Preface

In essence, the Student Handbook for Clinical Legal Practice is designed to support both student learning and legal service provision in the UCT Law Clinic, with a view to achieving the best possible outcome for clinical legal education and for access to justice for indigent peoples who seek assistance from the University of Cape Town Law Clinic.

Importantly, the Handbook aims to support students who undertake the Clinical Legal Practice Course in cultivating an appreciation of the broader aspects of ethical and professional lawyering, as well as essential aspects of the administration of legal casework. Moreover, in a simple and easy to use format, the Handbook is intended as a tool to assist the development of the confidence of students on the Clinical Legal Practice course as they navigate the various stages of legal casework.

I wish to acknowledge the dedicated assistance of the staff and associates at the UCT Law Clinic in assisting with the design and preparation of the content of the Handbook—namely Shamemah Abrahams, Ibtisaam Ahmed, Goksen Effendi, Michelle Le Roux, Jibraan Osman, Lionel Soupen and Andile Zantsi. In addition, we received much appreciated assistance from a number of former participants in the Clinical Legal Practice Course, who completed a questionnaire on topic coverage. I also wish to thank those that participated in the peer review process for their valuable comments. Finally, I wish to acknowledge the role of Vicki Igglesden in advising on and managing the project, and in editing the final handbook.

Yellavarne Moodley
Director
UCT Law Clinic
University of Cape Town
March 2018
Disclaimer:

Whilst all efforts have been made to ensure that information in the Clinical Legal Education Student Handbook is up-to-date, it was prepared using the best information available at the time of preparation. The UCT Law Clinic reserves the right to change the policies, procedures, guidelines and forms in the handbook without notice or obligation during the duration of student participation in the course. The provisions of this handbook are not intended to constitute a contract, expressed or implied, between any student or faculty member and the University of Cape Town.

The primary responsibility for reading and following correct policies and procedures remains with the student. The Clinical Legal Education Student Handbook does not cover all regulations that relate to students in the UCT Law Faculty. Students are advised to consult other sources of relevant information, including (but not limited to) items set out in the UCT Law Faculty Handbook 2018 (such as rules for degrees, and the values and goals that underpin teaching and learning within the Law Faculty). The scope of the handbook also excludes the following topic areas: University of Cape Town rules on registration & examinations, changes of curriculum, leave of absence, and academic conduct (with particular attention to dishonesty and plagiarism). (See General Rules and Policies - Handbook 3).

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1: INTRODUCTION

1.1 THE UCT LAW CLINIC: BACKGROUND

The UCT Law Clinic, which was started by law students in the early 1970s, was the first university law clinic to be established in South Africa. The first community clinic opened in Kensington in 1973, following which other clinics were established in disadvantaged areas in the Western Cape. Students provided legal advice to clients at these clinics, assisted by practicing attorneys. This model was replicated across South Africa in the 1980s, with law faculties appointing attorneys to manage and run the law clinics. In 1989 the UCT Law Clinic appointed its first Director.

Today, the Clinic has evolved from a student run initiative to a fully functioning law practice and a Cape Law Society accredited law clinic operating within the UCT Law Faculty. The Law Clinic is run by a professional staff of experienced practising attorneys who litigate in the District, Regional and High Courts on behalf of indigent people who would otherwise not have access to the law. The Clinic is a paying member of the Cape Law Society and adheres strictly to its guidelines with regard to ethical and professional conduct and to statutory obligations of the profession. The Clinic was registered as a practice on 28 May 1993 with practice number 1713. The UCT Law Clinic is guided by an Advisory Board, the members of which include the Dean of the Law Faculty, the Director of the Law Clinic, one or more Clinic Attorneys and other persons who can contribute meaningfully to the development of the Clinic. The Advisory Board is not involved in the day-to-day running of the Clinic.

Currently, funding is provided by the Attorneys Fidelity Fund (which funds clinical legal education in South Africa), from Legal Aid South Africa, and from the UCT Law Faculty (for general operating expenses). Additional funding is accessed by application on an ad hoc basis for specific purposes.

In 2002 the Legal Aid and Legal Practice elective (now the Clinical Legal Practice course) was approved by the Faculty’s Academic Planning Committee. The Law Clinic is a member of the South African University Law Clinics Association (SAULCA), whose vision is ‘to be a professional and efficient organization committed to democratic values and human rights and dedicated to promoting excellence in clinical legal education and access to justice’.

The central mission of the UCT Law Clinic is to provide students with an excellent clinical legal education (CLE) whilst promoting access to justice for those who would otherwise not have the means. To achieve the mission, the UCT Law Clinic aims to:

- provide education in a legal clinical environment to develop multi-culturally responsive and ethical legal professionals, and
- provide legal advice and promote improved opportunities for access to justice for clients, drawn from Cape Town and surrounding communities.
The **UCT Law Clinic’s objective** is to assist students with acquiring knowledge and skills through structured and supervised clinical education experiences and learning assignments. The clinical education component is viewed as a dynamic process where students participate actively in learning to apply academic information to clinical practice through working with clients who have various types of legal problems.

The **legal education goals of the UCT Law Clinic** are to prepare attorneys who demonstrate strengths in:

- analysis and synthesis of information, from a broad knowledge of legal practice
- inquiry and decision making
- a problem-solving attitude
- the use of appropriate evidence in the interests of ethical and responsible professional legal conduct
- extracting information and evaluation of credible legal options
- identification of relevant practical action for clients with a variety of legal issues
- effective and professional communication
- self-evaluation and reflective skills resulting in active steps to develop/refine legal competencies and extend their knowledge base

Fostering social consciousness, a commitment to lifelong learning and an engaged citizenry underpins the Law Clinic’s approach to legal education and advocacy.

In addition, the UCT Law Clinic has the following goals that relate specifically to the provision of legal advice:

- to provide legal assistance to persons who qualify in terms of the means test prescribed by the statutory Legal Aid Board and the guidelines laid down by the Law Society of the Cape of Good Hope, but subject to the discretion of the Director and/or the Clinic attorneys
- to treat everyone with empathy, dignity and respect, without discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion or language.
- to provide an efficient, professional and quality service, serving all clients to the best of the Clinic’s ability and maintaining the confidentiality of clients
- to establish and operate satellite clinics in the Western Cape
- To promote social justice and build communities through advocacy
- To be fair, unbiased and accountable.
The staff at the clinic include the Director, an Administrative Assistant and a Legal Secretary, two Attorneys, and two Candidate Attorney.

Director: Y S Moodley, BA HDE LLB LLM Cape Town Attorney of the High Court
Attorneys: L. Soupen, BA.UHDE.FDE.LLB
          M. Le Roux, LLB Cape Town, Attorney of the High Court of South Africa
          K Louw, LLB.LLM
          N Chirwa, BSocSc.LLB
Clinic Legal Secretary: A. Zantsi, Paralegal Diploma
Administrative Assistant: S. Abrahams, Paralegal Executive Secretarial Diploma

1.2 CLINICAL LEGAL PRACTICE: DOL4500F & DOL4500S

Research indicates that ‘supervised real-life experience enables students to better understand the legal rules and practical reflection required for legal practice’\(^1\). The Clinical Legal Practice courses provide for the integration of theoretical and practical approaches to learning law for participating students at UCT.

Clinical legal education (CLE) is a teaching methodology employed at law clinics to train law students. Definitions of CLE vary, depending on the chosen theoretical and ideological foundations. Jeff Giddings has a broad-ranging definition of CLE as involving:

an intensive small group or solo learning experience in which each student takes responsibility for legal or law-related work for a client (whether real or simulated) in collaboration with a supervisor. Structures enable each student to receive feedback on their contributions and to take the opportunity to learn from their experiences through reflecting on matters including

their interactions with the client, their colleagues and their supervisor as well as the ethical dimensions of the issues raised and the impact of the law and legal processes.²

This definition aptly describes the way the UCT Law Clinic approaches CLE. The legal practice course offers students their first opportunity of working with real clients and assisting in drafting and pleading for litigation, under the guidance of attorneys at the UCT Law Clinic. Students take instruction from clients and learning is largely experiential. Skills learnt include how to consult and communicate with clients, communication and organisational skills, file management, and trial advocacy.

Experiential education in the UCT Law Clinic is designed to provide direct experience of legal case work and, through that, opportunities for focused self-reflection to ‘increase knowledge, develop skills, clarify values’ and develop the capacity to contribute to communities.³

Students attend two lectures per week on practical aspects of the law and also conduct ongoing cases on behalf of their clients. In addition, each student participates in a Mock Trial which is based on an actual Law Clinic case and is argued before a Magistrate. During the course, students should attend three clinics and one office appointment, where they consult with clients and take on new cases. At the end of the course, students will be able to:

- Conduct an appropriate consultation with a client
- Draft letters and communicate effectively with clients, attorneys and other parties
- Draft civil pleadings in actions and applications
- Manage a typical attorney’s file
- Examine and cross-examine witnesses and present oral argument, and
- Conduct most cases undertaken by the UCT Law Clinic

1.3 THE STUDENT HANDBOOK

The University of Cape Town law Clinic Student Handbook was written to provide a practical guide highlighting critical aspects of substantive and procedural law, as applicable to clinical legal practice at UCT Law Clinic. The intention is to provide a framework to guide students (and candidate attorneys) in their interaction with clients and in properly taking instructions from clients whilst simultaneously maintaining the highest ethical and professional standards in their contact and subsequent casework. In effect, the Handbook provides a charter for the performance of professional legal practice.

The handbook was developed to identify and describe policies, procedures and legal principles to ensure that legal practice students and CA’s have the necessary information to

act competently, under supervision, to deliver safe, ethical and effective legal practice. The handbook is intended to be used in conjunction with course lectures, and prescribed readings.

It is therefore important that all students registered for Clinical Legal Practice read the entire Handbook to inform themselves of the policies, procedures and expectations that attach to experiential learning in the UCT Law Clinic and to the completion of the course. There is essential information in the *Handbook* to assist legal students with achieving the best possible outcomes for clinical legal practice training.
2: POLICIES & PROCEDURES OF THE UCT LAW CLINIC

2.1 FACILITIES

2.1.1 OFFICE ADDRESS & CONTACT DETAILS

The office of the UCT Law Clinic: is situated on the 3rd floor, Kramer Law School Building, Middle Campus, 1 Stanley Road, UCT, Rondebosch 7701

Contact details: Tel number: 021-6503775
Fax number: 021-6505665
Email address: uclawclinic@uct.ac.za

Office hours: 08.30am to 4.30pm.

Access: You will only have access to the Law Clinic offices through the front door during office hours. The student workroom for those registered for Clinical Legal Practice is located in the Law Clinic.

2.1.2 SATELLITE CLINICS

There are 3 satellite clinics:

<table>
<thead>
<tr>
<th>Venue</th>
<th>Day of clinic</th>
<th>Clinic starts</th>
<th>Clinic Ends</th>
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<tbody>
<tr>
<td>Athlone Library</td>
<td>Mondays</td>
<td>5pm</td>
<td>6.30pm</td>
</tr>
<tr>
<td>Retreat Library</td>
<td>Wednesdays</td>
<td>5pm</td>
<td>6.30pm</td>
</tr>
<tr>
<td>Ocean View Library</td>
<td>To be confirmed</td>
<td></td>
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</table>

Dates & times: A schedule of all dates and times of the clinics will be posted on VULA under the <Resources> tab, at the beginning of the course.

Clinic attendance: students should decide which clinics they wish to attend and should sign up for those clinics on the register kept by the Clinic Administrator as soon as possible. There is a limited number of places on each clinic. When the list for any clinic is full an alternative clinic must be chosen.

Cancellation of clinic attendance: Any student who finds that they are unable to attend a clinic they have signed up for should, as soon as possible, inform a member of staff (specifically the Clinic Director, the Clinic Administrator or the student’s Supervising Attorney) before the clinic takes place. Evidence must be provided to support why attendance was not possible.

Note: clinic attendance forms part of the student evaluation conducted by your supervisor—it is an essential part of the course.
**Name badge:** The Law Clinic administrator will provide you with a name badge. Your name badge must be worn at the clinic, at all times, clearly visible on the left side of your chest. It is essential that your client and other persons present have a clear indication of your name.

**Satellite clinic consultations:** If you do not manage to see a client at the satellite clinics (either through absence or through there being insufficient clients at the clinic), the Clinic Administrator will book an office appointment for you to see a client at the UCT Clinic.

See further information on Satellite Clinics, see Section 6.2.1.

### 2.1.3 PHONES

There are 3 phones in student workroom in the Law Clinic which students can use to contact their clients.

- All phone calls are to be recorded in the blue ‘Student Calls’ A4 hardcover book, which is left in the student workroom.
- Record the name of the client, their phone number, the time the call is commenced and the duration of your call, and the name of the student making the call.

### 2.1.4 PRINTER & PC’S

The printer is located in the student workroom and is connected to every PC in the Law Clinic workroom.

- The **printer address** is: IPP00257.
- You may print documents/drafts/specific research relating to legal practice matters ONLY.
- **Note:** where possible please print double sided or on recycled paper (which is in tray beside the printer, marked ‘scrap paper’).

To log onto the PC, switch it on and press <Enter>. No password is required.

### 2.1.5 WORKROOM

Students may use space in the Law Clinic workroom to work on matters relevant to legal practice (such as files management/ drafting/ researching, etc).

- **Note:** use all resources of the Law Clinic for the **Law Clinic’s work only** and to use such resources respectfully and sparingly.
- Students must keep the workroom tidy at all times, including disposing of paper waste.
- **No food** may be taken into the student workroom. However, students may take drinks into the room—provided that they clear up before leaving.
- All **Law Clinic stationery items** (including Law Clinic letterheads, punch, stapler, staple remover, scissors, pritt, paperclips and document binders) are to be kept in the workroom and are **not to be removed**.
2.2 PROCEDURES

In all business environments, including that of legal practice, there are a set of procedures that have to be adopted to ensure the efficient administration of the services provided. Students are advised to make themselves familiar with the procedures to be followed during legal practice and to adhere to these procedures, as an aspect of ethical and professional lawyering (see Chs 3 and 5 for further discussion of these aspects of legal work).

2.2.1 EXPENSE CLAIMS

Travel expenses: Students are requested to car pool for travel to satellite clinics.

- The owner of the car will be reimbursed at a rate of R3.61/km.
- In order to be reimbursed, a ‘vendor account’ must be created, and a declaration of the passengers in the vehicle must be provided. The details of what is required should be obtained from the Clinic Administrator.
- Note: students making claims for journeys that they do not share with other students will not get reimbursed.

Claims for any other expenses: will not be reimbursed unless they have been sanctioned, prior to the expense being sustained, by the Clinic Director.

2.2.2 OFFICE APPOINTMENTS

The procedure for allocation of appointments with clients in the UCT Law clinic are as follows:

For students arranging the required office consultation with a client:
- Email your availability to the administrator, who will schedule an office appointment
- You will be invited by the administrator to diarise the appointment via the Outlook calendar.
- The Clinic Administrator keeps spreadsheet with records of when students see clients

For students who did not get the opportunity to consult with a client at a satellite clinic:
- Advise your supervisor
- Email the Clinic Administrator, to request a client appointment, stating dates and times you are available for an appointment. You will be allocated an appointment with a client who has contacted the UCT Law Clinic directly. A period of 45 minutes should be allowed for the appointment.

2.2.3 VULA

Students will be added to the Law Clinic ’2018 Legal Practice’ tab on VULA.

- Students should regularly check this tab as the Clinic Administrator frequently posts important information—for example, clinic dates, course outline, readings – in effect, everything you need to know to be in a position to successfully complete the course.
• **Notifications of postings** to the <Resources> tab are sent via email to student mail boxes. Students should not rely on receiving all they need to know via an <Announcement> because some essential information is sent to <Resources>.

• **Announcements** are sent to student mailboxes.

2.2.4 FORMS

All the forms needed for completion of legal practice are kept in the pigeon holes in the Law Clinic workroom.

Letterheads are kept in the tray by the printer.

Examples of the most frequently used forms are included in this Handbook in the Appendix section

2.3 FILE MANAGEMENT

The important sections of the client file are: File cover
File folders
Additional documents

2.3.1 FILE COVER

The following must be filled out on the file cover when opening a file for your client:

1. Client’s particulars: Full name, Surname, Address, Phone (Work/Cell and Home), Alternative phone number(s).
2. Opposing side’s particulars: Full name, Surname, Address, Phone (Work/Cell and Home), Alternative phone number(s).
3. The type of matter
4. The student’s name
5. The supervisor’s name
6. The clinic where the client was interviewed

**Note:** Do not fill in the file number, date opened, or date closed. This will be done by the Law Clinic Administrator.

The choice of colour for the file cover (yellow or orange) depends on the results of the Means Test that you will complete with the client (see Sections 2.3.4 and 4.5)

2.3.2 FILE FOLDERS

Each file is divided into four folders, as follows:

2.3.2.1 CORRESPONDENCE/FILE NOTES

The correspondence folder contains a record of all forms of communications (calls, e-mails, consultations) with your client, supervisor or any other relevant party.
All file notes must:

- **record**: author of the note, the action taken, the date the action was taken, time that the action was taken (or commenced) and duration (how long the action took to complete).
- be **numbered and dated** (the date the note was written) and filed in chronological order with the latest file note on top.
- be **clear and comprehensive** and should make evident to the reader the thought process and plan of action decided upon while working on the case.

