

PROGRESSIO



Developing a skills course for distance law students

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Abstract

Law graduates entering the profession are not ready for the demands of a legal practice. There is a general skills deficit, especially in the areas of numeracy and literacy. This prompted the University of South Africa to implement a skills course for law students. The development of the module was challenging, considering the fact that Unisa is a distance learning facility. The open distance learning policy of Unisa is discussed, as well as the challenges of designing a skills module in this context. Statistics on the module, after 18 months of implementation, will also be highlighted.

INTRODUCTION

The manner in which law students are taught and trained at undergraduate and post-graduate level impacts on the quality of the legal services that are delivered to clients once students qualify as legal practitioners.¹ The poor quality of law graduates is of great concern to academics as well as law societies and the different bar councils. It was also noted by the Law Society of South Africa that the educational standards of law entrants to the profession were declining (Van der Merwe 2007; Swart 2007, 18–19).² The society indicated a need to ‘upgrade’ the LLB degree, specifically in the areas of numeracy and literacy skills.

Some say there is a skills crisis. Others say it is an arguable perception. Without promoting either a ‘doomsday’ or a ‘comfort zone’ scenario, ... skills transfer in the legal profession presents a very exciting challenge.³

The general skills deficits of law students may have their origins at primary or secondary school level.⁴ If this is a given it cannot be ignored, but needs to be addressed actively at tertiary and postgraduate levels⁵ if the legal profession is not only to retain its status as one of the learned professions, but is also to successfully withstand increasing competition from other professions (Van der Merwe 2007).

Skills development is more than just training; it is an integrated process to transform a student into a 'complete' professional who is equipped to practise in a South African context (Van der Merwe 2007). Undergraduate LLB programmes in law faculties are based on the English model which traditionally focused on substantive law and academic legal education, rather than on training students in practical aspects of the law (McQuoid-Mason and Wylie 2003, 199). Training in the latter was seen as the responsibility of postgraduate training programmes; articles for attorneys or pupillage for advocates (McQuoid-Mason and Wylie 2003, 199).

The above prompted the College of Law of the University of South Africa (Unisa) to develop a *Skills course for law students* as a compulsory first-year subject for all LLB students (see Slabbert 2006, 60). This article takes a look at Unisa's open distance learning (ODL) policy and how such a skills module was developed to suit distance learners. Statistics in relation to the course after its first year-and-a-half of implementation will be highlighted, as well as problems with Unisa's policy and the course itself. Future prospects of improving such a practical module will be discussed, taking cognizance of the fact that the success or failure of the course could only really be measured in future, when the graduates enter the profession.

OPEN DISTANCE LEARNING

The 'new' Unisa was founded in January 2004, when the 'old' Unisa merged with the distance teaching Technikon Southern Africa (TSA) and Vista University's Distance Education Campus (VUDEC). It is the only dedicated public open and distance education institution in southern Africa, and now serves around 250 000 students, which is in excess of 30 per cent of headcounts in the public higher education system in South Africa (*Commonwealth Report* 2007, 9).

ODL is a well-accepted mode of tertiary/higher education internationally, and is a particularly appropriate model to serve

- working people who wish to attain new skills and qualifications,
- those who, for reasons of geographical proximity, financial constraints and the desire for greater flexibility in their learning, may not be able to attend traditional face-to-face classes, and
- those older adults who did not have a 'first chance'.

Unisa now faces the additional challenge of ensuring that its programmes and services respond to the changing profile of a student body with more school leavers wishing to study at the university. Unisa is also designated as a comprehensive university and this

again poses a major challenge, combining, as the title implies, the traditional university curriculum (of the old Unisa) with the more vocationally oriented curriculum of the former TSA (*Commonwealth Report 2007*, 12).

Distance learning implies a physical separation of the lecturer from those being taught. The only form of teaching that takes place is that of students studying via print (generic tutorial letters and study guides), multi-media and online materials, while lecturers respond to students' work and questions by commenting on written assignments. Lecturers are also available to answer telephone and e-mail queries about course content. Bearing this in mind there is a need for Unisa lecturers to develop courses with a strong visual and technological element in order to meet the learning needs of the new profile of students (*Commonwealth Report 2007*, 12–13).

