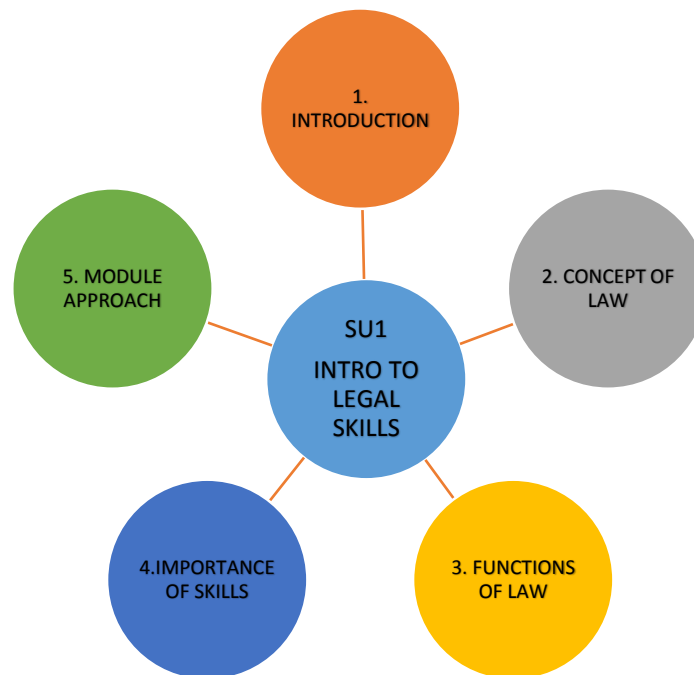


SCL 1501 NOTES

STUDY UNIT 1 –INTRODUCTION TO LEGAL SKILLS



i. INTRODUCTION

OVERVIEW OF MODULE:

- Intro to law
- Purposes/Function of Law
- Skills required for Students
- Preparation for legal practice

LAWYER refers to:

- Attorneys
- Advocates
- Prosecutors
- Magistrates
- Judges
- Law lecturers
- Academics

METHODS ACQUIRED WILL ASSIST THROUGHOUT THE MODULE

NB: REFER TO OTHER SOURCES OF INFO

- Textbooks in footnote
- ILW1501 information

2. CONCEPT OF LAW

Acquire skills

1. Law student
2. Legal Practice

N.B. MAIN FOCUS: Development of essential skills as a law student

UNDERSTANDING THE MEANING OF LAW

Not simple to provide the answer to the question “What is law?”

Different people in diverse situations understand law differently

Different types of laws:

- Religions/Church laws
- Military laws
- Laws of Nature
- Scientific laws
- Sports laws e.g. rugby; soccer; hockey
- Laws of the country

DEFINITION OF THE LAW

THE LAW IS THE SYSTEM OF LEGAL RULES RECOGNISED AND ENFORCED BY THE GOVERNMENT TO CONTROL HUMAN BEHAVIOUR

CHARACTERISTICS OF THE LAW (SIRE)

1. **S** SYSTEM OF RULES
2. **I** INTENDED TO CONTROL HUMAN BEHAVIOUR
3. **R** RECOGNISED BY THE STATE
4. **E** ENFORCED BY THE STATE

LAWS CREATE DUTIES (OBLIGATIONS) AND RIGHTS

LEGAL ORDER: WHEN PEOPLE CONFORM TO THE LEGAL SYSTEM AS THE STATE REQUIRES (TRAFFIC/TAX ETC) AND RESPECT THE RIGHTS OF OTHERS THEN WE HAVE LEGAL ORDER

THE CONCEPT OF LAW IS NOT EASY TO DEFINE

NO CONSENSUS ON ONE ACCEPTED DEFINITION OF LAW

MANY OTHER VIEWPOINTS ON RULES AND NORMS WHICH INCLUDE VALUES, ***UBUNTU (INDIGENOUS VALUES OF DIGNITY AND RESPECT)***

PEOPLE ACCEPT THAT THE LAW IS INDISPENSIBLE TO THEIR SAFETY AND ORDERLY EXISTANCE

LIFE WITHOUT IT WOULD BE BEDLAM/ANARCHY

NOT ALL RULES ARE LAW

Activity 1.1

- a. Think of situation/s where there are rules which control human beings in a specific context without such rules being recognised by the state – what makes these rules fall short of being laws

Tertiary institutions – code of conduct/ rules applicable to studies;

- b. Choose one area of your life (where you interact with other people or things) which you believe is governed by law. Think about how the law impacts on your life and the life of others.

Workplace – governed by labour law; Cell phone ownership (RICA) Banking (FICA)

The difference between non-legal rules and legal rules is that legal rules are enforced by the state.

3, THE FUNCTION OF LAW

SERVES AN IMPORTANT PURPOSE

INDISPENSIBLE TO PEACEFUL HUMAN CO-EXISTANCE

1. Law preserves harmony in the social order by maintaining the equilibrium between the individual's interests and those of the government
2. The Constitution ensures that the human rights of individuals will be safeguarded from random intrusions by the state, other individuals, groups and other dominant organisations. (Refer to Section 7 of the Constitution)
Several laws (besides the Constitution) protect the interests of members of society in specific spheres that are subject to these laws.(subject to the underlying principles of the Constitution and the Bill of Rights) (e.g. Indigenous law, law of delict, criminal law etc.,
3. The circumstances, the type of misconduct/offence and the persons involved will determine the kind of protection provided.
4. Criminal law will be applied to an individual whose misconduct has resulted in a crime that has upset society's peace and balance. The state (on behalf of society) will institute legal proceedings through the criminal courts, against the offender. A criminal sanction /punishment according to the law will be applied against that person, if found guilty.

CONSTITUTION is a social contract that establishes and keeps order among people.

STUDY UNIT 2- STUDY SKILLS I

Introduction: Ways to make to make studying effective and to improve the process of studying and learning by applying diverse methods and principles.