**Note**: The clarity and quality of this information will be **assessed during the review** of the file.

### 2.3.2.2 DRAFTS

All drafts of documents prepared should be kept in the drafts folder.

- Make a **distinction between different drafts** of the documents you prepare—name them Draft 1, Draft 2, etc.—and record on the document the date that each draft was produced.
- These steps are essential to avoid **confusion and unnecessary repetition** of work—both for the student working on the file, and for anyone who may have to take over the case from the student.

### 2.3.2.3 CLIENT PERSONAL DOCUMENTS

Ensure that no originals of client documentation are left in the folder.

Make copies of all the client’s relevant original documentation. At satellite clinics, the supervisor will provide money for this. See also Section 2.3.3.5 on Client Documents.

### 2.3.2.4 RESEARCH

The legal sources for work on the case must be listed and copies placed in the research folder.

Only the parts relevant to the case should be printed and included in the folder—i.e. not the entire Act/case.

### 2.3.3 ADDITIONAL DOCUMENTS TO BE INCLUDED IN FILES

#### 2.3.3.1 FILE ACTION SHEET

The file ‘Action’ sheet functions as a timeline and reflects the legal practice work you have done, as well as any action on the cases that others have taken on your behalf. The Action sheet should be stapled to the inside of the front cover of the file.

- This is an **important record**—both for the proper conduct of the case, and as a component of assessment when your file is reviewed.
- The aim is to record on the file (briefly) the date, the time, and the action taken.
- Examples of actions include: *Consulted with client*
Called client
Consulted Supervisor
Drafting/Draft 1, Draft 2, etc.

- The ‘Action’ sheet is also used for instructions regarding posting of documents, and confirmation of the posting (see Section 2.4.1)

2.3.3.2 DISBURSEMENT SHEET

Disbursement sheets: must be completed with client’s particulars and should show the client’s payments.

The following information must be clearly shown:
- Monies that have been paid by the client to the Law Clinic
- Actual disbursements (payments made on behalf of the client and/or expenses)
- Client balance

2.3.3.4 PROOF OF PAYMENT

Proofs of payment should be stapled at the back of the file. They may include:
- faxed or emailed proof of payments (bank deposits)
- receipts for cash payments (made at the office or clinic—in which case a cash receipt will be given to the client and a copy made for the file). The Law Clinic Administrator will manage all office cash payments and the Supervisor on duty at the clinic will take all cash payments and provide receipts for them.

Note: When a client sends their proof of payment for a bank deposit, they have to email the UCT Law Clinic mailbox or fax the proof of payment to the Law Clinic (see Law Clinic contact details).

If no money has been taken: no disbursement sheet is necessary. Record on the back cover of the folder that no money was taken. Instead of using a disbursement sheet, you need to write “no disbursements required”.

2.3.3.5 CLIENT’S DOCUMENTS

Client documents that, once completed, should be stapled inside the front cover of the file include:
- Means Test Form
- Indemnity Form (see Appendix)

2.3.4 MEANS TEST & COLOUR OF FILE TO BE OPENED

A means test (see definition Section 4.5) must be completed with the client, on Form LA1 (see Appendix ...).
• The completed form should provide a **record of** the client’s income, any properties they own, etc.
• **If the client earns under R5,500.00/month**, is unemployed or receiving a grant, they would qualify as a Legal Aid client.  A **YELLOW file** needs to be opened for them.
• **If the client earns over R5,500.00/month** but less than R10,000.00/month, the case automatically qualifies as a clinic file. An **ORANGE file** needs to be opened for them.
• However, there is some **discretion** on the upper earnings limit, according to the client’s circumstances. Please refer to your supervisor for a decision in such a case.

## 2.4 CORRESPONDENCE

### 2.4.1 OUTGOING MAIL

There are 2 types of postal mail:

1: **Ordinary mail**: is used for closing letters or any general correspondence with the client.

2: **Registered mail**: is used for letters of demand and pleadings and any other documents the student supervisor recommends be post via registered mail.

The following procedures should be followed for mailing documents:

- **Instructions for posting** (ordinary or registered mail, to whom it should be posted) should be written on the **Action Sheet** in the file, and the document for posting should be attached to the front cover of the file with a paperclip.
- The file is to be left in the tray marked ‘**letters/documents to be posted**’ in the work room.
- The Clinic Legal Secretary will arrange for the posting of the document(s), in line with your instructions on the Action Sheet. Once completed, the Legal Secretary will initial your instructions, noting the date the posting was completed.
- A copy of the ‘registered’ slip for documents sent via registered mail will be given to your supervisor.
- **The cost of posting**: is on the notice board in the student workroom. The cost of posting of any mail **must be recorded** on the **disbursement sheet** in the client’s file.

### 2.4.2 INCOMING MAIL

The Law Clinic Administrator receives all incoming mail which she will give to the relevant supervising attorney.

Returned mail is received when clients have not collected their registered mail. These letters are given to the Supervisor responsible for the case.
2.4.3 TELEPHONE CALLS & EMAILS

2.4.3.1 MESSAGES FROM CLIENTS

The Law Clinic administrator, as well as the Legal Secretary, will take messages when students’ clients call.

- Messages will be emailed to the student, who should return their clients calls as soon as possible—but at least within 48 hours.
- If for some reason you are unable to return the call within that time, please advise your supervisor by email as a matter of urgency.

2.4.3.2 PHONING YOUR CLIENT

Students should not use their cell phones to contact their clients. This is to protect students from being called by the client at all hours of the day. It is also a matter of professional ethics to maintain a distinction between work and personal phone numbers.

Telephones in the Clinic workroom should be used to make and to return client calls. (refer Section 2.1.3 for procedures)

2.4.3.3 EMAILING YOUR CLIENT

Students may use their UCT email address to email their clients.

If you do not want a specific client to contact you via email, you may:

- ask the Clinic Administrator to send the email for you, and/or
- tell your clients to email the UCT law clinic mailbox, namely: uctlawclinic@uct.ac.za
3: ETHICAL CONDUCT AND COMMUNICATION

3.1 CORE VALUES

Law is not value neutral, as is evident from the Constitution of South Africa, which implores everyone to uphold the values of ‘human dignity, achievement of equality and advancement of human rights and freedoms; non-racism and non-sexism’\(^4\). Thus, ‘everyone’ is held to the duty of respecting others. These values are enshrined in the Constitution precisely because of South Africa’s history of colonisation and apartheid and their sanctioned use of discrimination on the basis of differences.

In the light of the historical and current context of society in South Africa, the UCT Law Clinic puts the pursuit of social justice at the core of its legal practice. Social justice, often considered as the equivalent of distributive justice, concerns just relationships between individuals and groups. It relates to the interrelationship of economic, social and human rights, and the balance of rights and freedoms with duties and responsibilities.

Social justice relates to the equality of rights (non-discrimination and dignity) and opportunities (social, economic, cultural and political), and equity in living conditions (understood as what is just or fair in the context).\(^5\) In terms of the work of the UCT Law Clinic, social justice most obviously has relevance to upholding equitable access to the protection of the law in respect of a range of issues, including (amongst others) housing, divorce, work, and social security benefits.

In this respect, students of legal practice are reminded of the statement of values in the UCT Law Faculty Handbook 2018, in which it is stated that: We acknowledge the role played by the law in creating a society that was characterised by oppression and remains deeply divided by inequality’ and, as a consequence, the role of staff and students in the Faculty in contributing to ‘redressing the inequality and disparity that continues to exist within South African society’\(^6\).

An efficient and competent legal service, in the service of social justice, calls for ethical conduct and clear communication. Moreover, professionalism and ethical behaviour are crucial to developing trust and building a good relationship with Clinic clients. Legal practice students are therefore required to observe the following critical aspects of ethical behaviour

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\(^4\) Chapter 1, section 1 (a) and (b) of the Constitution of the RSA, Act 108 of 1996.


and communication—most of which are explored in greater detail in later sections of this handbook.

In essence, the core values of the UCT Law Clinic require that staff and students:

- Respect the client’s dignity and autonomy, ensuring that the client is consulted and informed about critical decisions;
- Maintain the highest standards of legal practice, conforming to accepted professional norms; and
- Ensure relevant knowledge and skills, be thorough and be appropriately prepared in our work with Law Clinic clients.

3.2 ROLES, RESPONSIBILITIES & EXPECTATIONS

The stakeholders of the UCT Law Clinic—that is, those who have a direct interest in the function of the Clinic—including staff, students and clients. Roles, responsibilities and expectations of each of these groups are set out in the following sections. It is important that these guidelines are understood and followed so as to maintain professional relations both within and between each group. Core principles (described in s.3.1) should be evident in the relations and interactions between all parties.

3.2.1 STUDENT ROLES, RESPONSIBILITIES & EXPECTATIONS

Students of Clinical Legal Practice act, under supervision, in the role of an attorney. This implies certain responsibilities and expectations. Responsibilities and expectations also attach to students as they conduct consultations with clients, and as they engage in learning in Clinical Legal Practice.

3.2.1.1 STUDENT IN THE ROLE OF AN ATTORNEY

The student is expected to adhere to the professional requirements of an attorney. In this role, the student:

- is an officer of the court and is not to mislead the court
- must ascertain the client’s mandate within the realms of the law and advise the client accordingly, without creating unrealistic expectations
- cannot create facts and evidence for a client in order to circumvent the true state of affairs
- must evaluate the facts, apply the law to the facts, and present the client with the true state of affairs and recommendations as to the way forward
- must withdraw from a case where there is a conflict of interest between the attorney and client that cannot be resolved
- must take appropriate action where a case is such that it would require expertise beyond that which the attorney can provide. This may involve advising the client of that fact and suggesting appropriate alternative approaches, which may amount to a referral to an alternative service provider, and
• must advise the client in such cases where there may exist a more onerous duty of care that might conflict with an attorney’s duty to the client. For example, when the rights of minor children are involved, the attorney’s role, in terms of what the court expects of an attorney, must be explained to the client.

3.2.1.2 STUDENT IN INTERACTION WITH CLINIC CLIENTS

As a representative of the UCT Law Clinic, and in line with relevant professional standards, students should:
• be polite and courteous to clients, whilst demonstrating a sincere attitude of care, even though they may not be able to assist the client further or in a manner that matches the client’s expectations
• be punctual and present themselves in a professional manner
• be properly prepared for consultations with clients, which includes:
  o being knowledgeable of what the Law Clinic is allowed to do for clients with regards to the different areas of law, as well as the Law Clinic’s means in terms of the limited resources available to allocate to a case
  o being dressed appropriately
  o be tolerant of client differences (see discussion in Section 3.3.1)
• inform the client if they are uncertain about a particular matter and advise them that they (the student) will have to do some research, rather than give information that might turn out to be incorrect
• attend to client matters without unnecessary delays
• keep clients updated on the progress of their matters
• respond politely and without delay to complaints by clients. Complaints must be referred to the student’s supervisor or any other supervisor at the Law Clinic
• maintain records in the client files in a comprehensive and professional manner.

Students may, in turn, have expectations that clients will adhere to their responsibilities in the student-attorney/client relationship, as set out in section 3.2.3

3.2.1.3 STUDENT AS AN EXPERIENTIAL LEARNER

The goal of the course in Clinical Legal Practice is for students to acquire knowledge and skills to enable them to be independent and successful in an entry-level position in legal practice. It is important, therefore, that students use their experiential learning opportunity to:
• take responsibility for their own learning (albeit with guidance from Law Clinic staff)
• be active participants in legal casework and take the initiative to access relevant information to support their casework
• take all reasonable steps to meet deadlines, and to honour appointments and other commitments in respect of the Legal Clinic, and to advise those affected in good time where unable to meet these commitments.
• use their law clinic experience to appreciate why and how legal decisions are made
• integrate content from their theoretical law courses into their legal practice
• refine their self-evaluation skills so as to cultivate an awareness of what they know, what they have yet to learn, and of the strategies for obtaining information and improving the skills they need
• maintain respectful and cooperative relations with fellow students

In relation to staff of the UCT Law Clinic, students should:
• maintain regular and timely communication with their supervisor, such communication to be conducted in a professional manner at all times. At meetings with supervisors, students should
  o be prepared to ask questions and to discuss problems,
  o discuss progress with their clients’ cases
  o review research and proposed actions
  o bring all relevant information to the meeting
• seek approval from supervisor on all major decisions regarding casework and/or service delivery to clients
• interact and communicate with the CA/s in the same manner as they would other members of staff of the Clinic
• liaise with administrative staff of the Law Clinic in a respectful manner and, when requesting information and assistance, remain mindful of the many other duties that administration staff have to fulfil.
• provide information to the Clinic Administrator regarding availability for Satellite Clinic sessions and office appointments timeously

Other responsibilities of students, in their role as experiential learners, include that they should:
• abstain from unethical, unprofessional or illegal conduct, such as (but not limited to) substance abuse, inappropriate relationships with clients, failure to protect a client, or presenting themselves in a way other than being in-training. Students will be subject to disciplinary action for unprofessional or illegal conduct (see Section 6.2.6).
• review the information in the Handbook and discuss any concerns or matters that are not clear to you with your supervisor of the Clinic Director
• be aware of and abide by procedures policies and rules of the Law Clinic at all times, as provided for in the Student Handbook, including (but not limited to) those in respect of the following:
  o maintenance of a professional demeanour and ethical conduct with all Law Clinic stakeholders whilst conducting legal casework
  o use of the student working area in the Law Clinic (refer Section 2.1.5)
  o attendance at Satellite Clinics and at office-based appointments in good time
  o timely notification to supervisors in respect of inability to meet commitments regarding attendance.
3.2.1.4 EXPECTATIONS THE STUDENT MAY HAVE OF THE UCT LAW CLINIC

Students registered for the Clinical Legal Practice course may expect to:

- Be treated with care and respect, and to receive appropriate guidance on legal matters from Clinic staff.
- Be afforded consideration by and the attention of Law Clinic staff as set out in Section 3.2.2.
- Receive a clinical legal education, within the terms set out in the Student Handbook, that strives to meet the aims and objectives of the UCT Law Clinic (as outlined in Section 1.1).

3.2.2 STAFF ROLES, RESPONSIBILITIES AND EXPECTATIONS

Supervisors, administration staff and candidate attorneys have roles and responsibilities in the UCT Law Clinic, designed to facilitate the delivery of an efficient and competent service to clients of the clinic, as well as to students registered for Clinical Legal Practice training.

3.2.2.1 SUPERVISORS

The role of the supervisor is to mentor students and to facilitate clinical legal education to a professional standard. To fulfil this role, supervisors should:

- be accessible to guide students through the process of their experiential legal learning.
- maintain regular and timely communication with students being supervised, such communication to be conducted in a professional manner at all times, in line with the core values of the UCT Law Clinic.
- provide clear instructions to students so that the work presented by the students meets with the expectations of the supervisor/s.
- mark student’s draft documents within a reasonable time period, which depends on the nature of the draft (letter, will or pleading).
- Ensure an equitable spread of the workload amongst students they supervise.

3.2.2.2 ADMINISTRATIVE STAFF

Administrative staff at the Law Clinic will:

- be courteous and respectful to students at all times and will maintain all communication with students at a professional level.
- assist students with regard to relevant workroom and administrative procedures, such as the printing of forms. Such assistance is subject to reasonable demands for assistance being made on the staff (as described in 3.2.1.3).
- Ensure that student access to files in supervisors’ rooms is possible at all times.

3.2.2.3 CANDIDATE ATTORNEY/S

The Legal Practice Act No 28 of 2014 defines a candidate attorney as ‘a person undergoing practical vocational training with a view to being admitted and enrolled as an attorney’. Candidate attorneys (CAs) in the UCT Law Clinic:
• are expected to be knowledgeable of their contracts and must meet the expectations thereof, as stipulated.
• will be mentored by other supervising attorneys of the Law Clinic, in the same way as is expected of their principal in their contract of service.
• may at times also supervise or oversee work performed by students
• will interact and communicate with students in the same manner as they would do with all other staff

3.2.3 CLIENT RESPONSIBILITIES & EXPECTATIONS

Members of the public who seek legal advice and assistance from the Clinic are considered clients of the UCT Law Clinic, and in that role have certain responsibilities and expectations.

Clients of the Law Clinic have the responsibility to:
• act within the constraints and freedoms of the Constitution of South Africa, with particular reference to matters of dignity and respect for other persons (as outlined in Section 3.1)
• not swear at, abuse or threaten other clients, or staff or students
• not to damage the property of the Law Clinic

Further, as specified in the Law Society guidelines for clients, the client of an attorney has the responsibility to:
• treat their attorney with respect and courtesy;
• give their attorney correct and complete information, and to disclose all the relevant facts to assist their attorney in giving the client the appropriate advice;
• give their attorney clear instructions;
• enquire about the cost implications and how the costs will be calculated;
• pay a deposit if requested to do so;
• respond timeously to all requests for information from their attorney;
• avoid directing unnecessary enquiries to their attorney as their attorney may charge consultation fees for these enquiries, and this may increase costs unnecessarily;
• settle bills from their attorney timeously; and
• use the legal system, including the courts, appropriately and not to abuse it.