The 'openness' in ODL refers to the fact that Unisa accepts all prospective law students. In other words, students who register at Unisa to study law do not necessarily have matric exemption.⁶ If such a student (without matric exemption) wishes to enrol, he or she is classified as an 'access' student, and may only register for three subjects in the first semester, namely Introduction to law, Skills course for law students and Thinking skills. The student has to pass all three subjects before being allowed to enrol for any other LLB subject. Should a student pass all three, he or she becomes a mainstream LLB student – as if they had matric exemption.

The above being the background against which the new skills course was to be developed, posed certain challenges: the first was how to teach a 'skill' through the printed word. It was soon realised that tutorial letters, study guides and assignments would not suffice and extra work was needed.

THE NEW COURSE

Prescribed book

As 'skills for lawyers' is a fairly new concept, the best way to start developing such a module was by looking at the study material of other universities that had already implemented such a course. The University of Pretoria uses the textbook *Skills workbook for law students* (see also Kok and Nienaber 2005, 161–180).⁷ This book was prescribed for Unisa students as well.⁸ Working through the book it became clear that it was not suitable for distance learners' needs on an ongoing basis, as it was specifically written for students at a residential university, where group work in a class situation is possible. A study guide has therefore been written focusing on distance learners enrolling for the subject in 2009. Five skills are addressed, namely: study, reading, research, communication and numeracy skills. Writing skills are addressed by the language departments (see, in this regard, Van der Walt 1996, 71–88).

While designing tutorial letters to assist the student in working through the prescribed book, it also became clear that certain aspects of being a lawyer were not addressed in the specific book, for example, the non-verbal communication of both attorneys and

advocates. Many students do not know how to act professionally. Teaching a student non-verbal communication – for instance, how to dress or use facial expressions – is difficult in writing. If you write a sentence, such as: ‘Do not chew bubblegum during an interview’ on the one hand, it sounds insipid. If you could show the student, on the other hand, that the legal profession is a formal environment and that it is inappropriate to chew gum while wearing professional clothes and acting dynamically during an interview, they might better understand the message.

DVD

A DVD depicting different scenarios, such as an interview by an attorney, a consultation in the advocate’s chambers and a formal case in court, was therefore added to enhance the study material and form part of the whole learning process.

As mentioned earlier, apart from all its possibilities, the written word has certain limitations which need to be broadened or supplemented by visual or oral technology such as a DVD. The two should not be seen as separate but should be integrated, i.e. you can read while you listen to or watch the DVD.

Study materials also need to be interesting, as today’s students were born in a different technological age: they watch television from an early age, use SMSes on a daily basis, and many of them possess i-pods. This must be borne in mind when study material is developed, as it is a myth to think that students are self-motivated – they need to be motivated, and it is the task of the lecturer to make them interested in the subject matter and to keep them interested!⁹

While developing the section on research skills it became clear that there is a possibility that the majority of students (being distance learners) might not have the privilege of visiting a library to experience the research process directly. It was thus decided to film the process of finding sources in a library. In the video, a student facilitator walks through the different sections of the library, addressing the viewers directly, while explaining all the detail in the research process; for example where and how to find an Act, a court case, journal articles and reference books. In this respect, many eminent legal scholars have pointed out that research should be at the heart of the law curriculum (McQuoid-Mason and Wylie 2003, 201).

Questionnaires were sent to the students to get feedback on whether the DVD was beneficial. One student summarised her feelings concerning this as follows: ‘*Die DVD het my ongeloflik baie gehelp om my pad in die biblioteek te vind.*’

Writing the script for the facilitator’s journey through the library took quite some time, and therefore the Film School at the Tshwane University of Technology, under the leadership of Prof. Leon van Nierop, was contacted to help with the part on the DVD depicting non-verbal communication. He appointed a team consisting of the final-year students in film technology to assist. They wrote the script, and did the filming, sound effects, lighting and editing. This proved to be an excellent collaboration between two universities, to the benefit of both. Personal friends, attorneys, practising advocates and

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Judge Bertelsmann from the Transvaal Division of the High Court were employed as actors.

In the first scenario, the student sees an accused in an office at a police station. An attorney comes to consult him (client counselling is an important part of any legal practice). First, the attorney does it the wrong way. In other words, she is dressed sloppily, she is ill prepared, her cell phone keeps ringing, and she does not take notes. In the second scene they replay the scenario, but do things correctly this time. The attorney is dressed formally, she is well prepared, takes notes and her phone is switched off.