<p>2. Learning and Studying</p> <ul style="list-style-type: none"> •2.1 Introduction •2.2 The concept of studying •2.3 Learning as a core element of Education •2.4. The Studying Process •2.5 The Study Environment •2.6 Motivation •2.7 Healthy Diet & Lifestyle •2.8 Time Management •2.9 Study Groups •2.10 Note-making •2.11 Study Methods •2.12 Summaries •2.13 Dealing with Assessment /testing 	<p>2.4 The Studying Process</p> <ul style="list-style-type: none"> •2,4,1 Introduction •2.4.2 The Exploration Stage •2.4.3 The Fixation Stage •2.4.3 The Testing Phase 	<p>2.5 The Study Environment</p> <ul style="list-style-type: none"> •a.Social Space •b.Physical Space <ul style="list-style-type: none"> • Study Place • Comfortable • Lighting & Ventilation •Temperature Control • No Interruptions • No distractions 	<p>2.6 Motivation</p> <ul style="list-style-type: none"> •1. External (Extrinsic) <ul style="list-style-type: none"> • Negative External • Positive External •2. Internal (Intrinsic) <ul style="list-style-type: none"> •Long Term Goals •Short Term Goals
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<p>2.7 Healthy Diet & Lifestyle</p> <ul style="list-style-type: none"> •Avoid alcohol, nicotine, coffee /stimulants •Fruit & Veg •Regular small meals •Water •Sleep •Exercise 	<p>2.8 Time Management</p> <ul style="list-style-type: none"> •1. Prioritising •2. Time Planning <ul style="list-style-type: none"> •Pressure •Procrastination •Time allocation Imbalance •Maximise Performance times •Family & Friends •Other commitments •Hobbies & Interests •Rest & Relaxation 	<p>2.9 Study Groups</p> <ul style="list-style-type: none"> •1. Why study groups •2 What makes study groups work <ul style="list-style-type: none"> •Common objective •Basic House Rules •Defined Roles •Confidence & Trust •Manageable number •Contribute •Prepare & cooperate •Constructive Criticism •3 Benefits of study groups •4. Disadvantages of study groups • Functioning of the Study group <ul style="list-style-type: none"> •a Central Figure model •b Decentralised Groups model •Free flow of communication & chairperson model 	<p>2.10 Note-making</p> <ul style="list-style-type: none"> • 1. Reasons for Note making <ul style="list-style-type: none"> • Note making process <ul style="list-style-type: none"> •Effective reading and listening skills •Active process •Promotes learning • Maintains concentration •Future Record •Use phrases •Use own words •leave spaces •Formats <ul style="list-style-type: none"> •headings •bullets •Markers •Abbreviations •Edit & Synthesise •Notebooks (A4) •Separate Notebooks •Legible writing • Styles of Note making <ul style="list-style-type: none"> •Visual Notes •Narrative Notes
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A LEARNING CONTRACT is a binding agreement you make with yourself to remind you of your goals and commitments. It motivates you to abide by your study programme and keep focused on your studies. It should include the features of a legal contract as follows:

- Date
- Place
- Clauses regarding the content of the agreement
- A breach clause
- Remedies
- Signature
- Witnesses

LEARNING CONTRACT OF LAURA WARNER –1ST YEAR LLB STUDENT AT UNISA

I, LAURA WARNER, IN ORDER TO SUCCESSFULLY COMPLETE THE SCL1501 SKILLS COURSE FOR LAW STUDENTS, HEREBY UNDERTAKE TO DO THE FOLLOWING:

1. SCHEDULE MY LEARNING ACTIVITIES SO THAT I CAN COMPLETE THE MATERIAL IN TIME TO WRITE THE EXAMINATION
2. READ THROUGH THE STUDY GUIDE
3. MAKE NOTES AND SUMMARIES
4. SUBMIT BOTH ASSIGNMENTS BY THE DUE DATE
5. PREPARE FOR EXAMINATIONS
6. WRITE THE EXAMINATION

SHOULD I NEGLECT TO DO THE ABOVE AS PLANNED, WITHOUT VALID REASON, AND BY PUTTING MY “WANTS” BEFORE THE ABOVE “MUST DO” TASKS, I UNDERTAKE TO FORFEIT MY FRIDAY NIGHT OFF STUDY EVENING UNTIL I HAVE CAUGHT UP ON MY STUDY SCHEDULE.

THUS AGREED AND SIGNED ON THIS [] DAY OF MARCH 2014 AT GOODWOOD CAPE TOWN

SIGNATURE:

WITNESS 1: [FULL NAME] SIGNATURE: [] DATE: []

WITNESS 1: [FULL NAME] SIGNATURE: [] DATE: []

2.11 Study Methods

- 1. Learning Method and Learning Approach Relationship
- Memory strategies
 - Mnemonics
 - Acronyms
 - Acrostics
 - Keywords
 - Linking/ chain
 - Association
 - Imagery

2.12 summaries

- What is a summary
- Hints
 - Read entire text
 - Get the gist of the text
 - Keep to same content and concepts
 - Identify and include key points
 - Identify key words
 - Include (if any)
 - definitions of key principles
 - theories
 - Procedures
 - Use simple language
 - Be objective and factual
 - Summary should be a synopsis
 - Refer to original text

2.13 Dealing with Assessment/Testing

- 1 Writing Assignments
 - **Introduction**
 - Short
 - Outline main argument
 - Focus on question
 - **Body**
 - Develop argument
 - supply details
 - give examples
 - state relevant facts
 - Write in paragraphs
 - One idea per paragraph
 - **Conclusion**
 - Summarise main argument and content
 - Focus on question
 - Be brief
- 2. Preparing for Exams
- 3. Writing Exams

STUDY UNIT 3 – READING SKILLS

READING SKILLS

1. INTRODUCTION

2. WHEN ARE YOU AN EFFECTIVE READER

- Able to use various reading techniques
- understand purpose of reading and act accordingly
- See bigger picture as well as detail when reading
- Identify the structure of different types of texts
- identify interrelations (within, without and link to known facts)
- Make correct assumptions /read between the lines
- Evaluate the text for purpose, content, usefulness, objectivity and scientific correctness
- Interpret and understand the text

3. TO READ AND UNDERSTAND AN ACT OF PARLIAMENT

- a. Text
 - Signed Text
 - The Short Title
 - The Long Title
 - The Preamble
 - Contents of the Act
 - Definitions
 - Sections, subsections, paragraphs and subparagraphs
- b. Context
- c. Presumptions

4. LATIN TERMS

5. HOW TO READ A COURT CASE

- 1. Case name
- 2. Year and volume
- 3. Series of law reports
- 4. Page where the report starts
- 5. Court where the case was decided
- 6. Structure of the reported decision
 - Judges names
 - Date on which the case was heard
 - Catch Phrases (Flynote)
 - Headnotes
 - Summary of heads of Argument
 - Date on which judgement is given
 - Judgment (Majority;Minority; Separate