Clients of the UCT Law Clinic may expect to:
• receive an efficient and competent legal service, without discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion or language
• be fully and appropriately advised in respect of their legal issues

• have their right to confidentiality respected at all times
• be treated with respect and courtesy at all times
• have their rights and personal wishes respected
• use the services of a translator or sign language interpreter—subject to their bringing their own translator/interpreter with them.
• receive a referral when the Law Clinic is not able to assist them
• benefit from the Law Clinic’s commitment to providing a safe and stress-free environment for consultations

Withdrawal of services:
• Clients who disregard the requirements of the UCT Law Clinic may be asked to leave the building and to return at another time. The Clinic may take steps to make sure that such a client leaves when asked to do so.
• Further, the Clinic may withdraw their services to such a client in the future
• The UCT Law Clinic reserves the right to refuse to provide assistance to any client who does not comply with their responsibilities as clients of an attorney, as specified in the Law Society guidelines for clients.

Client grievance procedures:
If dissatisfied with any aspect of the service received at the Law Clinic, have the right to:
• be afforded access to the grievance procedure to make a complaint against any member of staff or a student undergoing training in the Law Clinic
• They may make a complaint in any of the following ways:
  o Email or speak directly to the person who served them.
  o Telephone the Director on 021-6503775, or email her at yellavarne.moodley@uct.ac.za
  o For complaints about the Director, email the Dean, Professor Danwood Chirwa at danwood.chirwa@uct.ac.za
  o All complaints of misconduct on the part of an attorney may be escalated to the Legal Practice Council, prev. known as Cape Law Society. The Society is empowered to investigate all allegations of misconduct by attorneys and, where there is evidence of misconduct, has a duty to take appropriate disciplinary action. Advice on how to lodge a complaint is available at www.lpc.org.za (The Legal Practice Council complaints against attorneys: Public guide in disciplinary procedure) or phone 021-4436700.

3.3 CLIENT CONSULTATIONS

The UCT Law Clinic works with the ‘live client ‘model. Consultations are with ‘real ‘people who have legal problems. Communication skills are thus vital to building relationships and developing attorney-client trust. These are not innate skills but they are learned and developed over time and with practice.
3.3.1 VALUES & CULTURAL DIFFERENCE

The importance of awareness of personal values and cultural differences is critical to the process of consulting with clients. Knowing and identifying our own values or value system(s) and being mindful of cultural difference is vitally important to the consultation process and to the ethos of the Law Clinic.

South Africa is a heterogeneous country in which many languages are spoken. Besides linguistic differences, other diversities—cultural, gender, religious, political (to name but a few)—characterise people in South Africa.

Students will meet clients from backgrounds that are both similar to and different from their own. Almost all clients who attend law clinics are indigent, from underprivileged backgrounds. It is crucial for students to be aware of both the impact of cultural differences and of the danger of stereotyping, both of which can lead to alienating clients, witnesses, other lawyers and judges.8

BE AWARE!

In South Africa training in multicultural lawyering is critical. Law practitioners must be aware of the impact on the consultation process of:

- immigrant status, disability, race, sexual orientation, income, education, where people live, occupation, language, religion, nationality and political or other affiliations.
- personal & professional values.

In our behaviour and response, we are bound by the Constitution and it values.

In fostering the values espoused by the Law Clinic and the Constitution, students are encouraged to take time to self-reflect after each session with a client (see Section 5.2). It is important to develop awareness of our own biases and prejudices and their impact on our work. This is the necessary basis for change and for the development of a professional and ethical approach to legal practice.

3.3.2 ENHANCING COMMUNICATION DURING CONSULTATION

There are numerous factors and learnt skills that play a role in enhancing the easy flow of information from client to attorney and vice versa. The following sections address the effect of substantive knowledge, approaches to listening and questioning, and of emotional intelligence and empathy on the effectiveness of communication.

8 S H Krieger & R K Neumann, JR Essential Lawyering Skills (Wolters Kluwer 2011) at 60
3.3.2.1 SUBSTANTIVE KNOWLEDGE

Having the required knowledge of the law and of legal practice is essential to effectively assist a client with a problem. Asking relevant questions and knowing the principal elements of a specific cause of action are necessary—whether to win a case or produce the desired outcome of the consultation.

- If it is known what assistance the client is seeking—for example, when a client explains their problem when they book an appointment—students should familiarise themselves with that specific area of the law prior to consulting with a client.
- A checklist of questions for various matters is a useful tool to support effective information gathering. Checklists may include required documentation for each type of matter.
- Where clients have not pre-booked an appointment, or where students are unfamiliar with the area of law relevant to the client’s problem, it is important to research it thoroughly after the consultation and the feedback session with the supervisor, before advising the client.

3.3.2.2 LISTENING SKILLS

Listening is a learnt skill that is undervalued in the communication process. Listening and listening skills are important because:

- Listening allows the client to tell their story without being interrupted. Interruptions prevent a client from relaying her full story.
- Where there are time constraints, the client must be given time to tell his story so as to achieve success in the consultation. Insufficient time allocated to this process is likely to lead to time wastage as it may be necessary to schedule a subsequent consultation to acquire important information not acquired at the initial consultation.

To enhance listening skills, and the quality of information taken from the client, students should:

- Engage in self-reflection of their own listening practices as a prerequisite for improving this essential area of professional legal practice.
- Develop the capacity for ‘active listening’. This includes noting the choice of certain words, the tone of voice, and the body language (posture, gestures, facial expression, and use of eye contact) of both the client and the legal consultant.
- Clarify what you have heard the client say after the client has completed their story. This is done by re-phrasing their account to them in order to confirm the veracity of the information.
- Listen carefully so as to identify what the client has not said or what they have left out or thought not to include—either because they do not realise the importance of the information or because they are deliberately withholding important facts.
3.3.2.3 TYPES OF QUESTIONS USED
To elicit the facts of a case an attorney uses different types of questions to gather information. The three basic types of questions used are open, closed and leading questions. Learning when to use different types of information seeking approaches is a skill that comes with practice. A useful technique is also to formulate lines of questions around issues or themes (as described in Section 3.3.2.3).

i. **Open questions** allow the client to answer in whatever manner they wish. The use of open questions encourages the free flow of information from client to attorney. This type of question is best suited to acquiring general information and is very useful to use at the start of the consultation. It gives the client an opportunity to tell her version of events.

Examples:  
*So how can I help you?*  
*Describe the accident?*  
*What happened next?*

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**THIS LAST QUESTION CAN BE USED IN ANY CONTEXT. WHEN A CLIENT IS IN THE PROCESS OF RECOUNTING HIS STORY, IT IS A USEFUL FOLLOW UP QUESTION TO ENCOURAGE THE CLIENT TO SAY SOME MORE.**

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ii. **Closed questions** are used to obtain specific information, typically when a client has told her story and there is a need to ascertain additional relevant facts. They are usually preceded by interrogatives such as ‘who?’; ‘what?’; ‘where?’; ‘why?’; ‘when?’ and ‘how?’.

A closed question may also be one that elicits a ‘Yes’ or ‘No’ answer.

Examples:  
*How did you manage to avoid knocking into the pedestrian?*  
*What did the officer say to you when he asked for a statement?*  
*Were there any witnesses?*  
*Where did the incident take place?*  
*When did you first notice that your car was damaged?*

iii. **Leading questions** are a type of closed question in which the answer is suggested. They are an excellent technique used during cross examination in a trial. It is not advisable to use these questions during an information gathering session with the client as they are not helpful in building trusting relationships.

Examples:  
*So, you were speeding when you crashed into her car?*  
*You were using your phone at the time of the crash, were you not?*  
*You did not really trust her, did you?*
Lines of questioning: The preparation of a group of questions around a specific incident or issue ensures the consultation with the client is systematic and sequential.

- All the questions relate to a common issue.
- Once completed, the questioning moves to another issue.
- Using lines of questioning prevents unfocussed, random questioning and brings order to a consultation. Thus, the attorney remains in control and can direct the consultation.

Example: For an eviction matter, a series of questions may be prepared around cancellation or breach of the lease.

Note: Although lines of questioning are useful, the attorney should be prepared to modify their questions if, after careful listening, they realise that a particular line of questioning does not yield any results and that they therefore need to change course with the line of questioning.

3.3.2.4 EMOTIONAL INTELLIGENCE & EMPATHY

Emotional intelligence is the capacity of a person to be aware of their emotions, and to both control and express their emotions.

- Emotional intelligence includes the ability to empathise. Empathy is the ‘ability to understand and share the feelings of another’ and to place ourselves in their shoes and to feel what they are going through.
- Where empathy is present, a client is more likely to open up and disclose additional information.
- Many clients express emotions such as anger, fear and frustration when presenting their legal issues. Being able to read a client’s emotions and understand how they relate to the problem at hand will provide guidance in understanding and managing the problem and the client’s expectations.
- Reflective practice (see Section 6.2.3 on writing a reflective journal) is key to building emotional intelligence and empathy in legal practice.

3.3.3 FACTORS INHIBITING COMMUNICATION DURING CONSULTATION

An attorney who has good communication skills may still fail to elicit information from a client. The client may withhold information intentionally or unintentionally. Some reasons for this are given by Binder et al, who state that a client may:

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12 https://www.google.co.za/search?sourceid=navclient&aq=0&oq=what+is+empathy&ie=UTF-8rlz=1T4BBKB_enZA507ZA515&q=what+is+empathy&gs_l=hp...0l5.0.0.0.3514...........0. duaN3TN_s2w


• withhold information that threatens their self-esteem. For example, a client who has been beaten by her husband might not disclose that fact to her attorney because she believes the attorney would judge her negatively.
• withhold information that the client thinks would be harmful to the case.
• believe that revealing certain information would cause the attorney to doubt her and to lose interest in her case.
• not volunteer information because the client expects the lawyer to set the agenda.
• believe that the lawyer is in a position of authority and knows which subjects deserve inquiry and which do not.
• avoid relating facts that the client believes will shock, embarrass, or cause discomfort to the attorney.
• be reluctant to talk in detail about a traumatic experience that evokes unpleasant feelings.
• respond half-heartedly to questions the client views as irrelevant.
• simply have a greater need to talk about a subject that is not relevant to the issue the lawyer is trying to address.

3.3.4 THE CONSULTATION

The consultation is essentially an interview between the legal advisor and the client. There are four purposes for the consultation:
1. to develop an attorney/ (student advisor)-client relationship
2. to ascertain the client’s goals
3. to learn as much as possible about the facts of the case
4. to reduce the client’s anxiety about their situation, without being unrealistic about what can be achieved through the consultation.15

The consultation can be structured into six stages. Some of the stages may overlap or may not all take place in a single consultation (depending on the circumstances).
1. Preparation
2. Introduction.
3. Information gathering.
5. Strategizing & decision-making.
6. Closing.

There are clear objectives to each stage. Equally, there are specific strategies and procedures that assist with meeting those objectives.

3.3.4.1 PREPARATION

• Prepare for the consultation by familiarizing yourself with the area of the law for which your client requires assistance. A checklist of questions on a specific area may be useful.
• Acquaint yourself with the Law Clinic indemnity form and the Means Test form LA1. You must be able to fill in the means test form correctly (see guidelines in Section 4.5).

• Enquire prior to the consultation whether the client requires a **translator**. Where possible this should be done sufficiently early for the client to arrange to bring a translator to the consultation with them.
  
  o If one is required, ensure that the translator is reminded that they must only translate what the client has said and does not interpret what she/he thinks the client is saying. **It must be a verbatim translation.** Equally, your questions must be translated accurately for the client. (It can happen that translators do not accurately translate questions that they feel might be embarrassing to the client or themselves, or that they deem culturally inappropriate).
  
  o **Deaf clients** who need an interpreter often attend the Law Clinic. There are specific guidelines when working with interpreters as prescribed by the South African Sign Language Interpreters association (see Section 3.3.5). Do follow it strictly. **Note:** You must always maintain eye contact when communicating with the client even though the client will be looking at the sign language interpreter.

• Keep a **folder ready** with the **forms** (indemnity, means test LA1 form, etc) needed for the consultation.

• **Clear your desk** or table wherever the meeting is held—a clear desk helps you to focus on the client and gives a reassuring impression of an organised workspace.

• Make sure you are wearing your **name badge**.

### 3.3.4.2 Introduction

• When the client arrives, walk to the reception area to **meet your client**. Ensure your client feels well received.

• Introduce yourself and address your client using the necessary title. The walk to your desk may provide some opportunity for light hearted chat.Keep the topic light. You can do this by asking if they found the place easily, etc.

• Once in your room and seated, ask the client about their **preferred mode of address** (first name, or title and surname)

• Ensure there are **no interruptions**.
  
  o Phone calls should be placed on hold and mobile phone put on silent or vibrate mode.
  
  o Should you be awaiting an urgent call, let your client know and, when the call comes through, apologise for the interruption.

• Close your office door

  • Your task is to make the client feel comfortable enough to proceed.

### 3.3.4.3 Information gathering

• Use plain language always.

• Patience and empathy are essential.

• Tell the client that it may be necessary to **take notes** but assure them that you are listening to them while you take notes.
• Address the subject of confidentiality and the way the Law Clinic works so that the client is fully aware that there is a supervisor assisting you.
• Complete the indemnity form and the LA1 form/test. Be sure to explain the forms and their purpose, and check that they client has understood your explanation.
• Be sure to employ active listening techniques.
• Begin the information gathering process with simple questions such as “How can I help you?” or “What can I do for you?”
  o The client may not know where to begin so an opening line such as “Please start at the beginning” may be helpful
  o An initial open-ended question will prompt the client.
• The client may in a few sentences state the reason for coming to see you and then stop talking. You should probe for more information, using open ended question.
• Use closed questions, or lines of questioning, to probe further for information that you feel is relevant to the case.
• Avoid compound questions (where more than one question is combined in what appears to be a single question—for example: “Did the driver hit your car and was it damaged?”)
• Go through the documentation that your client has provided—if any—to gain clarity or to corroborate the facts as presented by the client. You may have to ask more questions.
• Make sure that the information elicited follows a chronological order or that there is a logical sequence to it.
  o If your client cannot give a date for an incident, a helpful method would be to ask them about events around that time.
  o If the client is unable to tell her story in a chronological or sequential manner, the attorney should assist by drawing a time line and using specific questions to fill in the gap(s).
• For clients who ramble, digress or go off on a tangent, you may have to employ specific questions to gain control and direct the course of the interview.
• For clients who are silent and not forthcoming with information, the skilful use of questions may elicit the information required. Be aware that some clients may be suffering from trauma and may require a longer period before they open to you.
• For clients requiring a will or a contract, the consultation is simpler. However, be sure to obtain all the relevant information by using a checklist of questions.
• The review stage: After you have obtained sufficient information you must briefly recount the information gathered to the client to ascertain the correctness of the information.
  o This can be introduced in the following manner:
  o Lawyer: I think I have a clear picture now. Let me tell you my understanding of what happened. If I’ve got anything wrong, please correct me. And if you remember anything else as I go along, please interrupt me to point it out.16

At this stage, all that is required is a summary of the information, without discussion or judgement of the issues.

### 3.3.4.4 GOAL IDENTIFICATION

- During this stage the client tells you what she would like from you.
  - The client is coming to you as the legal expert for advice.
  - She does not know what is possible from a legal point of view.
  - She may have entirely unrealistic goals.
- Include everything the client wants. Do not discard any of the options at this stage.
- **Aims** of the goal identification stage include
  - to list the goals from an action point of view, or in terms of result
  - to identify the client’s goals in terms of time, money and emotions.
  - to identify those goals that may prove overly stressful for the client, or even risky.
  - There may be a solution that the client has not thought about. Note this down as it is one that you may have to canvass.
- If the **client has difficulty identifying his goal** then invite the client to hypothesize what possible outcomes he/she would like.
- It is at this stage that you may **conclude your session** advising your client that you must **meet your supervisor and discuss all options**.
- Provide your client with a copy of the **UCT Law Clinic compliment slip** (see Appendix)—filled in with your name, the Clinic at which you consulted with the client, and the name of the Supervising Attorney. Point out to the client that the Law Clinic bank account details are on the back of the slip and explain that they may need this information if their case is taken on by the Law Clinic.

### 3.3.4.5 STRATEGIZING & DECISION-MAKING

- Strategizing and decision making takes place with your supervising attorney. The aim is to:
  - identify possible solutions:
    - discount those solutions that are impossible and unrealistic.
    - list all the possible workable solutions, including those that the client is not aware of or has not considered.
- You may need additional time to **research or investigate** as you may not have all the solutions straight away.
- Your client may need to bring in **additional documents**, which may alter some of the possible solutions you list.
- Once you have all the information and documentation you will need to contact your client and **discuss the options**. To do this, you need to:
  - factor in time, money, levels of complexity and likelihood of success, especially if you have at three or four solutions.
  - Only the client knows how much time or money and effort he has at his disposal so s/he must choose.
- Make your client aware of the **possible outcomes** if your client chooses a solution that you know is expensive and may not produce the best outcome.
- This is where **ethical lawyering** comes to play a part. It is your **duty to advise** from a **cost benefit analysis**.

- Part of the decision-making process is to ensure that your client **owns the process** by participating in his own decision.
  - His decision might involve two solutions—the second to be used only if the first solution fails.
- Once your client has reached a decision, confirm it with your client telephonically.
- Subsequently, you will need to write down the instructions and get the client to sign their agreement to the instructions.