The second scenario was filmed at the Brooklyn Chambers of the Pretoria Bar of Advocates. Once again it is pointed out that there is a wrong and a right way of consulting with an advocate. The final scenario was shot in the High Court in Pretoria. The scene also shows the wrong way of handling a case in court, and then the professional way of doing it. Between the different scenarios a facilitator (the lecturer for the module) tells the students what they have to look for, and identifies the anticipated outcome which will be expected of them after watching the scenes. The students also have to answer questions in their workbooks on the lawyers' behaviour.

If one takes the students' comments into consideration, this part of the DVD proved to be a huge success:

'The DVD is highly effective; it is hard to forget something you saw!', *'The DVD is very informative – it made things simpler and easy to understand'*, *'The DVD gave me insight in what happens in a court room, I have never been there before'*, *'Die DVD is uiters sinvol – ek werk in die praktyk en het gesien hoe ons "laat slaplê"'*, *'The DVD was excellent – you can refer back to it at any time'*, *'The DVD made me realise that the real legal world in South Africa is different from American TV shows'*, *'The DVD made the learning process less stressful'*, *'The DVD made me realise that a lawyer should be an "all rounder"'* and, finally, one student was very inspired: *'Ten opsigte van die DVD – ek het nog nooit so lekker in my studies gekry nie, dit was wonderlik gewees. Ek persoonlik dink dat elke vak/module 'n DVD moet hê – baie dankie. Dit was 'n wenner! Om jou studiemateriaal prakties te sien word dit baie meer toeganklik.'*

The final DVD consists of three parts: Part I: Research skills, Part II: Non-verbal communication, and Part III: Listening skills – this is a conversation between two lecturers discussing a court case in detail. There are no visuals, but the students have to listen to the conversation while they have the court case in front of them, and then they have to answer questions in their workbook on what they have heard. By learning effective listening skills, students are at the same time preparing themselves for practice, where they have to listen to arguments by opponents, remarks by judges or the testimonies of witnesses (Van der Walt 1992, 100).

Workbook

A lecturer at a residential university can see whether the class is listening and understanding his or her point – something which is not possible with distance learners. The only way in which lecturers can ascertain whether students are working and compre-

hending the work is through assignments. This, unfortunately, becomes a major frustration if one takes into account the number of students enrolled at Unisa. It is difficult to mark more or less 4 000 (4 224 registered for the skills module in January 2008) assignments individually and comment on each one. Due to the large numbers involved, assignments are usually in a multiple choice format, which is not satisfying for the students, as they might feel it is not really testing their skills.

A further problem is that comments on assignments are sent to registered students at a very late stage in the semester, with the result that students might lose hope while waiting for feedback. A workbook was therefore designed. In it, the student has to answer shorter questions in the spaces provided, after reading and working through the study unit. These exercises are designed to take no more than 40–45 minutes – the average attention span of a student.

Feedback on exercises in the workbook is given via a tutorial letter sent to the student at a later stage. In other words, the student has to answer the questions and upon receiving the feedback has to mark the work to see where they went wrong. The feedback in the tutorial letter consists not only of the correct answers, but also of comments on the answers, explaining why a specific answer was expected.

Students' comments on the workbook were encouraging as there were no negative remarks, but they did, however, request more exercises based on numerical skills.

Concluding remarks

The development of the course material was a challenge, but a most rewarding experience. The course material is not perfect and there is certainly room for improvement. Certain suggestions will be addressed in the final part of this article, but all the effort seems to have been worthwhile, if the students' comments are taken in consideration. General comments about the module as a whole were:

'Sonder die module sou 'n mens steeds oor baie aspekte van die regs-wêreld gewonder het', 'When one started out with this course, it may have seemed that one is dealing with logical matters, but as I progressed, I realised how practical the content is and just how much value it added!', 'Die kursus is so prakties gerig dat 'n mens jou in jou onkunde in hierdie vroeë stadium kan verbeel dat jy al heelwat met die reg te doen gehad het', 'This module gave me an understanding of what is expected of me on how to become a good law student and ultimately a good lawyer', 'Baie dankie vir 'n baie interessante, stimulerende en "hands-on" module. Dit gee my die geleentheid om myself 100% in my voorgenome rol as prokureur in te leef'. 'I greatly enjoyed the Skills Course! It was practical, it made sense and the DVD was brilliant. It was my first introduction to the study of law and is a solid foundation'

STATISTICS

The *Skills course for law students* (SCL1014) is a semester module, which means that the students write exams in either May/June or October/November of each year. The following are interesting statistics related to the first 18 months of implementation of the module.