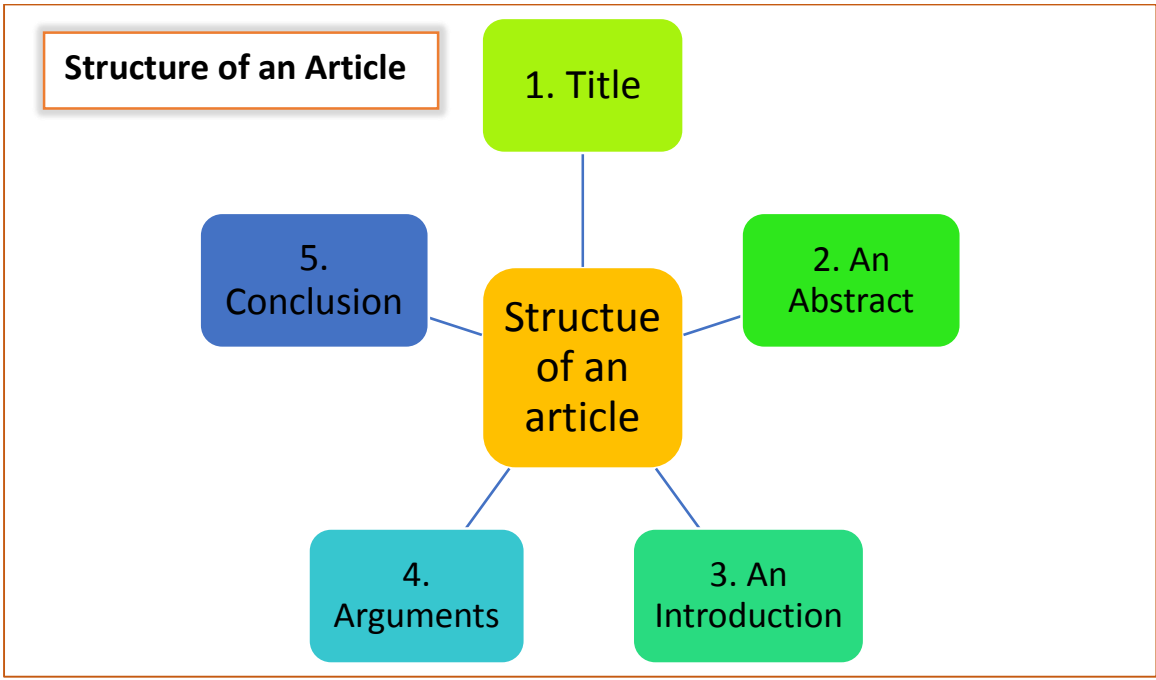
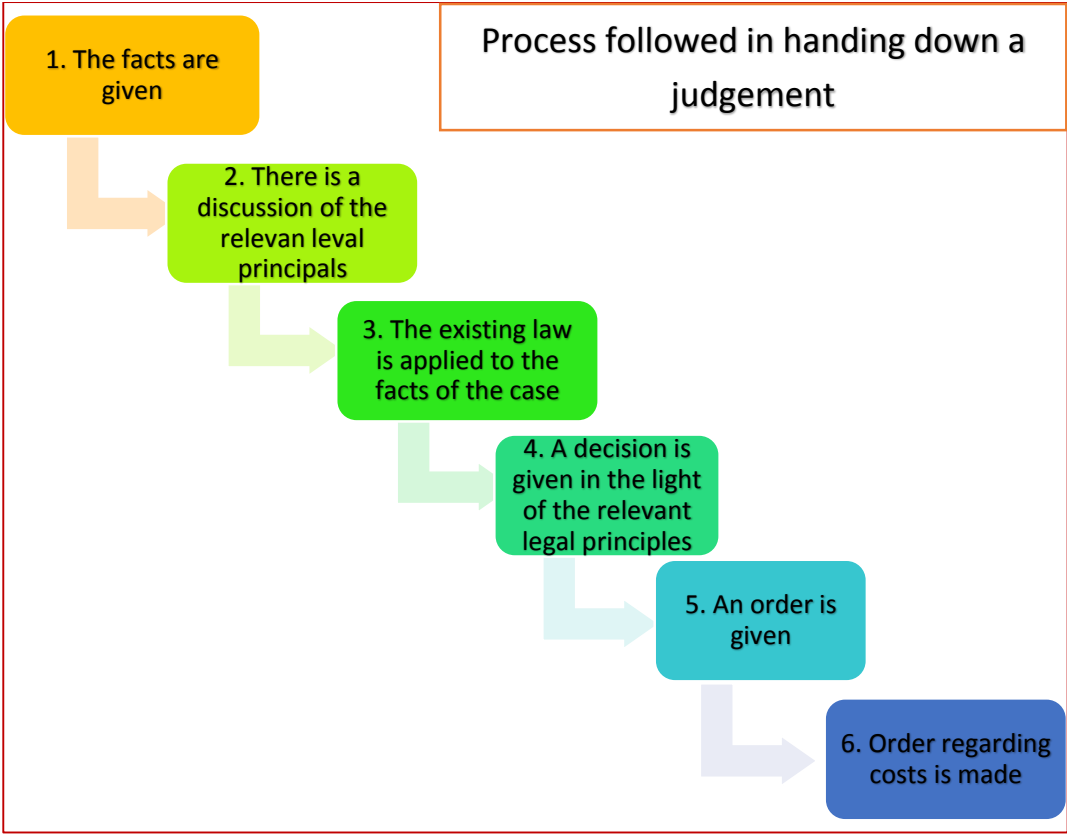
Judgment will take the following form:

- First the facts are given
- Second, there is a discussion of the relevant legal principal
- Third, the existing law is applied to the facts of the case
- Fourth, a decision is given in the light of the relevant legal principle
- Fifth, an order is given
- Lastly, an order regarding costs is made

6. READING AND UNDERSTANDING A JOURNAL ARTICLE

- 1. how old is the article - when was it published
- Was it prior or post the new Constitution
- Who is the author?
- Is this person an authority on the topic'
- Have other articles been written

7. CONCLUSION



READING AN ARTICLE

THINK ABOUT THE ARTICLE AND ANSWER THE FOLLOWING QUESTIONS IN YOUR HEAD

4. READ THE ARTICLE AGAIN INCLUDING THE FOOTNOTES AS THEY SOMETIMES CONTAIN VALUABLE INFORMATION

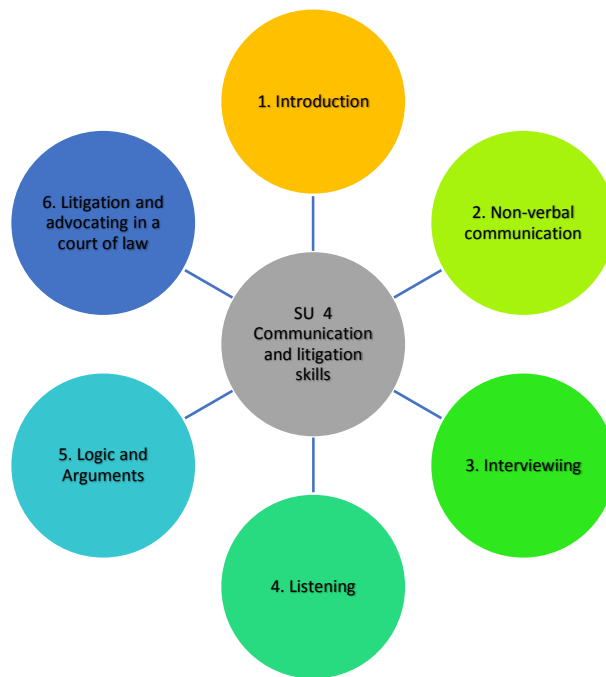
3. READ THE ARTICLE AGAIN FOR DETAIL

2. SKIM-READ THE ARTICLE

1. READ THE TITLE AS WELL AS THE ABSTRACT

Which aspects are the author addressing and why?
Which solutions are given?
Is it relevant information that can make a difference?
Which sources are reference and are they authoritative?