### 3.3.4.6 CLOSING

Once a decision has been made and the client wishes to engage your services:

- Both must **agree on the terms** of that engagement.
  - The client is giving the student legal advisor a mandate.
  - An attorney cannot act without an instruction form the client.
  - The mandate/instruction needs to be in writing.
- You may have to **explain all the legal terms** in plain language.
- You will have to **go through the mandate a second time** to ensure that the client has understood.
- Outline the **possible time periods** that the matter will take to be completed.
- State when the client can hear from you and exchange **contact details**.
- Make copies of all the client’s original documents and ensure that you return the originals to the client before he leaves your office.

<table>
<thead>
<tr>
<th>CHECKLIST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Make sure you have discussed the following in the initial consultation:</td>
</tr>
<tr>
<td>- Confidentiality and note taking</td>
</tr>
<tr>
<td>- Legal costs and disbursements</td>
</tr>
<tr>
<td>- The indemnity form</td>
</tr>
<tr>
<td>- The process of consultation with your supervising attorney</td>
</tr>
<tr>
<td>- How to communicate hereafter (identify a method that works)</td>
</tr>
</tbody>
</table>
### 3.3.5 CONSULTATION WITH CLIENTS USING A SA SIGN LANGUAGE INTERPRETER (SASLi)

<table>
<thead>
<tr>
<th><strong>Do</strong></th>
<th><strong>Don’t</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Speak directly to and look at the Deaf person, not the SASLI. This includes questions about the interpreting process - use ‘you’, not ‘her/him/they’.</td>
<td>Forget to treat the Deaf person and SASLI as you wish to be treated and as equal to hearing people.</td>
</tr>
<tr>
<td>Speak naturally, but clearly and not too quickly or softly, and be aware of background noise or interference. Furthermore, if any other language than English is used, you must have this translated into English unless previously agreed with the SASLI.</td>
<td>Read direct quotes without showing the printed text or having it available to Deaf people.</td>
</tr>
<tr>
<td>Understand the SASLI must interpret everything said and heard – and will interpret even when you say “Oh, they don’t need to know this.”</td>
<td>Expect the SASLI to do anything but interpret or to know &amp; share any details about the Deaf person with you, or that the SASLI is the person’s carer.</td>
</tr>
<tr>
<td>Be willing to assist the process by supplying the SASLI with preparation materials, like the kind of information you will be asking for</td>
<td>Go over time or skip a break, the SASLI has other appointments and also needs rests.</td>
</tr>
<tr>
<td>Be understanding of the fact that the process may result in small delays.</td>
<td>Panic if the SASLI isn’t around – you can communicate using paper and pen.</td>
</tr>
<tr>
<td>Remember a SASLI is human too, and needs breaks, gets tired, can only hear so much, and needs the toilet!</td>
<td>Make a fuss over the SASLI – they don’t need applause, fame or to be thanked.</td>
</tr>
<tr>
<td>Allow the Deaf person and client to decide where is best for them to be situated.</td>
<td>Touch, poke or move the SASLI.</td>
</tr>
<tr>
<td>Make sure only one person speaks at a time, and the noise level is minimal – you may need to repeat what is said.</td>
<td>Interject when you’re reading from a script – let the Deaf person read first. Add comments afterwards.</td>
</tr>
<tr>
<td>Be willing to adapt questions for the Deaf person, for example in obtaining information about their experience of an incident they are reporting</td>
<td>Expect all Deaf person to be the same! Each is different and lives and communicates in their own way.</td>
</tr>
</tbody>
</table>

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17 Table adapted from training material provided by the Disability Unit, University of Cape Town.
4: LEGAL PRACTICE GUIDANCE

4.1 CAUSE OF ACTION

A valid cause of action is needed in order to proceed with any matter. It is best to think of the cause of action as the client’s complaint. Whether the client has a valid cause of action is established after you have consulted with your client and identified the legal issue from the set of facts presented to you. Be sure to order you facts logically as you undertake the investigation of facts.

The legal issue will be situated in a particular area of substantive law. This includes basic laws encompassing rights, duties and obligations. Some examples of substantive law are the law of delict, contract law, family law, and criminal law; succession; and constitutional, labour and administrative law.

To obtain the necessary relief, your client will have to prove certain elements in their account of the matter about which they are consulting you. These elements are grounded in substantive law. Whether the elements are sufficient to constitute cause of action will be decided, at your meeting with your supervisor, based on the information you have recorded during your consultation with the client.

Below are examples of cases of valid cause of action for delict, contract and divorce respectively.

EXAMPLE 1: Delict

Your client has been involved in a motor vehicle collision which resulted in considerable damage to her car. The collision arose when an employee of Company X attempted to drive across a busy intersection and did not see your client’s car. A police officer at the scene smelt alcohol on the breath of the employee of Company X and a subsequent blood test revealed that he was above the legal alcohol limit.

Your client can therefore sue both the driver and Company X. In the law of delict, damages for patrimonial loss are recovered using the Lex Aquilia. Therefore, the main elements of your client’s cause of action, in terms of a delictual claim, would be:

- **Wrongful act**: crashing into your client’s car
- **Fault in the form of negligence**: depending on circumstances, you would have to prove either intention or negligence. In this case, the driver was negligent in that he failed to keep a proper lookout or did not exercise caution and/or his drunkenness reduced his alertness.
- **Causation**: there must be a causal link between all the elements
- **Damage**: damage to the vehicle
- **Vicarious liability**: your client would have to allege that the driver was acting within the course and scope of his employment.
EXAMPLE 2: Contract

Your client agrees to sell her car to Mrs A for R20 000, 00. Mrs A pays R10 000, 00 and says she will pay the balance by the end of the month. Two months have passed and your client wants to take action against Mrs A for non-payment of the remaining R10 000, 00.

The law of contract allows your client to sue for specific performance or cancellation of the contract and restitution. Whichever option your client chooses, she will have to allege, and prove, that there was a valid contract of sale. This would require that:
- There was an agreement to **buy and sell** the car
- There was agreement on the **item to be bought and sold** (i.e. the car)
- There was agreement on the **purchase price** to be paid (i.e. R20 000.)

EXAMPLE 3: Divorce

A client seeking a divorce must satisfy the court of the following:
- That a **valid marriage** between the parties still exists.
- The court in question has **jurisdiction** (see Section 4.3).
- The **marital regime** under which the parties are married (examples: married in community of property / by ante-nuptial agreement)
- Whether there are minor **children** and or children over 18 who are still dependants
- Whether the person suing for divorce intends to claim **sole guardianship, the right to care for** or **maintain contact with any children**. If so, the applicant must make allegations to support the claim they are making.
- The amount of **maintenance** required for the children.
- **Compliance with regulations** promulgated in terms of the Mediation in Certain Divorce Matters Act 24 of 1987.
- The **grounds** upon which the divorce is being sought, which is usually an irretrievable breakdown of the marriage.
- Whether **spousal maintenance** is being claimed from the person seeking the divorce.
- Whether the parties have drawn up a **settlement agreement** in order to divide the proprietary consequences between the parties.

TAKE NOTE!

If your client had suffered any **physical injuries**, legislation requires that s/he sue the **Road Accident Fund**.

Individuals cannot be sued directly for bodily injury.
4.2 LOCUS STANDI

Locus standi refers to legal standing—in other words, the right to sue or be sued. The Law Clinic assists clients who have locus standi. This is assessed by asking two questions:

Does the client have legal capacity to litigate?

If ‘YES’

Does the client have a direct and substantial interest in the matter?

If ‘YES’

Client may proceed with litigation.

Capacity to litigate: As a general rule, all natural persons have the capacity to sue and to be sued. Note: the following exceptions:

Spouses married in community of property:

- Must obtain written consent of the other spouse when instituting or defending legal proceedings. Such consent is not required in respect of legal proceedings:
  - between spouses
  - in respect of a spouse’s separate property
  - relating to spouse’s profession or business
  - recovery of damages due to a delict committed against the spouse.

Minors:

- Minors under the age of 7 cannot litigate
- A parent/guardian must act on his/her behalf. The claim must be instituted in the name of the parent/guardian.
- Minors between the ages of 7 and 18 may litigate, duly assisted or represented by a parent/guardian in their representative capacity.

Persons with intellectual disability:

- Persons with intellectual disability have no capacity to litigate and must be represented by a curator.
4.3 JURISDICTION

THE COURT SYSTEM IN SOUTH AFRICA

In addition to the above, there are specialist courts like the Small Claims Court, the Equality Court, the Labour Court, the Competition Court, Tax Courts and the Land Claims Court.

JURISDICTION

Jurisdiction has been defined as “The power or competence which a particular court has to hear and determine an issue between parties brought before it”.\(^{18}\)

The competency of a court to hear a matter can be determined by looking at:
- monetary value of the claim
- nature of the claim
- geographical location, termed ‘jurisdiction in respect of persons’

Most of the matters dealt with at the UCT Law Clinic are heard in the Magistrate’s Court.
- The Magistrate’s Court is a creature of statute (a legal entity).
- The rules relating to its jurisdiction can be found in the Magistrate’s Courts Act 32 of 1944.
- The Magistrate’s Court has no jurisdiction beyond that granted to it by statute.
- Note: Failure to comply with jurisdiction can be grounds for appeal or review.

JURISDICTION IN THE MAGISTRATE’S COURT

There are three sets of criteria for determining jurisdiction in the Magistrates Court:
- Monetary value of the claim
- Nature of the claim
- Geographical location

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\(^{18}\) Graaf-Reinet Municipality v Van Ryneveld’s Pass Irrigation Board 1950 (2) SA 420 (A) at 424.
1: Monetary value of the claim

- The District Court can hear claims up to R200,000.
- The Regional Court can hear claims up to R400,000.
- NOTE: The Small Claims Court has jurisdiction in respect of claims up to the value of R15,000.
- The High Court has concurrent jurisdiction.

2: Nature of the claim

Section 46 of the Act sets out certain types of claims which, by their nature, may not be brought before the Magistrate’s Court.

Examples:
- Even if the monetary value is under R400,000, the matter must be heard in the High Court.
- A guardianship application can only be heard in the High Court, whilst the Children’s Court (District Magistrate) court deals with adoption.
- A divorce is heard in the Regional or High Court only.
- An eviction can be heard at the District Magistrates Court in which the property is situated.

Matters which may not be heard by the Magistrate’s Court include:
- challenge to the validity of or interpretation of a will
- matters in which the status of a person in respect of mental capacity is at issue
- a claim for specific performance without an alternative payment of damages, subject to exceptions in section 46(2)(c)(i) – (iii) (see below)

(2) A court shall have no jurisdiction in matters-
   (a) in which the validity or interpretation of a will or other testamentary document is in question;
   (b) in which the status of a person in respect of mental capacity is sought to be affected;
   (c) in which is sought specific performance without an alternative of payment of damages, except if-
      (i) the rendering of an account in respect of which the claim does not exceed the amount determined by the Minister from time to time by notice in the Gazette;
      [Sub-para. (i) substituted by s. 4 of Act 25 of 1987.]
      (ii) the delivery or transfer of property, movable or immovable, not exceeding in value the amount determined by the Minister from time to time by notice in the Gazette; and
      [Sub-para. (ii) substituted by s. 4 of Act 25 of 1987.]
      (iii) the delivery or transfer of property, movable or immovable, exceeding in value the amount determined by the Minister from time to time by notice in the Gazette, where the consent of the parties has been obtained in terms of section 45;
      [Sub-para. (iii) substituted by s. 4 of Act 25 of 1987.]
   [Para. (c) amended by s. 5 of Act 19 of 1963 and substituted by s. 28 of Act 94 of 1974 and by s. 2 of Act 56 of 1984.]

3: Geographical location

Section 28 of the Act covers jurisdiction in respect of persons and provides that the jurisdiction of a particular Magistrate’s Court is to be determined by looking at the following:
• where the defendant resides, carries on business or is employed
• where the cause of action arose wholly – in other words the area where all of the facta probanda have taken place

**Jurisdiction in terms of persons:** In accordance with section 28 of the Act, a court will have jurisdiction in the following instances:
• any person who resides, carries on business, or is employed within the jurisdiction of the court
• any defendant who appears and does not object to the jurisdiction,
• where the cause of action arose wholly – in other words, every fact that must be proved in order for judgement to be granted in the Plaintiff's favour occurred within the court’s jurisdiction
• any person who owns immoveable property (within the jurisdiction of the court) in actions in respect of the said property or in respect of a mortgage bond thereon.

**Magistrate’s Court Jurisdiction**

A way to approach jurisdiction is to **answer the following questions**:

1. Can the Magistrate’s Court hear this type of matter?
2. Does the claim fall within the *monetary jurisdiction* of the Magistrate’s Court?
3. Must the matter be heard in the *District or Regional Court*?
4.4 APPLICATIONS AND ACTIONS

Once it is determined that a matter is to proceed to court for litigation, the issue of **which type of proceeding to use** is vital. In whichever court litigation is instituted—whether High, Regional or the District Courts—there is one of two proceedings we can use. This is either an **action** (trial) or an **application** (motion) procedure.

- You must **know the differences** between these two proceedings and what each proceeding entails.
- If you use the **wrong procedure** and waste the court’s time (not to mention the client’s time as well) then you may risk an **adverse cost order** from the presiding officer.
- A **key consideration** of whether to proceed by action or application is **whether a substantial dispute of fact will arise in the proceedings**.
- Once there is a **dispute of fact**, oral evidence will have to be called thereby proceeding to trial (action).

The differences between the two procedures are illustrated below:

<table>
<thead>
<tr>
<th></th>
<th>APPLICATION</th>
<th>ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Proceedings</strong></td>
<td>Motion</td>
<td>Trial</td>
</tr>
<tr>
<td><strong>Parties</strong></td>
<td>‘Applicant’ and ‘Respondent’.</td>
<td>‘Plaintiff’ and ‘Defendant’.</td>
</tr>
<tr>
<td><strong>Deals with</strong></td>
<td>Factual disputes that can be finalised by reading the papers.</td>
<td>Substantial factual disputes.</td>
</tr>
<tr>
<td><strong>Initiating document</strong></td>
<td>A Notice of Motion and a Founding Affidavit issued by the Applicant(s) and served on the Respondent(s).</td>
<td>The summons, issued by the Plaintiff(s) and served on the Defendant(s)</td>
</tr>
<tr>
<td><strong>Other documents</strong></td>
<td>Other Affidavits are exchanged, namely:</td>
<td>Further pleadings are exchanged, such as:</td>
</tr>
<tr>
<td></td>
<td>• Answering affidavit; and</td>
<td>• Defendant’s plea and counterclaim</td>
</tr>
<tr>
<td></td>
<td>• Replying affidavit (if necessary).</td>
<td>• Plaintiff’s replication (or reply) to defendant’s plea; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Plaintiff plea to Defendant’s counterclaim.</td>
</tr>
<tr>
<td><strong>Preparation for trial</strong></td>
<td>After exchange of Affidavits there is no trial preparation other than the submission of Heads of Argument before the hearing is to take place</td>
<td>Once close of pleadings takes place (<em>litis contestation</em>), preparation for trial begins and involves the process of discovery and expert notices</td>
</tr>
<tr>
<td><strong>Final stage</strong></td>
<td>Takes place in the Motion Court where no oral evidence is presented by the parties. The case is argued by the parties’ legal representatives.</td>
<td>Takes place in a Trial Court where oral evidence is heard by the parties.</td>
</tr>
</tbody>
</table>
4.4.1 APPLICATION PROCEDURE

The Notice of Motion, which is the initiating document, must inform the court and the Respondent of the following:

- WHAT - the type of application
- WHEN – the date and time of the hearing
- WHERE – specified court
- RELIEF – what is being sought

In addition to the Notice of Motion:

- the Founding Affidavit is attached to the Notice of Motion, along with all the relevant annexures setting out the facts and evidence on which the claim is based.
- The opposing party replies with an opposing or replying affidavit setting out the facts, with all the evidence in support of his/her defence.
- All arguments in the Motion Court are limited to the submissions contained in the affidavits – in principle no oral evidence is presented.
- Note: there are exceptions and a presiding officer can refer the matter to oral evidence.

Types of application:

- Ex Parte applications: the applicant is the only party before the court
- Bilateral applications: where another party will be affected and must thus receive notice of all proceedings
- Interlocutory (or interim) applications: temporary application seeking relief that is ancillary to the main proceedings between the applicant and respondent.
- For further information on the motion court, see http://www.justice.gov.za/mc/mcjhb/mcjhb_prac_motion.pdf

AFFIDAVIT:

The affidavit records certain facts under oath. Magistrate Court Rule 63(2) states affidavits must be subdivided into concise, consecutively numbered paragraphs.

The following information must appear in all affidavits:

- names and addresses of the applicant and respondent
- applicant’s locus standi
- the court’s jurisdiction
- the material facts (facta probanda)
- the evidence which the deponent wishes to place before the court (facta probantia)
- request to the court to grant the relief sought in the Notice of Motion

The affidavit must be signed by:

- the person making the statement (or deponent)
- the commissioner of oaths

If documentary evidence is referred to in the affidavit, such documents must be attached to the affidavit in annexures.
COMMISSIONING AN AFFIDAVIT:

The following paragraph must be included and signed by the Commissioner of Oaths:

```
Sworn to me at ....................... on this ..... day of ............... 20...., the deponent having acknowledged that:
  1) She knows and understands the contents of this affidavit.
  2) She has no objection taking the prescribed oath.
  3) She considers the prescribed oath binding on her conscience.

.................................................................
Commissioner of Oaths
(Signature and full details)
```

4.4.2 ACTION PROCEDURE

The action procedure involves oral evidence at the actual trial where two adversaries confront each other before an adjudicator. The parties are referred to as ‘Plaintiff’ and ‘Defendant’.

