1. If there are more than just a few of these, they may be bound separately from the heads of argument.</td>
<td>Not readily available in this context means not available in the court's library. In case of doubt, ask the court librarian. Maritime lawyers should take note that the SCA's library is particularly lacking in maritime law authorities.</td>
</tr>
<tr>
<td>(f) The heads of argument shall define the form of order sought from the Court.</td>
<td>1. The heads of argument should conclude with the order you contend should be made on the appeal. 2. That order should include what the trial court's order should be, if the appeal succeeds. 3. If the costs of two counsel are to be asked for, that should be stated specifically.</td>
<td></td>
</tr>
<tr>
<td>(g) If reliance is placed on subordinate legislation, a copy of such legislation shall accompany the heads of argument.</td>
<td>1. Acts of Parliament and Provincial ordinances are original legislation. 2. Attach legible copies. 3. All regulations, whether emanating from the State President, any Minister, Provincial Council or Premier or any local authority should be regarded as subordinate legislation. 4. Care should be taken that all amendments up to the date the cause of action arose (and later, if relevant) should be included.</td>
<td></td>
</tr>
</tbody>
</table>
The requirements of SCA Rule 10(5) should not be regarded as an unnecessary administrative burden; but as an invaluable guide to help counsel to prepare a coherent and persuasive argument. Compliance with each step of the process brings counsel closer to being prepared and closer to being persuasive. The content of the heads of argument will be a precursor of the argument on the appeal. The points made in the heads may be fully developed in the hearing but in the meantime they should be stated in such a way that the opportunity to persuade is not lost. The heads should serve as a roadmap for counsel and for the judges to follow the argument from beginning to end.

The heads of argument should contain a summary of your argument on the issues of fact and law opened up by the notice of appeal. Issues of fact and issues of law will probably be handled differently by the court of appeal and should therefore be approached differently by counsel. The point should be presented in the heads of argument in such a way that the oral argument can develop the point further.

If there is a cross-appeal, the appellant’s heads of argument must deal with both the appeal and the cross-appeal and the respondent’s heads of argument must follow the same pattern as the main heads.

Submissions of law
Submissions of law could be set out in a four-step process that could be used in the preparation of the heads and in the presentation of the oral argument:

☐ Step 1: Specify the challenged ruling or finding and locate it in the judgment. Refer to the volume and page numbers, as well as the line reference.

☐ Step 2: Indicate, in the form of a submission, what ruling or finding should have been made instead.

☐ Step 3: Formulate the propositions upon which the submission is based.

☐ Step 4: Identify the authorities relied upon in support of each proposition or submission, giving the full citation with page and margin or line references.

Submissions of fact
Submissions of fact could be made in a similar, stepped process:

☐ Step 1: Specify the challenged finding and locate it in the judgment. Refer to the volume and page numbers, as well as the line reference, where the challenged findings appear.

☐ Step 2: Indicate, in the form of a submission, the basis for the challenge, for example:
  - there was no acceptable evidence to support the finding; or
  - the finding was flawed, based on a misdirection, etc.

☐ Step 3: Summarise the relevant evidence in support of the submission, giving the name of the witness or document, the volume and page numbers, as well as the line references of the evidence.

☐ Step 4: Specify the nature of any misdirection or any principle which was applied incorrectly and deal with it as a submission of law but link it to the evidence.

☐ Step 5: Summarise the relevant evidence (giving the name of the witness or document with the volume and page numbers and line references) in support of the general submission that the ultimate conclusion (guilty, negligent, justified, etc.) of the court was wrong.
An hour can be a very short time when you have to persuade the court to allow an appeal. Your argument has to be compressed as there seems to be time only to make your best points. This is not a bad thing; it allows you to concentrate your effort on the sharp points of your argument. You have to weed out the lesser points and identify the strong ones. The point of a bayonet is more likely to penetrate than a flurry of blows with your fists. When you start your argument you have to introduce the issues in such a way that the court knows exactly what is in issue and what your basic proposition with regard to that issue is going to be.