STUDY UNIT 4 COMMUNICATION AND LITIGATION SKILLS



Non-verbal communication

2.1 What is non-verbal communication?

People usually communicate through verbal or written expression where sounds or words have specific meanings

We can also communicate through our body language (facial expression, posture etc) without speaking (or writing)

This unwritten, unspoken method "language" is called non-verbal communication

2.2. The Importance of non-verbal communication for a lawyer

Non-verbal communication is important to lawyers because their work relies on credibility and persuasion
Persuading the client you can win his case and persuading the judge to accept the logic of your arguments

Non-verbal communication can contribute to the success or failure of the lawyer

Lawyers need to master the art of non-verbal communication to create credibility by the way they dress, their attitude and by the unspoken message they give to the client and when appearing in court

Research indicates 35% of message is communicated verbally 65% non-verbal

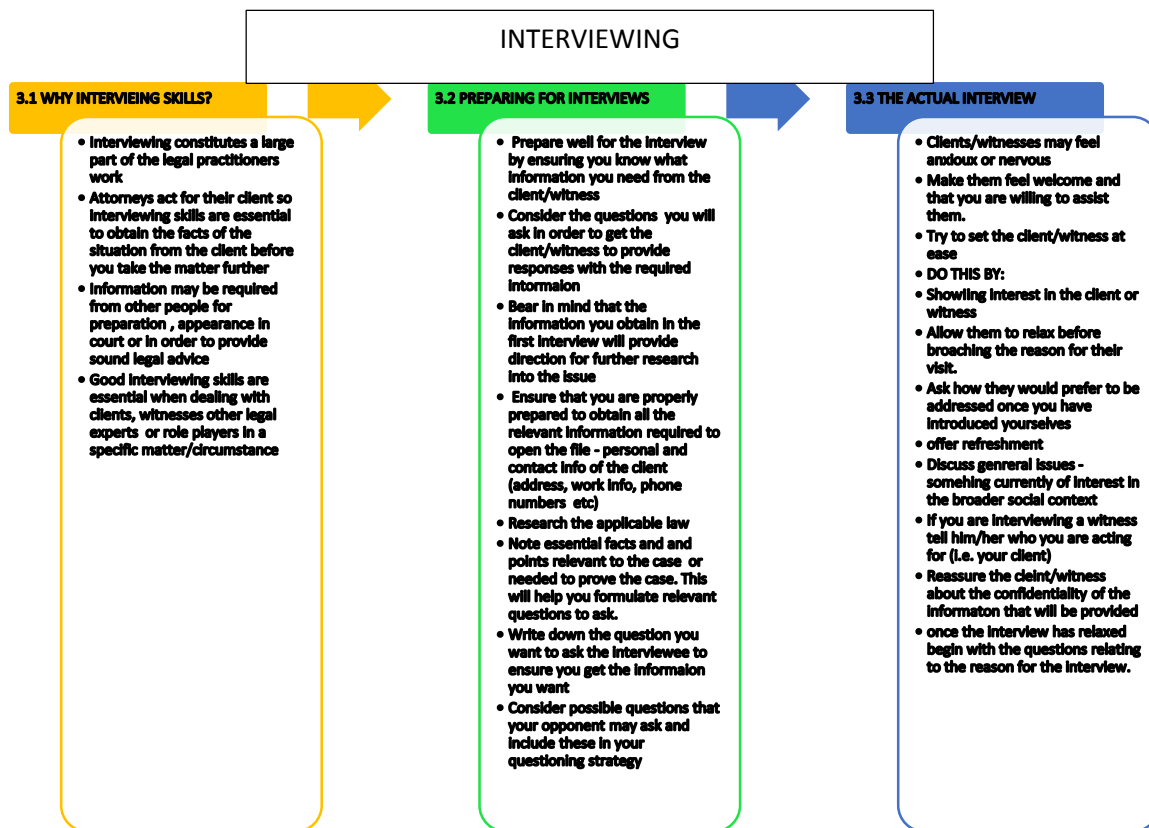
2.3 Examples of non-verbal communication

- CLOTHES
- BODY LANGUAGE
- EYE CONTACT
- FACIAL EXPRESSION
- TONE OF VOICE

NON-VERBAL COMMUNICATION ALSO INCLUDES OTHER PROFESSIONAL BEHAVIOUR SUCH RETURNING CALLS PROMPTLY, PUNCTUALITY, QUALITY OF ACCOUNTS AND LETTERS

Functions of an Interview:

- Establish the lawyer – client relationship
- Identify the issues
- Determine the client's aims and to advise accordingly
- Obtain enough information to proceed with the matter
- Prepare for further action on the client's behalf



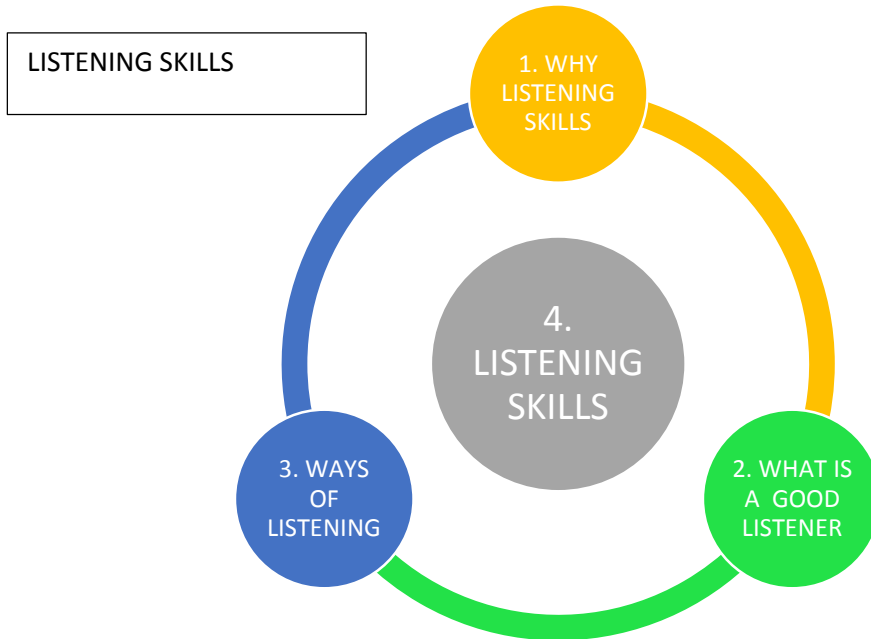
HOW TO HANDLE THE INTERVIEW – ONCE THE CLIENT/WITNESS HAS RELAXED

We are preparing a court case regarding..... Matter related details (circumstance/ place/date) and would like to get more information from you

Your details were given to us by he said you witnessed the and that you were willing to assist the court in this matter.

You can then ask the questions needed to obtain more specific information regarding the matter.

1. Ask the client or witness to give a brief description of what transpired as this will provide you with an understanding of situation.
2. Take notes while the interviewee provides the information
3. Stop the person for clarification or if she/he speaks too fast
4. Ask the client/witness to repeat the brief description a second time
5. You can then check for inconsistencies or deviations
6. If you discern deviations or inconsistencies politely ask the person to stop and request clarification on the issue – take notes
7. Remain focused on the facts as this will enable you to set the emotions aside
8. Apply your listening skills and techniques
9. Ensure that the interviewee has provided the information in answer to the questions you formulated prior to the interview which will assist you develop your argument with regards the disputed issues.



WHY LISTENING SKILLS?