The three stages of action procedure are:
1. The pleading stage
2. The preparation for trial stage
3. The actual trial hearing
4. Pleading stage

The pleading stage is where the student will do most of the work at the Clinic by drafting various pleadings. (Students do not get involved in preparation for trial and the actual trial hearing).

The purpose of a pleading is to:
- Inform the parties of the legal and factual issues
- Define the scope or limits of the legal dispute
- Place the issue on record
- Determine which party bears the onus of proof.

The various types of pleadings that may be exchanged between the parties are:
- Declaration
- Particulars of Claim
- Plea
- Counterclaim
- Further Replies
- Exceptions
  - Replication
  - Plea to counterclaim
  - Any amendments to any of the above
DRAFTING PLEADINGS:

When drafting pleadings, the rules of the court must be adhered to and practice directives for various courts should be checked.

- 18 (3) of the Uniform Rules of Court (URC), which regulate proceedings in the High Court, and rule 6(3) of Rules Regulating the Conduct of the Proceedings of the Magistrates’ Court of South Africa (hereafter ‘MCR’) provide the following guideline for drafting of pleadings: ‘pleadings must be divided into paragraphs and sub paragraphs and numbered consecutively’

- HCR 17(4) and MCR 5(4) address requirements for citing the parties to a dispute. They should include the first name and surname and address of both parties. Other necessary details are the gender in the case of the Plaintiff. You must also state the occupation and or place of business of the Plaintiff and the Defendant (if you have it)

- The following is recommended for drafting court documents:
  - 12-point font size
  - Arial or Times New Roman font
  - 1.5 or 2.0 line spacing

The Plaintiff initiates the proceedings by issuing a summons. A summons is a written judicial demand containing important information, such as names of the parties, the court, case number.

There are three types of summons that can be used:

- **Simple summons**: where there is a claim for debts / liquidated amounts where no further evidence is needed to prove the quantum. It must contain a description of the cause of action and relief that is claimed.

- **Combined summons**: where the claim is not a liquidated demand and contains the complete particulars of claim attached to the summons. The Particulars of Claim must set out the following:
  - jurisdiction and *locus standi*
  - nature of the claim
  - sets out permitted conclusions of law which may be deduced from the facts
  - prayer for the relief claimed

- **Provisional sentence summons**
Once the summons has been issued and served by the sheriff, the parties exchange pleadings directly.

**TAKE NOTE!**
Once a summons has been served on the opposing party it interrupts the running of *prescription*.

Read and familiarise yourself with the **PRESCRIPTION ACT 68 OF 1969**.
4.5 THE MEANS TEST: QUALIFYING FOR ASSISTANCE

A means test is an assessment, or investigation, into an individual’s or household’s income, expenditure and assets in order to determine eligibility for government assistance or aid.

- Legal Aid of South Africa’s means test is used by the UCT Law Clinic to determine whether a client qualifies for assistance from the Law Clinic.
- This is done by completion of the relevant form(s), made up of Form LA1 Annexure C and LA13 Annexures G1 and G2 (Means Test for Single Persons/Households) (see Appendix)

There are two steps in assessing qualification for assistance:

Step 1:
Assist the applicant with completion of Form LA1 Annexure C (Application for Legal Aid).

- Establish whether the applicant is unemployed and has no income or assets, or receives only a State grant, or old age pension from SASSA.
- If ‘Yes’, the enquiry as regards the applicants’ financial means is complete, which means no further forms need to be completed and there is no further test of whether the client will qualify for legal assistance.
- If ‘No’, Proceed to Step 2.

Step 2:
First: Establish whether the applicant is:

- A single person
  o Note: A married person who is instituting proceedings against their spouse is treated as a single person

- A member of a household
  o defined as a group of people who live together for at least 4 nights in a week and who share meals and resources
  o Note: a married couple would be considered a ‘household’.

- A child
  o The means test for households is applicable to children or their parents or guardians

Second: The applicant should be assisted to complete the Means Test LA13 (Annexure G1 & G2).

The means test has two sections to be completed:

- Section A: deals with the gross monthly income
- Section B: deals with assets
- Note: To qualify for assistance the applicant must satisfy the requirements for both sections A and B.
Requirements for **qualification for assistance** are as follows:

<table>
<thead>
<tr>
<th>APPLICANT</th>
<th>Income/asset limits</th>
<th>Qualification</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section A of LA1 – Monthly income</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Single applicant</td>
<td>Net income of R5 500 per month <strong>or less</strong> after deduction of tax</td>
<td>Qualifies for assistance in terms of <strong>Section A</strong></td>
</tr>
<tr>
<td>Applicant belongs to a household</td>
<td>Household net income of R6 000 per month <strong>or less</strong> after deduction of tax</td>
<td>Qualifies for assistance in terms of <strong>Section A</strong></td>
</tr>
</tbody>
</table>

**Note.** Both columns of the LA1 should be completed (i.e. single applicant & spouse/partner)

| **Section B of LA1 - Assets** | | |
| Applicant - Single or Household | | |
| | • No immovable property owned | Qualifies for assistance in terms of **Section B** |
| | • Net asset value not exceeding R100 000 | |
| | • Owns immovable property **AND** resides in the property | Qualifies for assistance in terms of **Section B** |

**DEFINITIONS**

| Assets: | Moveable or immovable and corporeal or intellectual rights to property |
| | e.g. house, investments (shares in a company, investment bonds, etc), furniture, vehicle, claim against a debtor, sum of money in a bank account, right to occupy a property under a will, right to receive a lump sum payment |
| | The following are not assets: lotto ticket, hope of an inheriting from a person who is still alive. |

| Net assets: | Assets less liabilities |

| Liabilities: | Debts owed by the applicant e.g. a mortgage bond, bank overdraft, obligation to pay a sum of money, balance owing under a credit agreement |
| | The following are not liabilities: income tax, rent, maintenance, clothing accounts (unless the person is in debt). |

**Net monthly income** includes income from all sources, and may include:

- Salary/wages
- Overtime (provided not occasional)
- Allowances
- Subsidies
- Bonuses
- Commission
- Interest received
- Rentals received
- Maintenance received
- Grants received
- Pensions
- Dividends
Further factors affecting qualification:

- **Property and money from a deceased estate**: In assessing the application, any property (including money) that the applicant is or will be entitled to receive from the estate of a deceased person must be taken into account.

- **Assets from a trust or company**: If assets are owned in a trust or company for the direct or indirect benefit of the applicant, such assets shall be deemed to be owned by the applicant for the purposes of deciding whether the applicant qualifies for legal aid.

If you think that the client is not disclosing their correct income:

- ask for a salary slip or bank statements for the last three months, or
- an affidavit confirming that the client is unemployed and is not self-employed.

Should it be difficult to determine whether or not a person is entitled to legal aid, the **supervising attorney** should be consulted.
4.6 MATTERS NOT TAKEN ON BY CLINIC

Due to the UCT Law Clinic’s mandate and capacity, only certain matters are taken on. The first step in determining whether or not a matter falls within the mandate of the Clinic is to make sure it does not fall into one of the categories below:

<table>
<thead>
<tr>
<th>Matter:</th>
<th>Refer client to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal Law</td>
<td>Legal Aid Board</td>
</tr>
<tr>
<td>Claims below R15 000</td>
<td>Small Claims Court located within the Magistrates’ Court. See Section 4.12 for details of how to direct client</td>
</tr>
<tr>
<td>Maintenance</td>
<td>Maintenance Court within the Magistrates’ Court</td>
</tr>
<tr>
<td>Domestic violence interdicts</td>
<td>Magistrates’ Court</td>
</tr>
<tr>
<td>Debt collections (S 65 of Magistrates’ Court Act)</td>
<td>Debt counsellors</td>
</tr>
<tr>
<td>Personal injury/Road Accident Fund claims</td>
<td>An attorney, to handle on contingency basis. Refer to a Personal Injury lawyer</td>
</tr>
<tr>
<td>Conveyancing</td>
<td>Conveyancing attorneys</td>
</tr>
<tr>
<td>Workmen’s Compensation Claims</td>
<td>The client’s employer and/or Department of Labour</td>
</tr>
<tr>
<td>Defamation</td>
<td>A lawyer</td>
</tr>
</tbody>
</table>

See the Appendix for a complete referral list.

Once the various forms have been completed, each referral needs to be neatly stapled, with a white page on which the following are noted:

- Name
- Clinic
- Supervisor
- Reason for referral

This must be accompanied by:

- LA1/LA13
- Mandate from the client
- Correspondence, and
- Photocopies of client’s documents (where relevant)

The referral should then placed in the referral tray in the Law Clinic, for data capturing by the Legal Secretary.
4.7 EVICTIONS: RESIDENTIAL PROPERTY

Many clients seek legal assistance to evict person(s) or to defend being evicted/an eviction.

- Section 26(3) provides that “no one may be evicted from their home, or have their home demolished without an order of court made after consideration of all the relevant circumstances. No legislation may permit arbitrary evictions.”
- This section led to the enactment of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act) whose object is to provide for the prohibition of unlawful evictions.

**PIE Act**

- ‘Evict’ means to deprive a person of occupation of a building or structure, or the land on which such building or structure is erected, against his or her will and ‘eviction’ has a corresponding meaning
- PIE defines ‘land’ to include a portion of land.
- PIE applies to all evictions from buildings or structures on the land
- PIE aims to ensure that no-one is evicted or has their home demolished without a court order
- PIE does not take away from a land owner’s proprietary rights, but merely prescribes the procedure to be followed
- PIE applies to municipal, private and state land
- According to PIE, the owner or person in charge of land occupied by an illegal occupier has the locus standi to bring an application for eviction

**Applicable legislation:**

- Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act)
- Extension of Security of Tenure Act 62 of 1997 (ESTA)
- Rental Housing Act 50 of 1999
- Rental Housing Amendment Act 35 of 2014

**Situations giving rise to eviction:**

There are various situations that may give rise to evictions. The following list is by no means exhaustive:

- Breach of lease agreement.
- Illegal occupation of houses built by authorities for people on the waiting list.
- Land invasion/s – rural and urban.
• Occupation after lease period as terminated.
• Occupiers who believe that they are owners.
• Defaulting mortgagors.

4.7.1 CONSULTATION CHECKLIST FOR AN EVICTION

The following information will be needed from your client:

Locus standi:
• Does the client have a right to evict?
• Is the client the sole owner?
• If there is more than one owner, do they all consent to the eviction?
• Does the client have proof of ownership? i.e. title deed
• A ‘person in charge’ could be a lessee or agent of the owner of the land\(^{19}\)
• Is the ‘person in charge’ the executor of an estate and do they have a letter of authority from the Master of the high Court?

<table>
<thead>
<tr>
<th>TAKE NOTE!</th>
</tr>
</thead>
<tbody>
<tr>
<td>• If the client is in a “rent-to-buy” agreement with the City, the City is the owner of the property</td>
</tr>
<tr>
<td>• If a client’s story “doesn’t check out”, consult with your supervisor</td>
</tr>
<tr>
<td>• The client must want an actual eviction – the Clinic does not write letters to threaten people</td>
</tr>
</tbody>
</table>

Details of occupiers:
• Full names
• Occupation
• Personal circumstances
• Gender
• Whether minors or elderly

History/background:
• Describe where on the property or land the illegal occupation is taking place (separate dwelling, room inside a house, etc)
• How did the occupiers come to reside on the property?
• How long have they occupied the property?
• Was there an agreement? If so, written or verbal agreement?
• Did the occupiers pay rent/contribute to household expenses?

\(^{19}\) Bekker and another v Jika 2002(4) SA 508 (E).
Steps already taken:
• Has the client lawfully terminated any agreement?
• Has the client asked the occupiers to vacate? If so, how and when?
• Has the client contacted the relevant street committee(s)? Note that ‘The primary aim of Street Committees is to help create a peaceful and productive environment by encouraging community members to take a greater interest in, and responsibility for, their community’.20

Prejudice suffered (by both client and occupier)
• Why does the client want the occupiers out?
• Is the client suffering as a result of the occupation?
• Will the occupiers be able to obtain alternative accommodation?
• Are occupiers aware that an eviction is sought?

Special circumstances:
• Are occupiers a household headed by women?
• Are there minor children? Will schooling of children be interrupted if evicted?
• Are there elderly persons?
• Are there disabled persons?

Costs and time:
The client should be advised of:
• the costs: which include a letter of demand, an ordinary letter and Sheriff’s fees.
• the length of time of the eviction procedure

Documents required:
The following documents are needed before a file may be opened:
• Title deed
• ID
• Marriage certificate (if applicable)
• Divorce certificate (if applicable)
• Lease agreement (if applicable)
• If the client is Executor of an estate of which the property forms part, the Will and letter of authority from the Master of the High Court.
• Note: photocopy and certify these documents. Do not keep the originals.

4.7.2 PROCEDURE TO BE USED TO EVICT A PERSON IN TERMS OF PIE

There are two applications to be made to the Court should the illegal occupiers not vacate after a letter of demand to vacate by a certain date is sent:

• the Ex Parte Application - Part A
• the Application in terms of PIE - Part B.

It may be necessary to **draft all of the following** for an eviction, depending on the circumstances of your case:
• Letter of demand to vacate
• Ex Parte Application to court for permission to commence with PIE
• Notice in terms of PIE
• Application in terms of PIE

Once your supervisor has decided you can take on the matter, follow the procedure below.

**Step 1: Drafting**

Begin by **drafting the Letter of Demand** on behalf of the client. It must:
• include proof of the client’s right to evict
• be addressed to ALL adult occupiers
• give 30 days’ notice to vacate
• cancel any prior agreement
• be sent via registered mail

**Step 2: Apply to court**

If the occupier still does not vacate, despite due notice (and specified date), we can proceed to **litigate in court**:
• You do this by drafting the remaining documents which are:
  o Ex Parte Application to court for permission to commence with PIE;
  o Notice in terms of PIE;
  o Application in terms of PIE
• Upon completion of all the drafting,
  o approach the court with the Ex Parte Application
  o have the Notice and Application in terms of PIE with you.
• Once the court grants you permission they will provide the date and time for the hearing.
• The application process involves a Notice of Motion and an affidavit.
• An action process may also be instituted by the issuing of a summons and particulars of claim (POC). However, the practice of the Clinic is to proceed by way of an application process.
• **Note:** the procedure will take place either in the **High Court or the Magistrate Court** in the area of the occupied property. according to PIE.

**Step 3: Notice of the hearing**

• Written Notice of the hearing must be served on the unlawful occupier/s and the municipality
• The notice should be **served by the Sheriff** at least 14 business days prior to the hearing.
• The Notice must indicate:
  o the date and time of the hearing
  o circumstances surrounding the eviction
  o the right of the unlawful occupier to defend herself/himself

<table>
<thead>
<tr>
<th>NOTE: The <strong>rights of the unlawful occupier/s</strong> are to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• receive timeous notice (14 days)</td>
</tr>
<tr>
<td>• appear and oppose the eviction, with or without an attorney.</td>
</tr>
<tr>
<td>• apply for legal aid.</td>
</tr>
</tbody>
</table>

**Step 4: Court hearing**

• Landlord and unlawful occupier/s may be present at court.
• If unlawful occupier/s are not present, the court may proceed in their absence or postpone the matter.

**4.7.3 CONSIDERATIONS BEFORE COURT MAY GRANT AN EVICTION ORDER**

Before granting an eviction order a **court must consider** whether:
• the occupier is lawful or unlawful
• the procedure provided in the PIE Act was followed.

If the unlawful occupier has been **in occupation for less than 6 months** (Section 4.6 PIE), the court must consider:
• all relevant circumstances—including the rights of elderly, children, disabled persons and households headed by women; and
• whether it will be just and equitable to grant an eviction order

If the unlawful occupier has been **in occupation for more than 6 months**, the court must consider:
• all relevant circumstance—including the rights of elderly, children, disabled persons and households headed by women;
• whether alternative accommodation has been made available or can reasonably be made available by the municipality, organ of state or an owner of property, for relocation of the unlawful occupier; and
• whether it will be just and equitable to grant an eviction order

Should the order be granted in the **absence of a valid defense**, the order must specify:
• the date the unlawful occupier must vacate the property
• the date the sheriff must evict the unlawful occupier/s if he/she/they fail to vacate the property by the given court date.
4.7.4 EVICTIONS IN THE ABSENCE OF A COURT ORDER

Tenants who are evicted from their residences solely by the actions of their landlord, or their agents, often do not fight back as they are of the view that they are in the wrong and therefore are not entitled to protection.
• An example would be someone who has defaulted on their rent payment/s. However, it is often not the case that a tenant has no protection.

• **Section 8(1) of PIE Act** makes it unlawful for anyone to be evicted without a court order authorizing such eviction, even if such person(s) might be deemed to be an unlawful occupier.

**Mandament van Spolie** is a remedy for those who have been unlawfully dispossessed. It is similar to an interdict and will stop anyone from interfering with or disturbing a person’s possession of property or services.