- if more than one day is required for argument, the reasons for the request;
- if the appeal is said to be urgent or is entitled to some precedence on the roll, the reasons;
- a list reflecting those parts of the record that, in the opinion of counsel, are not relevant to the determination of the appeal;
- a summary of the argument, not exceeding two pages; and
- an indication of those authorities to which particular reference will be made during the course of argument.

25.7 Presentation of argument on appeal

In many ways, appellate advocacy relies on the same skills as trial advocacy, but there are important differences nevertheless. In an appeal persuasion is the most important function of counsel while in a trial counsel also has the function of directing the production of the evidence. Counsel influences the findings of fact by examination-in-chief, cross-examination and argument. Counsel's task to persuade is doubly onerous in an appeal for a number of reasons. Firstly, the judgment is presumed to be correct. So the appellant's counsel starts with a severe handicap. Secondly, appeals are determined quite quickly while trials take a more leisurely stride. “An hour is a long time in the Court of Appeal.” And it is usually a very lonely hour too! There are no witnesses to ask some bridging questions to help you through a difficult patch and the instructing attorney is usually sitting a few rows back, unable to help when tough propositions are put by a difficult judge. Thirdly, the dynamics of an appeal are different with two, three or even five judges on the bench. Bringing one mind around to one's way of thinking is difficult enough; having to persuade five takes advocacy into another, higher, plane.

Yet, arguing an appeal has a special magic; there is no greater test of counsel's ability and skills. The cases are usually challenging and the stakes are high. The opponents are usually of the highest calibre too. And the game is played for keeps. The winner takes all.

Arguing an appeal could also be a daunting experience. In a trial, the judge usually has no idea what the facts are or will be until the plaintiff's counsel or the prosecutor gives the court some insight during the opening address. Then the evidence slowly unfolds with the judge steadily learning more and more. Counsel, on the other hand, knows exactly what the case is about from the start because he or she will have prepared fully for the trial. Counsel has an advantage over the judge in the early stages of a trial; the power of knowledge! This is not the case in an appeal. The appeal judges will have studied the record of the appeal and the heads of argument for both sides. Add the fact that the judges sitting on the appeal almost invariably have more experience than counsel and their combined knowledge and experience will outweigh that of counsel by far. The advantage is with the judges this time; they have the power of knowledge, experience and numbers!
An hour can be a very short time when you have to persuade the court to allow an appeal. Your argument has to be compressed as there seems to be time only to make your best points. This is not a bad thing; it allows you to concentrate your effort on the sharp points of your argument. You have to weed out the lesser points and identify the strong ones. The point of a bayonet is more likely to penetrate than a flurry of blows with your fists. When you start your argument you have to introduce the issues in such a way that the court knows exactly what is in issue and what your basic proposition with regard to that issue is going to be.
LETTER OF DEMAND – General example

WEBSTER & GOLDSMITH
ATTORNEYS • NOTARIES • CONVEYANCERS

342 LONG STREET
BLOEMFONTEIN
9300

Your Reference: 573/342/03

PER REGISTERED POST / BY HAND

PO Box 3942
BLOEMFONTEIN
9300

5 January 2011

Dear Mr Smith

DEMAND: PAYMENT OF OUTSTANDING SERVICE FEE

I hereby confirm that I am acting on behalf of John Smith of John Smith Gardening. It is my instructions that my client rendered services to you in the amount of R500-00 in December 2002, which amount has not been paid / has not been settled / still outstanding.

(Short paragraph on details of incident / terms of contract / etc.)

Please take further notice that if the above-mentioned amount is not paid within fourteen days of receipt of this letter, legal action will be instituted against you.

(Account details of attorney)

Yours sincerely,

[Signature]

DHL Webster
Example: Heading of heads of argument

IN THE ______________ COURT OF SOUTH AFRICA
(_______________ COURT, ____________)

CASE NUMBER: __________

In the matter between:

__________________________  APPELLANT / THE STATE /

PLAINTIFF / APPLICANT

and

__________________________  RESPONDENT / ACCUSED /

DEFENDANT / RESPONDENT

__________________________ ’S HEADS OF ARGUMENT
BIBLIOGRAPHY:

CHARROW, VR; ERHARDT, MK and CHARROW, RP


MARNEWICK CG


PALMER R and CROCKER, A