LISTENING IS AN ESSENTIAL SKILL FOR LAWYERS BECAUSE THE NATURE OF THEIR WORK REQUIRES WELL-DEVELOPED LISTENING SKILLS TAKING INTO CONSIDERATION THE IMPORTANCE OF OBTAINING RELEVANT INFORMATION AND FACTS DURING CONSULTATIONS, COURT APPEARANCES AND COMMUNICATION WITH OTHER ROLEPLAYERS IN THE LEGAL SYSTEM AND PROCESSES.

FAILURE TO LISTEN TO THE INFORMATION PROVIDED BY A CLIENT OR A WITNESS WILL IMPEDE THE ACCURACY OF GATHERING RELEVANT INFORMATION AND PROVIDING ACCURATE ADVICE. IT MAY ALSO HINDER ESTABLISHING A CONNECTION WITH THE INTERVIEWEE AND GAINING HIS/HER TRUST AND CONFIDENCE

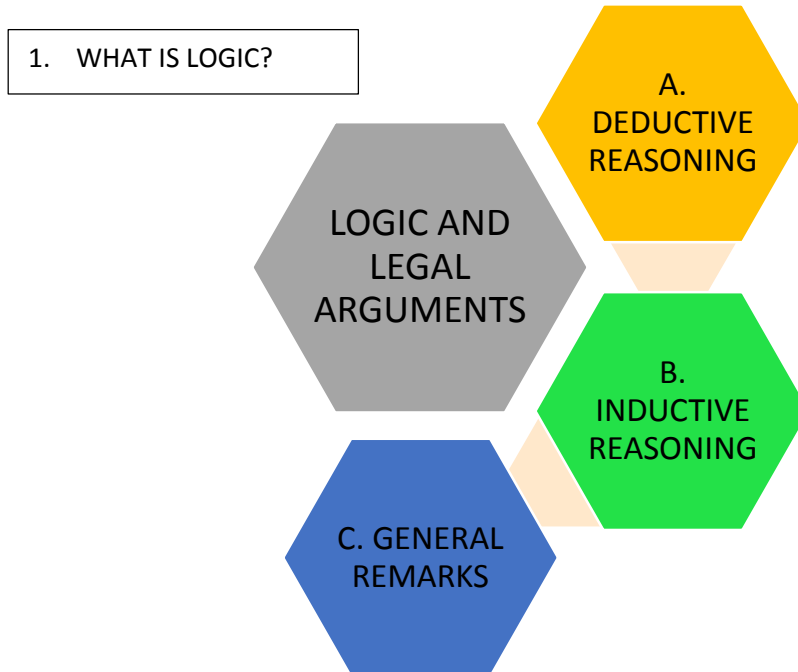
THERE IS A DIFFERENCE BETWEEN HEARING AND LISTENING – HEARING IS PASSIVE WHEREAS LISTENING IS AN ACTIVE, CONSCIOUS ACTION BY THE RECEIVER OF A MESSAGE



WAYS OF LISTENING

- Two ways
 - Listening for facts
 - Listening while noting feelings or emotions
- **LISTENING FOR FACTS**
- Listen for what is being said
- Analyse what you hear based on the facts
- Think about :
 - How do the facts relate to the issue
 - Listen for main arguments
 - Note which arguments support the main idea
 - Try to remain objective
 - Take notes
 - Ask questions for clarification
- **LISTENING WHILE TAKING NOTICE OF EMOTIONS**
 - This is a very important way of listening
 - This is an even more active way of listening because you have to listen for what is being felt
 - You need to reflect on what is being said as well as what is being felt
 - To listen successfully to emotions
 - Refrain from judging the speaker
 - Use non-verbal techniques to encourage the speaker to relax and trust you

- Don't interrupt the speaker
- Avoid disturbances
- Refrain from providing examples of your own experiences
- Don't provide advice unless it is requested
- Provide a summary of what the person said when they are finished
- Clarify where necessary by asking questions



ARGUMENTATION forms the foundation for all forms of legal arguments or oral advocacy

CONTENT OF THE LAW is both substance and rules of procedure

THE ROLE OF A LAWYER is to solve a problem by applying relevant laws in an argument which persuades the court of its validity so that you achieve your objectives

LEGAL ARGUMENTATION is the action of the lawyer to apply the relevant law to a specific legal problem

THE ABILITY TO ARGUE EFFECTIVELY DEPENDS ON SUCCESSFULLY CREATING A LOGICAL SEQUENCE OF IDEAS WHICH LEAD TO A LIKELY OR ACCEPTABLE CONCLUSION

5.1 WHAT IS LOGIC?

Logic is the study of rational thinking and relates to the structure of valid arguments

LOGIC is related to the ability to solve problems by argumentation and good thinking

WHAT IS AN ARGUMENT?

It is a web of statements in which one statement is made on the strength of the rest. The relationship between the premise and the conclusion may take different forms. The best known **forms of argument** are Deductive reasoning and Inductive reasoning.

a. Deductive Reasoning: Goes from general to specific

If you know the premise you know the conclusion as it is almost a certainty

Example: All pears are fruits, all fruit grows on trees therefore pears grow on trees.

3 aspects

○ **Form and Content**

In deduction the form determines the validity. P1 plus P2 results in C

○ **Truth**

For an argument to be true and valid the premises have to be true from which a true and valid conclusion can be deduced

○ **Meaning**

Deductive reasoning does not provide new information but tends to provide clarification on existing information. Clarification and interpretation are important aspects of legal participation.

b. Inductive Reasoning: Goes from specific to general

Example: Jerry is an attorney, all observed attorneys are attractive therefore Jerry is attractive

○ **Argument from (so-called) law**

Lawyer argue from the basis of laws and have to show if the laws can or cannot be applied to the specific case. This is form of argument is often used to establish a pattern of behaviour if someone's behaviour is under examination.

○ **Connectedness or correlation**

This is a weaker form of argumentation and is based on establishing a link between two events Eg., because this then that is to be expected . Provides and excuse.

○ **Causality**

This is a general form of argument in the legal spheres as causality usually has to be proven. This is the strongest link between two events

c. General Remarks

i. The nature of premises

- Should be relevant to the point in question
- Can be perceived or acknowledged facts.
- Or Assumptions
- Conclusions in previous arguments

Two forms of irrelevant argumentation:

- **Argumentum ad hominum** (personal attack) attacking the arguer instead of the argument being made
- **Argue from authority** – introducing a name in an attempt to strengthen an argument without using an authority correctly

ii. Beware of arguing in circles

Occurs when the desired outcome is introduced as a premise- unacceptable because it starts with what still must be proven

iii. **Criticism**

Views and opinions must be substantiated and open to criticism and discussion in principle. Criticism of an argument can be focused on the premises or the conclusion. The principle of reasonableness must apply

iv. **Non-sequitur –conclusions do not follow the premises that they are supposed to originate from.**

Must be avoided

Logical order should lead to a rational result or conclusion

There are ways in which logical reasoning can be challenged in situations

- The argument is based on weak and unacceptable premises
- Inferences made from the premises are faulty
- *Non sequitur* where the final conclusion made does not follow the premises presented.