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In May/June 2007, 2 553 students were registered for the module, of whom 2 149 were admitted to the examination. Of the 1 903 students who wrote the examination, 1 262 passed while 640 failed the module. The average percentage for the skills course was 52 per cent.

In October/November 2007, 2 263 students registered for the module and 1 916 were admitted to the examination but only 1 652 eventually wrote. Of the students who wrote, 1 177 passed and 475 failed. The average percentage at the end of the year was 53 per cent.

In 2008, Unisa introduced a pilot project known as Managed Open Access Programme (MOAP) for all new registrations for the LLB degree. In terms of this programme, all prospective students had to write a standardised assessment test for entrance to the College of Law. The test, developed by the University of Cape Town, consists of 15 multiple choice questions the student has to answer after reading a comprehension text. A small section of written work was also added by Unisa. Based on the results of the test, students were categorised as 'under prepared' (below 30%), 'partially prepared' (between 31 and 59%), and 'prepared' (above 60%).

Before they could register in 2008, 1 207 students wrote the test. Of those who wrote 112 students were categorised as 'under prepared'. According to a decision by the MOAP management team, these students should not be allowed to register, but should follow a university preparation programme in order to prepare them for tertiary studies. Despite this decision, 20 students registered and all of them failed the first semester of 2008.

Five hundred and fifty-five students were categorised as 'partially prepared'. They were allowed to register for the LLB degree, but as 'access' students. Of the 555, only 17 per cent (i.e. 94 students) passed the skills module.

Lastly, 540 students were seen as 'prepared' for studies, yet only 49 per cent of them passed the skills module.

Even more alarming is the fact that 4 224 students registered in 2008 for the first semester. If those writing the MOAP admission test are subtracted from the total, it seems that 2 993 students were already in the system, but not first registrations. It is not clear whether they were repeaters, or whether they transferred from one course to another or from one university to another.

Only 3 411 students eventually wrote the examination in May 2008. In other words, 813 'disappeared' in the period between registration and the exam. This is troublesome, as the cost per module is R800. Where does the money come from, and why waste it by not writing the examination?

May 2008 examination statistics

Of the 3 411 registered students who wrote the examination, 1 921 failed. Of the candidates who failed, 871 obtained less than 30 per cent (0–29%). This sample group was used as a basis for the following remarks:

More than half (57%) of the students who failed dismally come from Pretoria and surroundings (the East Rand, West Rand, Hammanskraal, Thembisa, Brits and Bronkhorstpruit). This is interesting, as these students are on the doorstep of the main campus, and support services are therefore easily accessible. In Durban and surroundings 145 students obtained less than 30 per cent and in Limpopo 35. The rest of the students who obtained a mark below 30 per cent were scattered throughout the country, and some were from other African states and Europe.

Taking into consideration the above comments about the development of the module and the supplementary aids, the DVD and workbook, it is troublesome that so many students still failed. It is thus worthwhile to look at each specific skill, as tested in the examination paper, to find out where the problem areas are, in order to determine how students can be helped in future or to change the method of instruction.

Question 1 of the examination paper focused on study skills. In order to answer this part of the paper, students had to study the prescribed book *Effective study*,¹⁰ supplied by Unisa. Questions were asked on external motivation, planning a study time table, the meaning of prioritising, and rules for group meetings. They were also given a newspaper article on corporal punishment and had to draw a mind map in order to cover all the relevant information in the article. The total for this section was 15 marks. The target group (those below 30%) obtained an average of 5.9 out of 15, which is 39 per cent.