**Requirements of Mandament van Spolie**

In the case of a tenant being evicted for non-payment of rent or dispossessed of services (such as electricity or water) without a court order:

• the tenant may approach the court on an urgent basis for a spoliation order. This provides that possession of the rented premises must be restored to the person who has been deprived of possession, i.e. the tenant.

• The merits of the matter are not taken into consideration when applying for an order for spoliation.

• You must prove to the court that the client was in possession of the property or service when it was unlawfully taken from them while they were using it peacefully and undisturbed.

• You must also prove that the person or entity who carried out the dispossession took the law into their own hands when depriving the client of their possession, without the consent of the client.

• Upon hearing both sides of the case the court will make a ruling.

• If such an order is granted by the court, the tenant would be entitled to return to the rented premises and to stay there until the Landlord has taken the necessary steps to evict the tenant, as required by legislation.

The normal procedures, in terms of the rules of both the Magistrates Court and the High Court, are:

• to serve the application for spoliation, which would consist of a Notice of Motion and a founding affidavit, via the sheriff, on the Respondent(s).

• the Respondent(s) should then be afforded a short period (normally 10 days in the Magistrate’s Court and 15 days in the High Court) to respond to the application.

• The court may condone the non-compliance of these time periods due to the urgency of the matter, should the merits of the matter warrant such a step.
4.8 DIVORCE

Many clients come to the Clinic in order to institute or defend divorce proceedings. It is important that students are familiar with the Divorce Act 70 of 1979 and understand the correct procedure to follow when dealing with a divorce.

**KEY POINTS**

- Civil marriages and civil unions performed by a registered marriage officer can only be dissolved by an order of court
- The Regional Court and High Court have jurisdiction to hear divorces
- South Africa has a ‘no fault’ system of divorce which means that a divorce will be granted if one of the parties believes that there has been an irretrievable breakdown and there are no reasonable prospects of restoring the marriage
- Divorces may be opposed or unopposed
- Section 6 (1) of the Divorce Act 70 of 1979 states that a decree of divorce shall not be granted until the court is satisfied that the welfare of any minor or dependent child of the marriage is satisfactorily provided for, or is provided for in a manner deemed the best that can be effected in the circumstances.
- **NOTE:** In terms of the Children’s Act 38 of 2005, a child means a person under the age of 18 years.

4.8.1 CONSULTATION FOR DIVORCE

The following should be covered during the consultation with the client.

**Documentation:**

- certified copy of marriage certificate
- certified copy of client’s ID
- certified copies of children’s birth certificates
- Annexure A if there are minor children – to be commissioned
- Statistics SA Form

**Details of plaintiff and defendant:**

- full names, physical address, occupation
- ID number

**Details of the marriage:**

- When the marriage took place
- Matrimonial property regime
  - in community of property, or
  - out of community of property
  - with or without the application of the accrual system
  - if the accrual system applies, a copy of the antenuptial contract must be furnished.
Reasons for breakdown:
- There must be an irretrievable breakdown of the marriage in order for a divorce order to be granted
- Possible reasons include: separation, adultery, drug/alcohol abuse, domestic violence, loss of love and affection, etc

Minor children:
- Annexure A must be completed and commissioned
- If there are minor children (i.e. under the age of 18), certified copies of their birth certificates are required
- Primary care giver: Establish who will be the primary caregiver once the divorce is finalised
- Contact: Establish whether the parent who does not have primary care will exercise
  o reasonable contact, or
  o supervised contact (in the case of risk of harm to the child’s well-being)
    ▪ if supervised, establish the reasons for restricting rights of contact
  o establish the specific arrangements regarding care and contact
    ▪ i.e. days and times, weekends, school holidays, religious holidays, who will supervise the contact, etc.

Maintenance of children:
- Covers the contribution towards food, clothing, rental, electricity, toiletries, etc
- Establish whether the opposing party is employed and, if so, how much they earn
- If this information is not known, or the opposing party is unemployed, maintenance should be referred to the Maintenance Court.

Medical costs for children:
- Establish whether the children will remain on one of the party’s medical aid
- Establish whether the costs will be divided equally or whether one party will be solely liable

Educational costs for children:
- Includes uniforms, extra-murals, transport to school, stationery, textbooks etc
- Establish whether the costs will be divided equally or whether one party will be solely liable

Division of assets (in the case of a marriage in community of property)
- Immovable property: Establish
  o whether the parties’ own immovable property and, if so, what is the outstanding bond and who pays it
  o the intention regarding immovable property
    ▪ Will the house be sold and nett proceeds divided?
    ▪ Will the parties remain co-owners?
    ▪ Will forfeiture be requested?
• Movable property
  o List how the household items will be divided
  o If the parties are already separated, items could be retained in their respective possession
  o Vehicle(s): establish make, model, colour and registration number(s)
    ▪ whether financed
    ▪ whether to be sold or retained

• Pension/providence fund
  o The plaintiff is entitled to 50% of the opposing party’s pension interest as at date of divorce, or they may request forfeiture
  o Information required:
    ▪ full name of fund
    ▪ full name of administrator of fund
    ▪ client/opposing party’s membership number

• Communal debt:
  o Establish whether each party will pay their own debt or will the estate’s debt be divided between the parties

Forfeiture:
• Client may ask for a forfeiture of benefits
• It is within the court’s discretion to order total or partial forfeiture if, in the absence of such an order, one party will be unduly benefited

Section 9(1) of the Divorce Act lists the following factors which a court must consider:
• duration of the marriage
• circumstances which led to the breakdown of the marriage
• any substantial misconduct on the part of either spouse

Spousal or rehabilitative maintenance:
• Explain to the client that spousal or rehabilitative maintenance is not an automatic right
• South African law favours the “clean break” principle, which means that after a divorce the parties should become economically independent of each other as soon as possible
• In terms of section 7 (2) of the Divorce Act, the court will use the following factors to determine whether a maintenance order is to be granted:
  o existing or prospective means of the parties,
  o respective earning capacities of the parties,
  o financial needs and obligations of the parties,
  o age of each party and duration of the marriage,
  o parties’ standard of living during the marriage,
  o conduct of the parties in so far as it may be relevant to the breakdown of the marriage
  o any other factor
THE FAMILY ADVOCATE

The role of the Family Advocate (FA) is to ensure that the best interests of minor children are safeguarded. Thus, he/she:

- has the prerogative to investigate into the welfare and best interests of minor children
- will furnish the parties and the court with a report and recommendations in this regard
- must endorse all pleadings and settlement agreements before the matter can be finalised whenever there are minor children in a divorce

The FA will investigate when:

- there is a dispute regarding primary care or contact arrangements
- there is abuse
- children’s best interests are at stake

If an investigation is required:

- Complete an Annexure B
- To be served on all parties and the FA, and filed at court
- When completed form is received by the Office of the Family Advocate they will conduct an investigation
- Upon completion of the investigation the FA compiles a report to Court giving recommendations regarding the care of, primary residency of and contact with the children
- Investigation takes a minimum of 6 - 8 months

FORMS FROM THE OFFICE OF THE FAMILY ADVOCATES: ANNEXURE A & ANNEXURE B

Annexure A:

- must be completed for every divorce where there are minor children (i.e. under the age of 18)
- alerts the Office of the Family Advocate to the fact that this divorce includes minor children and deals with arrangements that have been made regarding the children
- must be attached to the summons
- takes the form of an affidavit and therefore must be commissioned by a Commissioner of Oaths.

Annexure B:

- must be completed if an investigation by the Office of the FA into care and custody arrangements is requested.
- must be filled in when there is a dispute relating to the minor children
- NOTE: this can be filled in by either party
- is not attached to the summons.
4.8.2 PROCEDURE TO BE USED FOR A DIVORCE HEARING

DRAFTING

• Once you have all the relevant information, begin drafting the summons and particulars of claim.
• The summons must be signed by your supervising attorney
• The Plaintiff’s ID, marriage certificate, children’s birth certificates and Annexure A must be attached to the combined summons
• Make 3 copies of the summons if no minor children and 4 copies if there are minor children

ISSUING

Your supervisor will have the summons issued by the Assistant Registrar—a case number will be allocated and a court file opened.

SERVICE

• Prepare a cover letter for Sheriff serving within the jurisdiction where the Defendant is to be served
• When the issued summons is received, send the original and 1 copy to the relevant Sheriff
• When the Sheriff’s return is received:
  - make sure you have the original return for the court file
  - make sure the administrator has a tax invoice for payment
  - count 10 court days from the day after the summons is served on the defendant to await the Defendant’s Notice of Intention to Defend (exclude day of service, weekends and public holidays)

TAKE NOTE!

Summons will NOT be issued without:

• a certified copy of marriage certificate,
• plaintiff’s ID
• completed Statistics SA form.

BE AWARE! Dealing with a divorce is an emotional process for all involved

• You need to be empathetic while remembering that you are offering a professional service
• Be upfront with your client
• Do not give your client unrealistic expectations
• Make sure the client is fully aware of the possibility of attempting to reach a Settlement Agreement before enrolling the matter for trial
• If couples require meditation, we can refer them to trained mediators (ask your supervisor) or to FAMSA
The proceedings will then follow as indicated in the figure below, depending on circumstances.

Decision paths in divorce proceedings
4.9 WILLS

One of the services the Law Clinic offers is the drafting of wills, mainly for pensioners. When asked to draft a will you must be familiar with the **Wills Act 7 of 1953**, which sets out the applicable law.

A will is:
- A written document
- Drafted or executed by the person who has died, and
- Must clearly indicate that the Testator/Testatrix intended this to be his/her will.

Before beginning, you must ensure that the client has **testamentary capacity**, which is a prerequisite for making a valid will. According to section 4 of the *Wills Act* the testator must:
- be over the age of 16, and
- must be mentally capable of appreciating the nature and effect of the act of making a will.

### THE STARTING POINT
When consulting with your client, you are trying to **ascertain the following information** when taking instruction from a client:

- Their current circumstances
- Their financial affairs
- Their wishes and intentions

It is also crucial that your client knows and understands the effect and ramifications of their instructions.

4.9.1 CONSULTATION FOR DRAFTING A WILL

The following information should be obtained from the client:

**Personal details:**
- Full name
- ID number
- Physical address
- Postal address
- Telephone numbers
- Fax numbers
- Email address
- Nationality
- Income tax number

**Marital status:**
- Whether single/married/divorced/widowed
- *If married*: date of marriage, spouse’s name, ID number
- *If married out of community of property*: whether anti-nuptial contract contains testamentary dispositions
• If divorced: date of divorce, divorce court, ex-spouse’s name, ID number, outstanding settlements or maintenance obligations

Children:
• Name, major/minor, ID number, age
• If any child is a minor, who will be the child’s guardian should the other natural parent pre-decease the client
• Are there other children from previous relationships (with possible maintenance orders in place)?

Dependents:
• Does the client have any other dependents (e.g. parents)?
• What arrangements are to be made regarding dependents?

Assets and liabilities:
• Immovable property
• Mortgage bonds/outstanding amounts
• Movable property - e.g. motor vehicles, unit trusts, JSE shares, jewellery, antiques
• Bank accounts
• Loans outstanding
• Life insurance policies

Previous wills:
• Is this the client’s first will?
• If the client already has an existing will (including a ‘CNA type’ of standard will), what was the date and place of execution?

Executor:
• Name and contact details of executor and alternative executor.
• Alternative executor is always preferable in case the executor predeceases the testator/testatrix or for some reason is unwilling or unable to act.

Instructions, wishes and intentions:
Establish from the client what they would like in their will:
• Bequests of sums of money:
  o Specify amounts and legatees’ details
  o Enquire about alternative legatees.
• Bequests of particular items to particular beneficiaries:
  o Specify particular items and beneficiaries’ details
  o Enquire about alternative beneficiaries.
• Special needs of any family members.
  o Be aware of limited rights: usufruct, lesser rights (usus; habitatio; fideicommissum)
• Residuary heir(s) and alternatives
• Conditional bequests

4.9.2 DRAFTING A WILL

The law does not prescribe any set form, nor are there any set requirements about the content. However, an approach to the form and content has developed over time.

It best to begin the draft with some framework in mind. Headings are a good way to structure the document.

The following headings may be used:
• The document is a will and that it is a will of the Testator.
• Revocation clause
• Nomination of executor clause, which includes giving the executor/executrix power of assumption.
• Legacies
• Bequests
• Residue
• Creation of trust
• Appointment of guardian (in case of minors)
• Exclusion from community of property
• Provision in the case of possible sequestration of beneficiary
• Funeral or burial instructions
• Attestation clause
• Date (the lack of a date does not invalidate the will but best practice is to date the will)

The will must:
• comply with all the legal requirements set out in the Wills Act
• be capable of being effected—it must not contain any ambiguities that lend themselves to misinterpretation

Section 2 of the Wills Act prescribes that:
• the will must be signed by the testator at the end, or by some other person at his/ her direction
• if the will is longer than one page the testator or other person must sign on each page, anywhere on the page.
• the testator’s signature must be made in the presence of two or more competent witnesses at the same time
• witnesses must attest and sign the will in the presence of the testator and each other
• if the testator signs with a mark, or an amanuensis (proxy) signs on behalf of the testator, a commissioner of oaths must be present
• Note: the commissioner cannot be the attorney who drafted the will
Example: Commissioner’s certificate in terms of Section 2(1)(a)(v)

I, (full name)…………………………………………… of (full address)………………………………………
………………………………………………………… in my capacity as commissioner of oaths certify
that I have satisfied myself as to the identity of the testator (full names) ……………………
…………………………………………………………………… and that the accompanying will is the will of the
testator.

…………………………………………………………
Signature
Commissioner of Oaths
…………………………………………………………
Capacity

Place……………………………………             Date………………………………

4.9.4 ONCE THE WILL IS DRAFTED

- The drafted will must be checked by your supervisor and corrections made.
- Once the final draft has been approved by your supervisor, call the client and make an
  appointment for the client to sign the will.
- Note: The witnesses must also be present and available to sign at the same time.
- Give your client clear instruction on safe keeping of his/her document and the need to
  inform their next of kin where they have kept their will.
- Send your client a closing letter.

4.9.5 ADMINISTRATION OF ESTATES

REPORTING ESTATES

- Law clinics are not allowed to administer estates.
- If the client needs to report an estate to the relevant authorities, they should be advised
  to report that estate to the Master of the High Court.
- The client should be provided with the necessary information, available from the Master
  of the High Court of South Africa’s website at
http://www.justice.gov.za/master/index.html and under the section on deceased estates,
<how to report an estate>. The information provided deals with:
  o the administration of the deceased person’s estate and
  o ensuring that the heirs financial interests are protected
  o the documents required to report an estate, and
  o which forms must be filled in.
INTERPRETATION & SUCCESSION DISPUTES

A client may bring a will to the Law Clinic and ask for assistance in the interpretation of the will.

The Law Clinic is able to provide:
• A written opinion, based on your research and guidance of your supervising attorney.
• Remember to advise the client that the Law Clinic will not administer the estate.

For disputes over the validity of a will, the Law Clinic does not take on these matters.
• Advise the client to seek a private attorney
• Advise of the costs involved, as this is a High Court matter.
• If the client is unable to bear the costs, refer them to the Cape Law Society or pro bono section of the Cape Bar.
4.10 LABOUR LAW

The Law Clinic is mandated to assist only in certain matters with regard to labour disputes, limited to providing advice.

- For clients with labour problems, the referral system is used.
- However, in order to make the appropriate referral a client consultation—possibly followed by some research—is necessary.

The main employment law statutes are:

- The Labour Relations Act 66 of 1995 (LRA)
  - This law was amended in 2002 the Labour Relations Amendment Act, 2002.
- The Basic Conditions of Employment Act 75 of 1997 (BCEA).
  - This law has also been amended in 2002 by the Basic Conditions of Employment Amendment Act 2002.
- The Employment Equity Act 55 of 1998 (EEA)
- The Skills Development Act 97 of 1998 (SDA)
- The Unemployment Insurance Act 30 of 1996 (UIA) [NB: This law has been repealed and replaced by the Unemployment Insurance Act, 2001]
- The Occupational Health and Safety Act 85 of 1993 (OHSA)
- The Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA).

It will be necessary to refer to the relevant legislation in order to advise a client on the appropriate relief.

- Relevant documents must be obtained from the client to establish the dilemma at hand and the client’s possible remedy.
- the contract of employment will generally be the starting point to establish whether there have been substantial or procedural irregularities.

**CONTRACT OF EMPLOYMENT**

Note: a written contract of employment is not strictly a necessary requirement for the validity of an employment relationship.

The BCEA compels an employer to give an employee details in writing of a set of prescribed employment conditions when they start work with that employer. This aims to ensure:

- certainty between the employer and employee,
- protection for the ‘vulnerable’ employee in the event of any disagreement as to the details of their employment.
4.10.1 TERMINATION OF CONTRACT OF EMPLOYMENT

If the client’s problem relates to termination of their contract of employment, the advice given needs to take into account of the grounds on which the contract of employment was terminated.

The contract of employment can be terminated on one or more of the following **grounds**:

- on expiration of the agreed period of employment
- on completion of the specified task
- by notice duly given by either party
- by summary termination in the event of a material breach on the part of either party
- by repudiation
- by mutual agreement
- by death of either party
- by the insolvency of the employer, and
- by the supervening impossibility of performance, where either party becomes permanently unable to perform his/her obligations in terms of the contract.