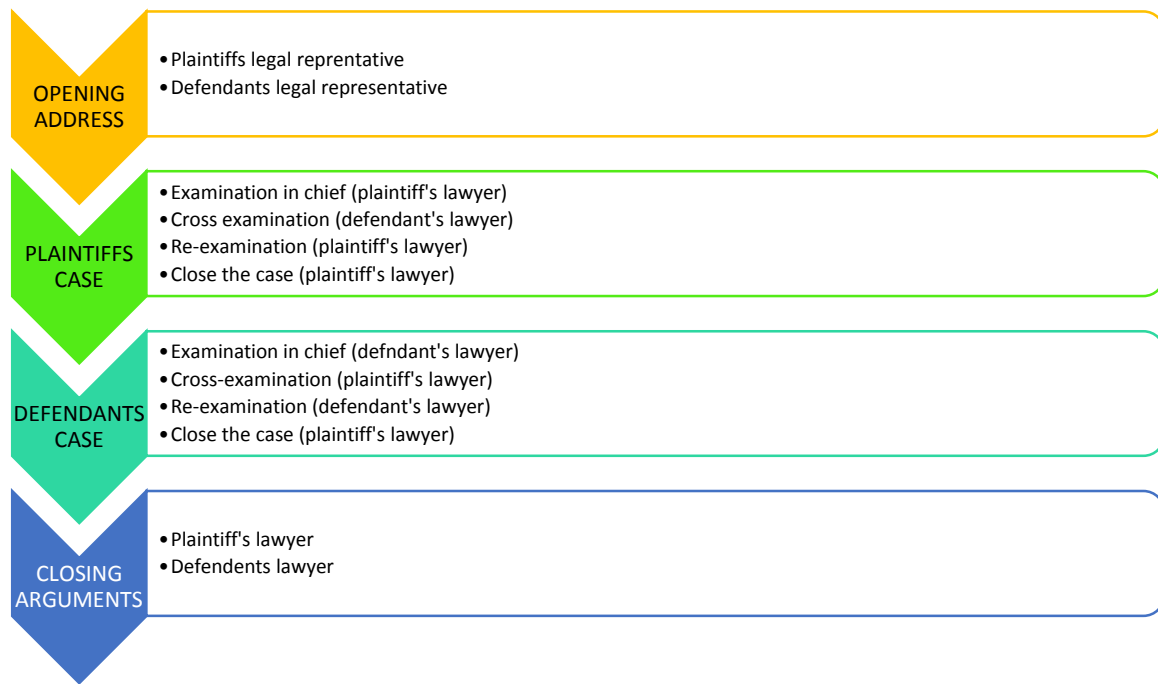
What is a good argument?

- *It is a strong argument*
- *The premises should not only be true but be understood and accepted by the intended audience*
- *It should successfully persuade its audience*

5. **Litigation and Advocating in a court of law**



SUMMARY OF PROCEDURAL STEPS IN A TRIAL (STAGES IN A TRIAL)



A.OPENING ADDRESS

Address the Magistrate

- Your worship

State your name

- My name is Laura Warner from LAWSERVE Legal Advisors

State for whom you act

- I act for the plaintiff /defendant [NAME AND SURNAME]

State what the matter is about

- This is a claim for damages resulting from a motor collision which occurred on 24 September 2013 at the intersection of Vanguard Drive and Frans Conradie Boulevard in Goodwood Cape Town

State the issue in dispute

- the parties differ on the quantum of the claim

State what evidence you will present

- I will call Prof Duvenhage, an expert in reconstruction of accidents as well as Mr. Jack a panel beater from Jacks Panelbeaters situated in Goodwood Cape Town

EXAMINATION –IN-CHIEF

- Conducted after the witnesses have been sworn in
- Encourage the witness to relax
- Your objective is to get the witness to provide a logical and coherent account of the incident
- Adopt a calm, friendly conversational style of questioning
- Frame your questions so that the response from the witness provides only the information you require
- Your witness's evidence should correspond to the information provided in the pleadings
- Avoid asking leading questions (**leading questions elicit responses about information that is still to be provided**)

CROSS-EXAMINATION- IS THE PROCESS OF CHECKING, CHALLENGING OR EXTENDING THE TESTIMONY ALREADY GIVEN BY A WITNESS

- The cross-examiner may become aggressive during the cross-examination in an effort to demonstrate that the witness's testimony is not reliable.
- Your opponent will cross-examine your witness after you have completed the examination-in-chief.
- Cross-examination should be done carefully so that you do not inadvertently strengthen your opponent's case.
- Cross-examination can also be used to obtain information from your opponents witness that can strengthen your case

- Focus on what you need to obtain from the cross-examination and be forceful in doing so if necessary so that the witness's version of events is tested and inaccuracies are exposed
- Your aim should be to discredit/create doubt about the facts and veracity of the witness's testimony

RE-EXAMINATION

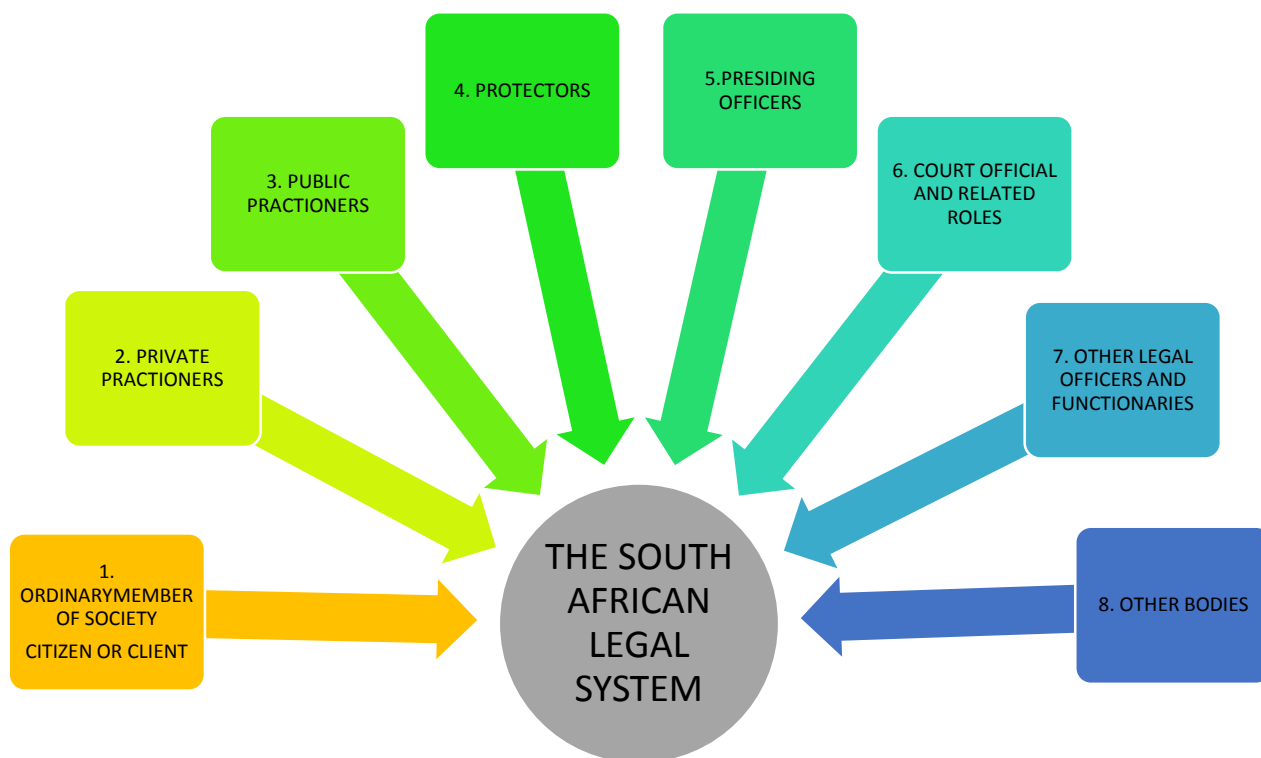
- Re-examination is done after your witness has been cross-examined
- The purpose of re-examination is to reduce or repair any damage that may have been done during cross-examination
- Some lawyers feel you should only re-examine only if you have to otherwise you could do damage to your own case if the witness contradicts previous statements