Question 2 tested numeracy skills. This topic was discussed in detail in the students' prescribed book, and they had to do many exercises in their workbooks. Feedback was provided through tutorial letters sent to them during the semester. Numeracy skills were also tested thoroughly in their assignment, and the lecturers also gave a satellite broadcast where calculations, VAT, an attorney's account and general concepts were addressed. The following questions were asked in the examination:

- Khwara and Kiba decide to form a partnership, and combine their assets and liabilities. Khwara's assets amount to R180 000, and his liabilities R75 000. Kiba's assets amount to R320 000, and his liabilities to R110 000. Determine the value of the partnership assets.
- The distance between Lephepane and Xihoko towns is 168 km. When the highway, which is under construction, is finished, the distance will be 15% shorter. What will the distance in kms then be?
- Letsitele Packers cc employs 240 people. $\frac{3}{4}$ of these employees are women. How many men has Letsitele Packers cc employed?
- Modiidi borrows R250 000 to buy a new Honda. The interest rate at the bank on loans for motor vehicles is 17,25% per annum. He is going to repay the amount over a period of 54 months. How much will Modiidi eventually pay for the car?
- The advocate's fees amount to R5 590 inclusive of VAT. How much are the fees excluding VAT?
- A Toyota Stallion and a Jeep Cherokee collide at an intersection. Difolaka, the owner-driver of the Stallion was 15% negligent. Faro, the owner-driver of the

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Cherokee was 85% negligent. The damage to the Stallion is estimated at R20 000. It is uneconomical to repair the Cherokee. The pre-accident value of the Cherokee was R180 000. The salvage value of the wreck is R70 000. Who must pay whom; and what amount of damages must he pay?

- You arranged with your client to account to him on a monthly basis. You agreed on remuneration as follows:
 - R20 for every letter written.
 - R10 for every letter received.
 - R220 per consultation of 40 minutes or any part thereof.
 - Drafting of summons: R350.
 - R150 per telephone consultation of 40 minutes or any part thereof.
 - Drafting of affidavit: R20 per page or any part thereof.
 - VAT = 14%.

During the past month, you completed the following work on behalf of your client:

- You wrote and posted 12 letters, you consulted with the client for 123 minutes. You drafted a summons. The advocate's fees amounted to R920 (excl VAT). You had 3 telephone consultations: one lasted for 10 minutes, one for 80 minutes and the other 42 minutes.
- Account to your client. (You may assume that postage stamps cost R1,00 each, VAT included.)

Despite the low level of numeracy required, the average obtained by the sample group was 3.5 out of 20 or 17,5 per cent for this category. (Concerning the importance of numeracy in LLB studies, see Kok 2007, 47–56.)

Question 3 was based on communication skills, and covered mainly oral advocacy. Questions were asked on how to interview a client, deliver an opening address in court, pose questions in examination-in-chief and handle a cross-examination, based on the information in the newspaper article (Question 1). Lastly, students had to indicate what topics were to be addressed in their heads of arguments (they were given a court case and an Act based on the information in the newspaper article (corporal punishment)). They could prepare well for this part of the paper, as oral advocacy is dealt with in detail in their prescribed book. The total for this part was 20 marks. The sample group obtained an average of 4.2 out of 20, which is 21 per cent.

Question 4 was very short and based on research skills. Students had to give examples of primary and secondary sources, identify the difference between a civil and a criminal case, recognise a table of content and an index, and briefly explain how to find a court case on a given topic. Although this part of the work is explained in their prescribed book as well as on the DVD, the students performed badly in this question. The total for this section was only 5 marks. The sample group obtained an average of 1.4 out of 5, which is 28 per cent.

Lastly, *Question 5* tested reading skills. Students received a printed copy of an Act and a court case, and then had to answer very short, basic questions (not content related) such as: Who was the judge? In which court was judgement given? What is the short title of the Act? Students' performance in this section was the worst despite the DVD which addressed the skills needed to answer this question, as well Tutorial letter 501, in which three different court cases were given as examples, with each being discussed in detail. It is clear that the students did not or could not read! The total for this section was 40. The sample group obtained 5.8 out of 40, which is 14,5 per cent on average.

The above statistics are alarming, especially when one takes into account the current economic climate. Too many students are allowed to register for modules for which they are not prepared.

PROBLEMS

Starting a new module is never without teething problems, but content-related errors can be solved by means of follow-up tutorial letters. Other major concerns require more incisive attention in the whole process of developing new modules.