The LRA expressly recognises the following grounds for termination of the employment contract:

- misconduct on the part of the employee;
- the employee’s poor work performance and/or incapacity;
- the operational requirements of the employer.

The contract may not be terminated in the absence of a justified reason.

4.10.2 CONSULTATION FOR TERMINATION OF CONTRACT OF EMPLOYMENT

- **Ascertaining the facts and/or background of a client’s matter in order to determine**
  - the problem the client is faced with
  - the possible remedy that is available to the client.
- **Advise the client that the clinic does not deal with labour matters, but can assist by providing advice**
- Research the matter, and consult with your supervisor
- Advise on the prospects of the particular case
- Prepare the client for any stage they may face in the process of challenging the termination of contract. This can be done for
  - An internal disciplinary hearing—bearing in mind that such a hearing is the preliminary stage before the matter goes to the Commission for Conciliation, Mediation and Arbitration (CCMA)
  - Appearance at the CCMA
4.11 SOCIAL SECURITY BENEFITS

The Constitution of the Republic of South Africa 1996 (Act no 108 of 1996) provides that citizens have the right to have access to social security in a variety of circumstances. The Constitution further obliges the state to take reasonable legislative and other measures, within the limitations of available resources, to achieve the progressive realisation of each of these rights.

The South African Social Security Agency (SASSA) was created in 2005, activating a transition from local to national administration of social security in South Africa. The legislations governing SASSA are, Social Assistance Act, 2004 and SASSA Act, 2004.

The range of SASSA grants are:
- Older person’s grant (old age pension)
- War veteran’s grant
- Disability grant
- Child support grant
- Care dependency grant
- Foster child grant
- Social relief of distress grant

Information on who is eligible and how to apply for the grants is available on the SASSA website on www.sassa.gov.za.

CONDITIONS FOR GRANT QUALIFICATION

4.11.1 CHILD BENEFIT

- The primary care giver must be South African, a permanent resident or recognised refugee
- Both the applicant and the child/children must reside in South Africa.
- The applicant must be the primary care giver of the child/children
- The child/children must be under the age of 18. (In terms of the Children’s Act 38 of 2005, “child” means a person under the age of 18 years).
- The applicant and spouse must meet the requirements of the means test
- The applicant cannot apply for more than six children for whom they are not the biological or adoptive parent

4.11.2 DISABILITY BENEFIT

The applicant must:
- be a South African citizen, permanent resident or recognised refugee
- be resident in South Africa.
- be between the ages of 18 and 59 years old.
- submit a medical assessment report confirming disability.
  - The medical assessment must not be older than 3 months at the date of application
• must, together with their spouse (if any), meet the requirements of the means test
• must not be maintained or cared for in a state institution
• must not be in receipt of another social grant in respect of him or herself.

4.11.3 FOSTER CARE BENEFIT

• The applicant and child must be resident in South Africa.
• There must be a court order indicating foster care status.
• The foster parent must be a South African citizen, permanent resident or recognised refugee
• The child must remain in the care of the foster parents.

4.11.4 UNEMPLOYMENT INSURANCE FUND (UIF)

The Unemployment Insurance Fund Act provides protection for workers who become unemployed. It sets out the terms for claiming unemployment benefits for unemployment, maternity benefits, illness benefits, adoption benefits and dependent benefits.

UIF Act and UIF Contribution Act apply to all employers and workers, with the exception of:
• Workers who work less than 24 hours a month
• Learners
• Public servants
• Foreigners working on contract
• Workers who get a monthly state old age pension
• Workers who only earn commission.

Clients seeking assistance with claiming from UIF should be referred to a local labour office. Clients of the Law Clinic are usually referred to the Cape Town Labour Centre (see Appendix/Referral list).

4.11.5 PENSION BENEFIT

Clients may have queries for claims in terms of the state pension fund or in terms of private pension funds.

State pension:

To qualify for the state pension (older person’s grant), the applicant must have a monthly income below a certain level, as established by completion of a means test. Their spouse (if they have one) must also pass the means test.

Other conditions that should be met are that the applicant is:
• a South African citizen, permanent resident of South Africa or recognised refugee
• 60 years or older
• Not living in a state institution
• Not receiving payments from another social grant
Private pension:

Pension benefits from an employer’s pension fund are paid when the employee reaches retirement age. The employee is considered a ‘member’ of the pension fund.

- Depending on the rules of that fund, the employee may receive a lump–sum on retirement and a specified pension payment for the remainder of their life.
- The value of the pension and/or lump sum is predetermined by a formula, set out in the fund rules, based on the employee’s earning history, length of service and age.
- Pension funds vary on their rules for the continued payment of a portion of the pension to remaining spouses or dependants of the member of the pension scheme.
- Every pension fund must be registered, in terms of the Pension Fund Act.

A client who requests assistance in terms of the benefits of a private pension fund may be referred to the Pension Funds Adjudicator - https://www.pfa.org.za/ - whose mandate is to investigate complaints and resolve disputes.
4.12 THE SMALL CLAIMS COURT

The Small Claims Court is a specialist court in that its jurisdiction is defined by the value of the amount claimed. Often, we will refer our clients to the Small Claims Court as it is more efficient and cost-effective if the claim is under R15 000 (or as determined by the Minister from time to time by notice in the Gazette).

4.12.1 JURISDICTION

Before referring a client to the Court, make sure that their claim can be heard by the Small Claims Court. Section 15 of the Small Claims Court Act 61 of 1984 lists the actions that fall within the jurisdiction of the Court:

- Actions for the delivery or transfer of any property, moveable or immovable;
- Actions for ejectment against the occupier of any premises or land within the court’s geographical jurisdiction;
- Actions arising from a liquid document or mortgage bond;
- Actions arising from a credit agreement as defined in section 1 of the National Credit Act 2005.

4.12.2 INSTITUTING A CLAIM

<table>
<thead>
<tr>
<th>WHO may institute a claim?</th>
<th>Against?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only natural persons may institute claims</td>
<td>Anyone, including companies, corporations, municipalities or other entities EXCEPT the state</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>VALUE OF CLAIM?</th>
<th>REPRESENTATION?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cannot exceed R15 000, as determined by the Minister from time to time by notice in the Gazette</td>
<td>Neither the plaintiff nor the defendant may be legally represented in the Small Claims Court</td>
</tr>
<tr>
<td>Claims based on the same cause of action and exceeding the jurisdiction of the court cannot be split with the aim of falling within the monetary jurisdiction.</td>
<td>Prior advice from an attorney may be obtained</td>
</tr>
<tr>
<td>A portion of a claim may however be abandoned in order to bring a claim within the court’s jurisdiction.</td>
<td>The Clerk of the Court provides guidance at no cost</td>
</tr>
</tbody>
</table>
4.12.3 PROCESS IN THE SMALL CLAIMS COURT

LETTER OF DEMAND
The Plaintiff is required to send the Defendant a letter of demand, preferably via registered mail. However, delivery by hand is also acceptable provided there is proof thereof.

The Defendant must be given 14 days from date of receipt to satisfy the claim.

PROCEDURE
If the defendant has not satisfied the demand, the client should do the following:

• Go to the Small Claims Court with the letter of demand and proof of service as well as any proof on which the claim is based.

• The Clerk of the Court will assist with drafting the summons, issue the summons and allocate a date and time for the hearing.

• The client should then serve the summons on the defendant personally or arrange for the Sheriff of the Court to do so at a minimal cost.

• No further pleadings will be required. However, the Defendant is permitted, prior to the hearing, to file a statement with the clerk detailing his version and serve same on the Plaintiff.

HEARING
On the day of the hearing the client should report to the Clerk of the Court at least half an hour before the start of the hearing.

• The client must take along all their documents, including proof of service of both the letter of demand and summons.

• The court proceedings are informal and simple, there is no cross-examination and the client should be as clear and concise as possible.

• The Law of Evidence does not apply and the Commissioner may ascertain any relevant facts in such a manner as he/she sees fit. The proceedings are:
  o The Commissioner of the Court will request that both parties state their case.
  o After the Commissioner has heard both parties he/she will give judgement.

INTERPRETERS
Any of the official languages may be used and if an interpreter is needed, prior arrangements must be made with the Clerk of the Court.

APPEAL AND REVIEW
There is no right of appeal against an order of the Small Claims Court. However, judgement may be taken on review on one of the following grounds:

• court’s lack of jurisdiction

• interest in the cause, vice, malice or corruption by the Commissioner

• gross irregularity with regard to the proceedings
5. PROFESSIONAL LAWYERING

Globally, legal firms report that ‘professional formation’ is lacking in contemporary education of lawyers. This chapter gives an introduction to that can be developed by law students in preparation for their career as a professional lawyer.

5.1 CLIENT CENTRED LEGAL PRACTICE

Client-centred legal practice is central not only to the ethos of the UCT Law Clinic, but also to a broad range of approaches to professional lawyering. Internationally, development of client-centred practice is a response to calls for transformation in legal practice—from the perspective of transformation in both the education of lawyers and the legal services provided to clients.

In client-centred lawyering, attention is given to:

• the manner in which direct and meaningful interaction is conducted between the lawyer and their client
• the non-legal aspects of a client’s case and the primacy of the client’s position as a decision maker
• the limits of the role of the lawyer’s professional expertise, along with the importance of understanding the client’s perspectives and priorities
• the various aspects of values and cultural difference (as discussed in Section 3.3.1)
• the personal circumstances of the client, including:
  o mental and physical health,
  o economic status,

Understanding the needs and concerns of the client requires empathy and communication in a manner that is:

• appropriate to the circumstances of the client
• clear and precise, whatever the levels of sophistication of the client
• sufficient for the client to have information about the law and the possible options available to them so they may make an informed choice about how to proceed.

The importance of conscious communication in client-centred legal practice (see also Sections 3.3.1 and 3.3.2)—in both oral and written communication—calls for lawyers to:

• communicate with clients with empathy and respect
• be mindful of the extent to which the **client’s knowledge of their personal situation** is a **domain of expertise** at least as valid as the formal legal knowledge of the lawyer. Whilst lawyers may be best placed to advise their clients of the possible legal routes available, clients remain best able to evaluate the potential emotional, social and practical costs of a proposed legal remedy.

**Effective communication** with the applicant for legal assistance (as described in Ch 3) is a critical skill in the conduct of negotiations and mediation (i.e. alternative dispute resolution)—often referred to as **preventive lawyering**. Further, it is essential for the task of persuasion that falls to the lawyer working in court. **Advocacy** on behalf of a client, for example, requires effective oral and written communication in the pursuit of restitution, or, in some cases, of major changes in the status quo.

The various aspects of client-centred legal practice are critical to various approaches to professional lawyering, including collaborative lawyering and therapeutic jurisprudence. **Collaborative lawyering**, where the case is conducted by a multidisciplinary team, draws on the co-operation and expertise of a range of actors that may include—along with the client—social workers, environmentalists, medical specialists (dependent upon the subject focus of the case).

Client-centred legal practice is also a core element of **therapeutic jurisprudence**, where the focus is on:
• the potential impact of the law on the emotional and psychological wellbeing of the client
• recognition of the law ‘as a social force that often produces therapeutic or anti-therapeutic consequences’
• client well-being and the support of ‘humaneness, social justice and fairness’, which are values central to **ubuntu** and the Constitution of South Africa.

The application of the law entails social responsibilities, given the potential effects on society. Mindfulness of these responsibilities is driven by ‘an ethic of care’, mobilised in the service of the community.

27 Ibid at 2.
28 Ibid at 4.
29 Ibid at 4.
30 Ibid
5.2 TRANSFORMATION IN PRACTICE: MINDFULNESS & INCLUSIVE THINKING

The effective practice of client-centred lawyering relies on critical self-reflection so as to:

- ‘connect to historical and contemporary realities of power and privilege’\(^{31}\)
- uphold equality and inclusion
- foster freedoms of self-expression and self-determination,
- uphold ‘respect for the intelligence and agency of individuals and communities’\(^{32}\)

**Power and privilege** are constant determiners of opportunities—both enabling and restricting. Traditionally, the practice of law most obviously serves the continued dominance of privilege, to the detriment of the marginalized and voiceless. To counter this tendency, lawyers embrace **mindfulness in legal practice**. This necessitates:

- developing a capacity for non-judgemental awareness of events as they occur, and of one’s personal responses to those events\(^{33}\)
- self-reflection and the possible development of alternative and more effective responses.

Mindfulness is therefore a tool that provides a framework for critical thinking and self-reflection regarding the relationship and boundaries between individuals and systems\(^{34}\).

- Mindfulness can assist, for example, in responding thoughtfully and effectively to the emotions of a man who finds himself deprived of access to his children by state authorities.
- Closer to home, mindfulness provides tools for reflection on ‘how law school and lawyering perpetuate systemic bias and subordination’\(^{35}\)

Mindfulness is the basis of what are increasingly seen as critical ‘soft skills’ of professional lawyering. Broadly, these amount to four sets of skills\(^{36}\):

- intrapersonal (self) awareness, values and abilities;
- Intrapersonal (self) management competencies;
- interpersonal (other) awareness;
- interpersonal (other) management competencies

These four interrelated dynamics constitute the basis of **emotional intelligence** (as discussed in Section 3.3.2.4 and represented in Figure 5.1).

As with emotional intelligence, mindfulness in legal practice nurtures

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\(^{32}\) Ibid at 54


\(^{34}\) Gonzalez, op cit note 27 at 63

\(^{35}\) Gonzalez, op cit note 27 at 66

• emphasis on relationships and connectivity\textsuperscript{37}.
• development of inter-personal and intra-personal transformation.
• collaboration towards a shared vision of social change\textsuperscript{38}
• awareness of our own values and beliefs
• development of self-management skills.
• greater understanding of the beliefs, and values of others,
• creation of a platform for more effective management of others.

\begin{center}
\begin{tabular}{|c|c|}
\hline
SELF & OTHERS \\
\hline
Self-Awareness & Social Awareness \\
Self-Management & Relationship Management \\
\hline
\end{tabular}
\end{center}

**Emotional intelligence: intrapersonal & interpersonal\textsuperscript{39}**

Adopting mindfulness as a key approach in legal practice facilitates **inclusive thinking** which, in turn, helps legal practitioners to:

• incorporate alternative perspectives, experiences, values, expectations, and modes of thought as an ongoing process in their legal practice\textsuperscript{40}
• expand their knowledge and awareness of options for action\textsuperscript{41}
• interrupt the occurrence of the **preferences and stereotypes** that direct our decisions and actions without us being aware of them (implicit bias). Other similar thinking processes are also affected, namely:
  o the search for information that confirms our pre-existing beliefs (confirmation bias);
  o conclusions that are directed by our assumptions rather than by consideration of available information (unwarranted inferences);
  o the identification of information that is not clearly provided (by the client) so as to make what appears to be a credible story (quest for coherence).

The **capacity for thinking inclusively** is influenced by a number of factors, including:

\textsuperscript{37} Gonzalez op cit note 27 at 63
\textsuperscript{38} Gonzalez op cit note 27 at 56-58
\textsuperscript{41} Ibid at 22
• the diversity of identity, experience, perspective and personality in personal and professional networks
• the extent to which different perspectives can be incorporated into our problem-solving style, and the capacity to (re)examine our core beliefs\textsuperscript{42}.

5.3 PROFESSIONAL IDENTITY IN LEGAL PRACTICE

Some characteristics are universal aspects of professionalism—such as honesty, civility, loyalty and a service orientation\textsuperscript{43}. A profession can be understood as a group of individuals who share commitment to a codified set of ethical standards, and specialized knowledge or skills which they apply in the service of others\textsuperscript{44}. As a result of these characteristics, membership of a profession suggests adoption of a professional identity.

The professional identity of a lawyer—as with any other identity—changes over time and exists alongside a range of other identities that that person holds simultaneously. It includes\textsuperscript{45}

• An individual’s self-concept as a member of the legal profession
• Their internalised beliefs, values, preferences, passions, expectations, motives and behaviours that are drawn from how they see themselves in their professional role
• How others see that person as a lawyer

The many approaches to lawyering provide opportunities for choices in how lawyers—whether students or qualified—develop their professional identities. A range of factors influence those choices, not least of which are existing interests and skills. The range of qualities that are sought by employers of newly qualified lawyers is broad (see figure below), which gives scope for a wide range of professional identities for student lawyers to aspire to.

Although, in line with the work of the UCT Legal Clinic, this focus in this Chapter has been largely confined to aspects of social justice legal practice, the basic elements of the discussion apply equally in those fields of law such as corporate, banking and finance, and commercial law. The development of people-centred lawyering skills is relevant to all legal practitioners and is an area of learning that is on-going throughout the career of a legal expert. How this development is to be achieved, and what it should involve, are questions that student lawyers start identifying for themselves during clinical legal practice.

\textsuperscript{42} Grimes op cit note 36 at 23-25
\textsuperscript{43} Jacobowitz op cit note 29 at 72
\textsuperscript{44} S. Mark, “Re-Imagining Lawyering: Whither the profession?” (2008). Keynote address. Australian Academy of Law Symposium. Sydney. 25 July. at p.3; Daicoff op cit note 32 at 206
\textsuperscript{45} Part 1: Knowing at p.33
Clinical legal practice is an opportunity to consider not only the area of law that you will pursue as a professional, but how you wish to present yourself as a professional lawyer—your brand, in effect. Your experiences on the clinical legal practice course should assist you in identifying your preferred professional identity, along with the practical skills, and the values and behaviours required to uphold that identity. **Reflective journal writing** (see Ch 6) is one strategy that provides opportunities to kickstart these deliberations.