CLOSING ARGUMENTS

- Presented after both sides have presented all their evidence to court
- Meant to persuade the court to accept your arguments and find in your favour
- Prepare typed heads of argument to support your argument
- Heads of argument are written presentations where you briefly outline
 - i. The facts or background of the case
 - ii. The evidence
 - iii. Applicable law and sources
 - iv. Ask the court for a specific order or orders- often referred to as prayers or remedies
- The heads of argument will be verbally presented during your closing argument/statement

STUDY UNIT 5 LEGAL ACTORS

ACCRONYM FOR LEGAL ACTORS IN TH SOUTH AFRICAN LEGAL SYSTEM = OP⁴COO



LEGAL ACTORS IN THE SOUTH AFRICAN LEGAL SYSTEM

OP⁴COO

ORDINARY CITIZEN, CLIENT

PRIVATE PRACTITIONERS

PUBLIC PRACTITIONERS

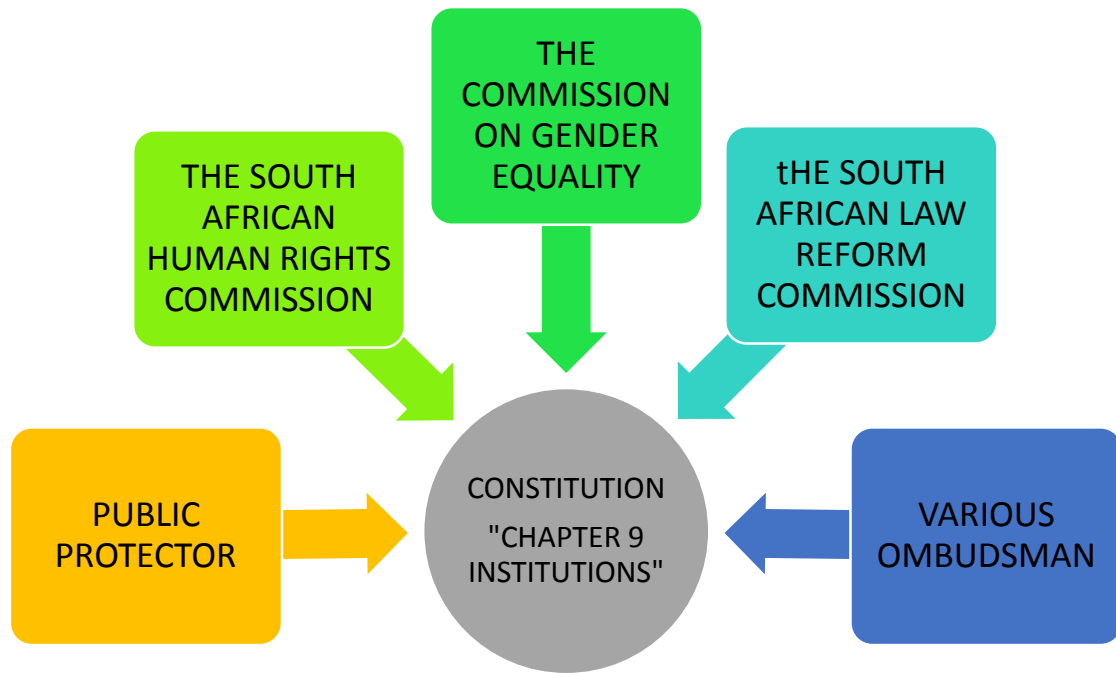
PROTECTORS

PRESIDING OFFICER/S

COURT OFFICIALS

OTHER LEGAL OFFICERS AND FUNCTIONARIES

OTHER BODIES



ORDINARY MEMBER OF SOCIETY	PRIVATE PRACTITIONERS	PUBLIC PRACTITIONERS	PROTECTOR	PRESIDING OFFICERS	COURT OFFICIALS	OTHER LEGAL OFFICERS /FUNCTIONARIES	OTHER BODIES
Client	Paralegals	Prosecutor	Public Protector	Judge	The Master	Registrar of 'Deeds	(SALRC) SA law Reform Commission
Criminal accused	Attorneys	State Attorney	Public Defender	Magistrate	Registrar of the High Court	Companies and Intellectual Properties Commission	SA Human Rights Commission (SAHRC)
Civil parties	Advocates	State Advocate	Ombudsmen	Small Claims Court Commissioners	Clerk of the Court	Commissioner of Oaths	Commission for the Promotion and Protection of Cultural, Religious and Linguistic Communities (CPPCRLC)
	Conveyancers	State Legal Advisor		Traditional leaders	Family Advocate	Marriage Officer	Commission for Gender Equality
	Notaries			Presiding Officers in special courts	The Sheriff		Academics and Jurists
					The Police		

SOCIAL CONTRACT refers to the consensus of a group of people who have willingly united and agreed to a system of rules by which their lives will be governed and which provides order, protection and certainty in the situation.

1.1. Ordinary citizens as legal actors:

1. ORDINARY CITIZENS: The legal system is created by citizen to serve them. In terms of a SOCIAL CONTRACT, citizens agree to comply with the system
2. Legal processes often revolve around the individual member of society
3. The individual should be seen as a fundamental actor in the legal system and processes
4. In specific cases may be:
 - a. Client
 - b. An accused or complainant in a criminal matter
 - c. Plaintiff or defendant in a civil matter
 - d. Witness
5. The participation of the ordinary citizen in the legal system may be by
 - a. Direct involvement:
 - b. Proxy**
6. Important role should be recognised and not disregarded.