Despatch

The workload of staff members in despatch is far too demanding, with approximately 700 million pages being produced in 2005 (*Commonwealth Report 2007, 30*). This situation worsened in 2007, as more students registered.

The facilities in the printing area are crowded – something which impacts negatively on the production, storage and distribution of printed materials, leading to bottlenecks in the current system (*Commonwealth Report 2007, 30*). The teaching and learning process at Unisa is completely dependent on the smooth operation of this preceding process. Even the most excellent teaching materials are of little use to a student unless they arrive safely and on time. Despatch did not anticipate the numbers of students who enrolled for this module, and therefore did not print nearly enough tutorial letters in 2007. In 2008, after better planning, the situation improved although many students still complained about receiving their study material late.

Sound and video

The Directorate: Sound, Video and Photography was not ready to handle every request. They are in the process of converting from analogue to digital, which will shorten the turnaround time on materials (*Commonwealth Report 2007, 30*).

Managed access

Some students are simply not ready for tertiary studies. The managed access programme, discussed above, was not to be implemented again in 2009. In 2010 a responsible access programme is envisaged. This should be imperative in order to prevent students from

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enrolling for modules they are not ready for. Bridging courses might also be considered. The content of the skills module is extremely accessible, yet if one takes into account the statistics, some students should not have been allowed to enrol.

'Distance' learning

The majority of first-year students need help digesting new information. The current tutor system is not fully effective, and Unisa needs to pay more attention to training and finding competent tutors to help lecturers with the task of teaching.

Pressure on lecturers

Lecturers are under constant pressure to do research, to be involved in the community and do administrative work, and it is therefore difficult to design either a new module or to be creative within their study field. Tuition is not recognised on the same scale as research outputs, which is a demoralising factor and prevents lecturers from being more student focused.

CONCLUSION

This module could be used as a pilot project to apply different assessment criteria. The ideal would be that the students should not write a formal examination on the subject, but should rather be assessed on a portfolio of evidence in which they prove their ability to write, do research, read and argue. This could be a future prospect to maximise the purpose of the module.

The development of a skills module for law students was a necessity. It was also a challenge in the distance learning context. Reflecting on the development of the module, it is clear that 'distance' is something in one's mind. Whether the lecturer is front of you or speaking to you from the written word should actually not make any difference. In the end it is the student him- or herself who has to use the tools on offer, to achieve their goal or dream.

NOTES

1. McQuoid-Mason, D. J. and J. S. Wylie. 2003. Can't get no satisfaction: The law and its customers: Are universities and law schools producing lawyers qualified to satisfy the needs of the public? *Journal for Juridical Science* 28 (2): 199.
2. For the training of advocates, see *Advocate* (The SA Bar Journal) December 2006: 35–47.
3. Swart, N. 2007. Skills development: Stand up and be counted. *De Rebus* September: 18–19.
4. Naudé, P. 2008. Die denkers is onder druk. *Perspektief* (bylaag to Rapport) 8 July: 1. Ons sit met 'n skoolstelsel wat onder elke minister van onderwys 'n kurrikulêre koersverandering ondergaan . . . Die akademiese gevolg is dat SA leerlinge klokslag onderpresteer in vaardighede soos Engels en wiskunde . . .
5. Ibid. Naudé warns: *'As jy onvoorbereide eerstejaars inneem, remedieer jy in plaas van innoveer.'*
6. All other universities in South Africa have strict requirements for enrolling for an LLB degree. See, for example: <http://www.maties.com/portal/page/portal/Maties/toelatingsvereistes>; <http://www.uovs.ac.za/apps/yearbooks/index> <http://www.uj.ac.za/study/AcademicCourses/Law/LLB> (accessed on 16 July 2008).
7. Kok, A., A. Nienaber and F. Viljoen. 2002. *Skills workbook for law students*. Landsdowne: Juta.
8. Tutorial letter 501 was written as a 'wrap-around' the prescribed book. In other words, the students were guided through the book by means of the tutorial letter.
9. Naudé, P. *Tegnologies onvoorbereide dosente is net so 'n groot probleem soos swak eerstejaars'*.

10. Van Schoor, A., E. Mill and D. Potgieter. *Effective study*. Pretoria: Unisa Press.

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