The ultimate objective is **authenticity in legal practice**—which entails the conscious choice of a legal practitioner to integrate professional identity with personal identity in the course of their practice. It is described as ‘the ability to hold on to personal values and goals while integrating them with a newly-acquired identity as a lawyer’[47]. Personal motivations and values are relevant to the life of a lawyer and play a role in how ethical decisions are made. However, choices are individually made as to how these personal values are—or are not—integrated into professional legal identity.

### 5.4 EFFECTIVENESS IN PROFESSIONAL LAWYERING

The effective professional lawyer needs to develop a range of skills. Consciousness of personal values and motivations, emotional intelligence and cultural competence have

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46 Adapted from Gonzalez op cit note 27 at 63.
already been discussed. Time management and attorney wellbeing—which are especially important for students studying clinical legal practice—are discussed below.

5.4.1 TIME MANAGEMENT

Successful time management is a matter of developing habits that make required tasks easier to complete.

• Get into the habit of effective information management, by ensuring:
  o timely, accurate, accessible notes and interview write-ups
  o documents correctly and chronologically filed in the client folder
  o action sheet updated as and when you work on the case.

• Make a plan.
  o Identify the facts of the client’s case
  o Establish the legal issues
  o Do the necessary research
  oConsult with your supervisor and take clear notes at the meeting
  o Make a ‘to do’ list, organized by priority, and with limits on the amount of time for achieving each task
  o Divide large tasks up into smaller units, the progress of which you can monitor easily
  o Batch similar tasks together—for example, do all the printing and photocopying you need to do at the one time
  o Review progress regularly, and if necessary revise the timeline for completion of work
  o Make meetings effective – prepare an agenda and make sure that other participants know what is to be discussed
  o Declutter – your desk, the clients’ file, your notes, your mind (thinking space)

• Get advice: if you have a problem with your client’s case, seek advice early on, rather than avoid resolving the problem and then multiply your difficulties by running out of time to do the necessary work.
  o Be diligent: queries and problematic issues must be immediately brought to the attention of supervising attorneys. Note: the absence of diligence = negligence
  o Confer with your colleagues: get into the habit of discussing issues with your fellow students—taking care always to maintain client confidentiality. Team work is an essential aspect of professional legal practice.

5.4.2 HEALTH & WELLNESS

High levels of stress are associated with legal practice and, by extension, with studying law. A focus on health and wellness is, therefore, an important aspect of being able to work effectively as a lawyer. Incorporation of habits supporting the areas of wellbeing set out in the table below will go a long way to enabling effective performance, both as a law student and as a professional lawyer.
Information on student welfare organisations, non-emergency health services and student counselling services at the University of Cape Town is available on the UCT website, as follows:

- **Student services and support, Handbook 5**: contains all the information re student wellness and contact information as well as the numbers for the disability office.

- **All handbooks** in the series can be accessed at:
  [http://www.students.uct.ac.za/students/study/handbooks/current](http://www.students.uct.ac.za/students/study/handbooks/current)

### WELLBEING STRATEGIES FOR LAW STUDENTS

<table>
<thead>
<tr>
<th>WELLBEING</th>
<th>VALUE: HOW WILL THIS HELP ME?</th>
<th>STRATEGIES: HOW CAN I ACHIEVE THIS?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EMOTIONAL WELLNESS</strong></td>
<td>• Coping effectively with life • Creating satisfying relationships</td>
<td>• Develop awareness &amp; acceptance of your feelings • Practice adjusting to change, both good &amp; bad • Learn ways of coping with stress • Seek to enjoy life despite disappointments and frustrations.</td>
</tr>
<tr>
<td><strong>FINANCIAL WELLNESS</strong></td>
<td>• Satisfaction with current &amp; future anticipated financial circumstances contributes to overall wellness</td>
<td>• Manage finances from the start, rather than leave this to when they are already a problem • Focus on managing the day-to-day stress of living on a budget • Have a plan for what your financial situation may be after law school.</td>
</tr>
<tr>
<td><strong>SOCIAL WELLNESS</strong></td>
<td>• Provides a sense of connection and belonging</td>
<td>• Build a network of strong relationships – have a well-developed support system. • Join student groups &amp; organisations • Attend social events for students</td>
</tr>
<tr>
<td><strong>SPIRITUAL WELLNESS</strong></td>
<td>• Understanding of your sense of purpose &amp; meaning in life • helps ground decisions &amp; actions, &amp; leads to balance</td>
<td>• Might involve prayer, meditation, affirmations, or specific spiritual practices that are meaningful to you</td>
</tr>
<tr>
<td><strong>OCCUPATIONAL WELLNESS</strong></td>
<td>• Personal satisfaction &amp; enrichment from work</td>
<td>• Identify professional paths that will fulfil you after leaving university • Gain skills that will help you get into that field. • Seek feedback to help you change how you approach your work &amp; your colleagues.</td>
</tr>
<tr>
<td><strong>PHYSICAL WELLNESS:</strong></td>
<td>• Supports general well-being • Which in turn positively affects mental health, including memory, the ability to focus, making decisions, and emotional balance</td>
<td>• Develop habits for regular physical activity, a healthy diet, and sufficient sleep</td>
</tr>
<tr>
<td><strong>INTELLECTUAL WELLNESS:</strong></td>
<td>• A cornerstone of being a fulfilled person is intellectual growth</td>
<td>• Recognize and develop your creative abilities • Find avenues for expanding your knowledge and skills. • Figure out how you learn and choose the most appropriate tools and strategies to suit your learning style</td>
</tr>
</tbody>
</table>
| ENVIRONMENTAL WELLNESS | • Good health is promoted when you occupy pleasant, stimulating environments that support well-being | • Find what environment best helps you focus and achieve your goals.  
• Find ways to make the room where you stay comfortable and supportive of doing your work |
6: COURSE INFORMATION: DOL4500F & DOL4500S

6.1 COURSE OUTCOMES

The Clinical Legal Practice course focuses on facilitating the acquisition of knowledge, skills and professional attributes needed for professional practice. The following broad competency areas are targeted:

- professional responsibilities
- interpersonal skills
- communication proficiencies – verbal and written
- interviewing competencies
- self-evaluation skills
- case assessment competencies (planning, implementing, and post-consultation strategies)
- application of the law (research, planning, and implementing)

More specifically, completion of the course in Clinical Legal Practice is designed to develop essential skills, as follows:

Client consultation:
- Consult with a client to identify the legal issue(s), take instruction, give advice to the client, manage the client’s expectations, and communicate regularly with the client during completion of the case.
- Listening skills and empathy.
- Questioning techniques to elicit information.
- Self-reflection.

Legal document drafting:
- Drafting of pleadings
- Drafting of applications (Notice of Motion and an affidavit)
- Drafting of a basic will that complies with required formalities.
- Letter writing (including a letter of demand).

Application of the law:
- Identify a cause of action.
- Assess when to use an action and when to use an application procedure.
- Trial advocacy (conduct of examination in chief, cross examination and re-examination)

Ethical practice:
- Identify a conflict of interest
- Model ethical and professional behaviour
6.2 COURSE ASSESSMENTS

The intended learning outcomes are assessed informally on a continual basis but are formally assessed in five ways.

<table>
<thead>
<tr>
<th>Mode of assessment</th>
<th>Learning areas</th>
</tr>
</thead>
</table>
| 1. Consultation with supervising attorney (oral & written review) | • Client consultation  
• Ethical practice  
• Self-evaluation |
| 2. Client consultation write-up            | • Client consultation  
• Application of the law  
• Ethical practice |
| 3. Reflective journal                      | • Self-evaluation  
• Ethical practice |
| 4. File review                             | • Client consultation and communication  
• Application of the law and relevant supporting research  
• Legal document drafting  
• File management |
| 5. Moot court                              | • Application of the law  
• Legal document drafting  
• Trial advocacy |

6.2.1 CLIENT CONSULTATIONS

In the semester you can expect to consult with four clients for legal assistance. The client consultations component of the course requirements consists of:

- Attendance at three satellite law clinic sessions, each of which should involve at least one client consultation
- Office consultation with a client allocated by the Clinic Administrator

**A: Satellite Clinics:** There are three compulsory clinics for the course:

- March, April & May in the first semester (DOL4500F)
- July, August & September in the second semester (DOL4500S)

Each of the three attendances at satellite law clinic sessions should involve:

- Consultation with at least one applicant seeking legal advice
- Write up of case-notes following the clinic
- Post-clinic assessment, with supervising attorney, of the merits of the case
- Contact with client—either to advise them that the Clinic will not be able to assist them, or to arrange further contact for legal assistance.
**PROCEDURES FOR ATTENDANCE AT SATELLITE CLINIC**

1. **REGISTRATION:**
   - **Signing up for the clinics** takes place within the first week of the academic term. You must commit to signing up for one clinic venue (i.e. Retreat, Athlone or Ocean View) and cannot change to another clinic venue in the course of the semester. (See instructions for sign-up in Ch 2).
   - Ensure at the time of signing up that you have checked your timetable properly and have no conflicts in your commitments.
   - There may be some students who will have to be accommodated on the office appointment system. Such a student will have 4 (1 hour each) appointments in lieu of the 3 clinics for the semester (Intermediate students).

2. **ATTENDANCE:**
   - Attendance at all clinics is **compulsory** in order to obtain the necessary community service hours and to pass the course.
   - Should you be **unable to attend** as a result of an EMERGENCY, you should email the supervising attorney of your clinic before the clinic takes place, with a copy to the Clinic Administrator and to your Supervising Attorney. Evidence must be provided to support why attendance was not possible.
   - The physical **addresses of the clinics** can be found under <Resources> on Vula.
   - A **supervising attorney** will be in attendance at all clinics.
   - You will **meet your supervising attorney at the Law Clinic workroom**, 30mins prior to the start of the clinic. Check Vula for <Announcements> on the day.
   - Students **travel to the satellite clinics** in groups of approximately 10 – 15 students, accompanied by the supervising attorney.
   - It is preferable to **car-pool**. Students who lift 3+ students may put in a claim for their petrol. The supervising attorney will also lift students.
   - Make sure you are prepared for consultation with an applicant for legal assistance:
     - that you are appropriately dressed
     - that you are wearing your **name badge**
     - that you have the **necessary information and equipment** to conduct a consultation in which you achieve effective information seeking and note taking.

3. **CONSULTATION**
   - Guidance and procedures for consultation with applicants for legal assistance are set down in Ch. 3 of this handbook. You should be familiar with this information prior to attending your first satellite clinic session.
   - Do not give advice at the clinics unless you have the go ahead from the supervising attorney at the clinic.
   - Provide clients with your contact details, as well as those of your supervising attorney. This should be done on the Law Clinic compliment slip (see Appendix).
   - Do not give clients your cell phone number

4. **POST-CONSULTATION**
   - Consultation notes should be written up as soon as possible after the consultation
   - A meeting must take place with your supervising attorney within the first week after the consultation to
     - report on the consultation and the matters raised by the applicant,
     - receive instructions on how to respond to the application for legal assistance
B: Office Consultation:

The procedures for arranging an office appointment with an applicant for legal assistance are set out in Section 2.2.2. Guidance and procedures for conducting the consultation are set out in Section 3.3.

6.2.2 CLIENT CONSULTATION WRITE-UP

Objectives of the client consultation write-up:
1. Demonstrate clear reporting of consultation with an applicant for legal assistance, and of client’s instructions
2. Indicate accurate identification of
   - legal issues of the applicant’s case
   - other relevant issues that relate to the applicant’s circumstances
   - potential conflict of interest (if any)
3. Provide evidence of self-reflection in legal practice
4. Present argument for:
   - Plan for advising the client
   - Whether the client’s application for assistance should be approved

Brief:
Consultation notes should be written within 48 hours of consultation with your second client, and prior to meeting with your supervisor.

<table>
<thead>
<tr>
<th>Rubric:</th>
<th></th>
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<tbody>
<tr>
<td>CLIENT INFORMATION</td>
<td></td>
</tr>
<tr>
<td>First name &amp; surname:</td>
<td>(2)</td>
</tr>
<tr>
<td>Date of birth:</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>Address/place of work:</td>
<td></td>
</tr>
<tr>
<td>Contact number &amp; alternate contact number:</td>
<td></td>
</tr>
<tr>
<td>Does client meet means test: Yes/No. (If no, state why not in a short paragraph)</td>
<td></td>
</tr>
<tr>
<td>Case number: (leave blank)</td>
<td></td>
</tr>
<tr>
<td>Gender:</td>
<td></td>
</tr>
<tr>
<td>FACT SUMMARY</td>
<td>(8)</td>
</tr>
<tr>
<td>Summarise facts of applicant’s case</td>
<td></td>
</tr>
<tr>
<td>LEGAL ISSUES</td>
<td>(3)</td>
</tr>
<tr>
<td>Legal issues you identify and, possibly, those identified by the client</td>
<td></td>
</tr>
<tr>
<td>Try to conclude the section by identifying the type of matter (e.g.: divorce, eviction, variation of a divorce)</td>
<td></td>
</tr>
<tr>
<td>OTHER ISSUES (if evident)</td>
<td></td>
</tr>
<tr>
<td>For example: psycho-social, familial, conflict of interest</td>
<td></td>
</tr>
<tr>
<td>APPLICANT’S INSTRUCTIONS</td>
<td>(3)</td>
</tr>
<tr>
<td>Use bullet points or number the separate points.</td>
<td></td>
</tr>
<tr>
<td>Avoid providing long explanations.</td>
<td></td>
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</table>
CONCLUSION
Para 1: Self-reflection on your consultation skills during this consultation and the ease of gathering relevant information.
Para 2: The next step in advising this applicant.
Para 3: Should the application for legal assistance be approved and why?

Presentation, style and grammar (3)

Mark: The assignment counts for 30% of your mark.

Submit: two copies.

Length: 2 to 3 typed pages

6.2.3 REFLECTIVE JOURNAL

The importance of reflective practice in the development of the professional lawyering are made clear in Ch. 5. Reflection on negative and positive aspects of conduct of interviews with individual clients assists in developing communication, interpersonal, recording and fact-finding skills over time, thus avoiding making recurring mistakes.

Objectives of the reflective journal:
• To provide an insight into reflection as a vital tool for professional development in legal practice.
• To provide an opportunity to understand and critique the law in context
• To check your own progress and learning during the course

Rubric:
• Each entry should be a page long (if using an A5 book).
• It is suggested that the first entry is on your core professional values. This will assist you by setting the foundation for your reflections on your consultations and learnings during the course.
• An entry must be made in your reflective journal after each client consultation.
• The choice of topics for any additional entries is left to the student. You might, for example, want to reflect on your interaction with your supervising attorney and how it is to work so closely with a staff member.
**Brief:** Guidance taken from a publication on reflective practices\(^{48}\) include the following:

- Roy Stuckey in his book on ‘Best Practices for Legal Education’ refers to Reflection “as helping students how to learn from experience”
- “[Reflection] is the magic ingredient which converts legal experience into education” Georgina Ledvinka
- Gibbs in the above text describes how the process of reflective journal writing might work:
  - Description involves simple retelling of what happened and the reflective thinker then expresses the feelings these events produced in them, they then move to assessing the good and the bad in the situation before engaging in a deeper analysis in order to find meaning
  - From there they consider what they could have done differently in order to get an improved (different outcome)

**Due date:** Journals will be submitted for assessment after the second client consultation.

**Assessment:** The reflective journal will not be assessed for a mark but, as one of the requirements of the course, it will go towards the supervisor’s assessment.

At least one entry per journal will be assessed.

**6.2.4 FILE REVIEW**

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<th>FILE REVIEW</th>
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**Objective of the file review:** to assess students’ practical work in respect of client’s consultation; written / typed file notes; file management; drafting; research and time management. A good file must be self-explanatory

**Panel:** The file review is conducted by a panel of UCT Law Clinic Attorneys. Students will be advised, prior to the review, who is taking part on the panel.

**Rubric:** see below.

**Brief:** You will be assessed on all files in your possession to date. This may include a file from a previous student/year that is handed over to you at the beginning of term. Thus, everyone should have a minimum of 3 files.

Whoever marks your file will ‘randomly’ select a file from your box to be assessed. A second file may have to be examined to confirm a mark. The marks will be moderated.

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\(^{48}\) Australian Clinical Legal Education: Designing and operating a best practice clinical program in an Australian law school, by Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Peter Joy, Mary Anne Noone and Simon Rice, published 2017 by ANU Press, The Australian National University, Canberra, Australia.
6.2.5 MOCK COURT

Relevant information will be provided during the semester.

6.2.6 STUDENT GRIEVANCES PROCEDURES


Service Charter

Mission:
To provide students with an excellent clinical legal education (CLE) whilst promoting access to justice for those who would otherwise not have the means.

The Clinic is committed to:

- Promoting social justice and building communities through advocacy
- Providing an efficient, professional and quality service
- Non-discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion and language
- Serving all clients to the best of our ability
- Treating everyone with empathy, dignity and respect
- Maintaining the confidentiality of our clients
- Being fair, unbiased and accountable
- Fostering social consciousness, lifelong learning and an engaged citizenry.