Exercises

1. Summarise the text in two narrative lines.

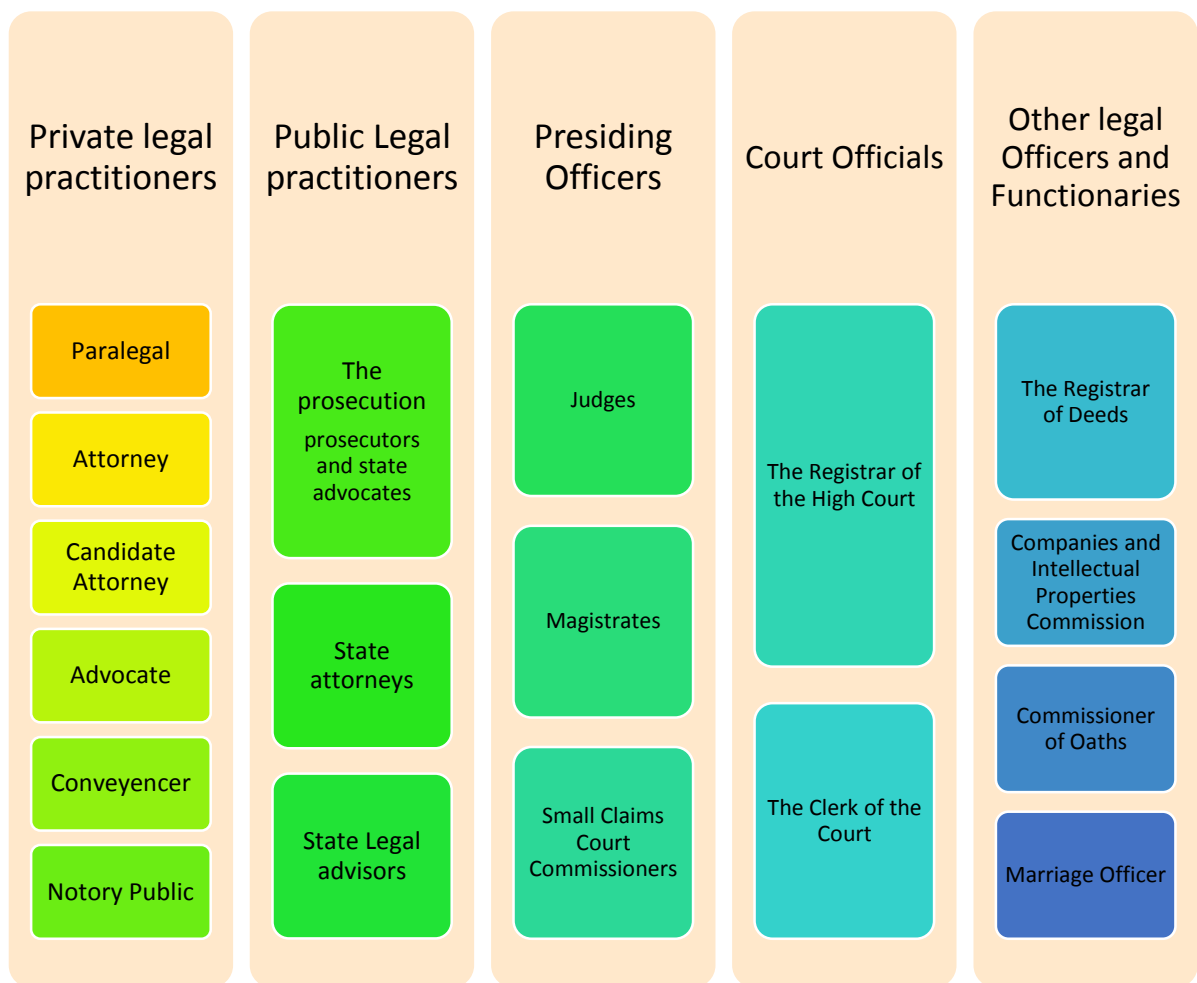
Initially ordinary citizens play a pivotal role in the creation of the legal system and processes through a social contract and later by participating in various roles. E.g. Parties to civil or criminal litigation.

2. Discuss the meaning of:
 1. Formal Functionaries: means the various legal practitioners and officials who participate in the legal system who have a specific function in the execution of the law such as attorneys, judges, agencies such as the SA Law Reform commission and so on.
 2. Democratic Constitutional order: means a legal order that is representative of the will of the people and that safeguards their personal legal rights from interference by the state, influential others and other individuals.
 3. Civic duty: means the duty that each person has towards the community or general public
 4. Actor: in the legal context means a person or agency that plays a role in the legal system and processes
3. Discuss the role of the citizen as a legal actor in the South African legal system
 - ORDINARY CITIZENS: The legal system is created by citizen to serve them. In terms of a SOCIAL CONTRACT, citizens agree to comply with the system
 - Legal processes often revolve around the individual member of society
 - The individual should be seen as a fundamental actor in the legal system and processes
 - In specific cases may be:
 - Client
 - An accused or complainant in a criminal matter
 - Plaintiff or defendant in a civil matter
 - Witness
 - Important role should be recognised and not disregarded.
4. Clarify:

- a. Referenda: refers to votes and surveys in which the citizens of a specific geographic area participate
- b. Elections: refers to the democratic process where the citizens of a specific geographic region by a system of voting (secret ballot) choose individuals, parties or groups who will represent their interests in as specific context.

PROXY: refers to the indirect participation of an individual who is represented in a situation by a representative (agent) or representatives (agency).

2.2. Legal Practitioners as legal actors



Legal practitioners may represent the individual by *proxy*. Members of society may encounter legal issues and challenges which require the assistance of attorneys, conveyencers, notaries, paralegals, the Public Protector or ombudsman. Legal issues can occur in civil (private) and public (criminal) matters. In public/criminal cases they will deal with, for example, prosecutors, the Public Prosecutor, state attorneys, state advocates, the police, etc.,

Legal practitioners can be divided into two groups:

- a. Private legal practitioner
- b. Public legal practitioners

- a. **Private legal Practitioners**
 - Attorneys
 - Advocates
 - Paralegals
 - Candidate attorneys
 - Conveyancers
 - Public notaries

- b. **Public legal practitioners**
 - i. The Prosecution
 - 1. Prosecutors
 - 2. State Advocates
 - ii. State Attorneys
 - iii. The state legal advisors

- c. **Presiding Officers**
 - Judges
 - Magistrates
 - Small Claims Courts Commissioners

- d. **Court Officials**
 - The Registrar of the High Court
 - The Clerk of the Court

- e. **Other Legal Officers and Functionaries**
 - The Registrar of Deeds
 - The Companies and Intellectual Property Commission
 - Commissioner of Oaths
 - Marriage Officer

Overview of Attorney and Advocates Professions

Requirements	Attorney	Advocate
Training	LLB Degree; Legal Articles of Clerkship or Articles (1 year plus practical legal training) Attorney's admission exam (the Side Bar Exam)	LLB Degree; Pupillage (ranging between four months to 1 year) Bar examination
Controlling Body	Law Society of South Africa (LSSA)	General Council of the Bar Provincial Bar Societies
Act/Rules	Attorneys Act 53 of 1979	Admission of Advocates Act 74 of 1964
Jurisdiction	Deals Directly with the public(clients) Practises and right of appearance in the lower courts	All courts in South Africa
Powers/Competencies	General legal matters and problem solving Examples: Drafting of contracts, wills, powers of attorney, and other legal documents Litigation Representation <i>Ex officio</i> commissioner of oaths	Litigation Drafting legal documents Pleadings Legal Opinions