INTRODUCTION TO LAW SCHOOL

2026

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INTRODUCTION TO LAW SCHOOL

1 THE WORKSHOP

1.1 The workshop is aimed at the following students

- First year postgraduate 3-year LLB students or LLB (i.e. students who starting their postgraduate LLB degrees in 2026 and have never taken any law subjects before)
- First year LLM, MPhil, Postgraduate Diploma students from other faculties (i.e. LLM students who do not have LLB degrees)
- Students on the 'Semester Study Abroad' programme (i.e. students from a foreign country who will be at UCT for one semester)

1.2 Purpose of the workshop

The students identified above will enter programmes in 2026 where they will study alongside students who at least have a foundational knowledge of South African law. We have found that students who do not attend introductory courses or workshops, like this one, struggle to adapt to law school, since their lecturers often assume a certain basic level of understanding on their part. The purpose of this workshop is to introduce some foundational concepts of South African law to novice law students, in order to facilitate their transition into the discipline of law. It is anticipated that participants will acquire some fundamental knowledge, as well as a basic grasp of some essential skills for success in law school.

1.3 Structure of the workshop

A five hour workshop

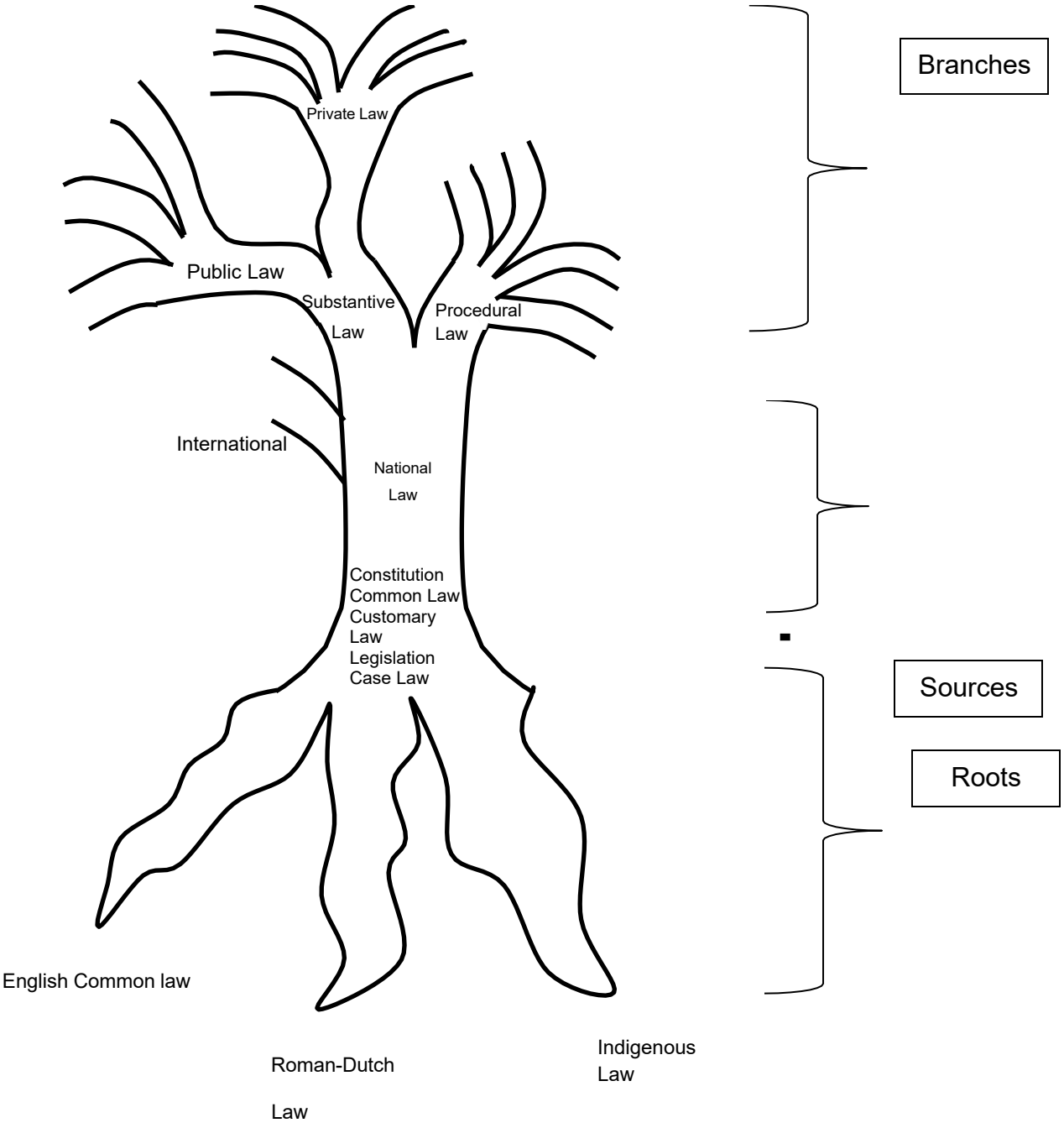
1.4 Attendance

Attendance of the workshop is strongly recommended. Lecturers will assume that students are familiar with basic concepts covered in the introductory workshop.

2 ILLUSTRATION OF THE CLASSIFICATIONS OF SOUTH AFRICAN LAW

Barratt et al[1] compares the law to a tree. Below is a simplified version of this tree:

[1] Amanda Barratt et al (eds) *Introduction to South African Law* 4th ed (2025).



3 WHAT IS LAW?

Although this has been the topic of much debate, for purposes of this outline, law is defined as a set of rules to govern or control the behaviour of people.[2]

4 ROOTS OF SOUTH AFRICAN LAW - A hybrid system

Before 1652, the inhabitants of South Africa were governed by indigenous customary law. The term customary or indigenous law refers to "the system of cultural norms, beliefs, and rules that govern the way people have lived and continue to live, and that

[2] Ibid at 4.

are considered legally binding on the communities where they live."[3] Then, in 1652, the Dutch settled at the Cape of Good Hope. They brought with them their law. It was called Roman-Dutch law, since it is essentially a system based on Roman law that was integrated into Dutch customary law. Due to this Roman-law influence, many legal terms used in South Africa are still in Latin today.

In 1806, the English colonised the Cape of Good Hope. They, in turn, brought with them their law, which was called the English Common law.[4] English law did not replace Roman-Dutch law, but it had a significant impact on various branches of South African law, such as the law of procedure and commercial law.[5]

The common law in South Africa (definition of common law: the law practiced in South Africa that is not written down as legislation) is therefore a hybrid/mixed legal system.[6] It is based on Roman-Dutch law, but also includes rules and principles from English law.[7] The common law (Roman-Dutch and English law) is recognised as law alongside the customary law of South Africa.[8]

5 SOURCES OF LAW

5.1 What is a source of law?

A source of law contains the rules and principles that form the law of a specific country. There are primary and secondary sources of law.[9] Primary sources of law contain binding rules and principles. This means that if they are applicable a court must give effect to them, unless they are overridden by a rule or principle found in a source with greater authority.[10] This hierarchy of authority is as follows:[11]

- The Constitution
- Legislation
- The Common law (including precedent) & Customary law
- Custom & Public international law

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[3] Ibid at 206.
[4] Ibid at 38-39. The term "common law" can have different meanings, including (1) the law used by the whole country, (2) law that does not come from legislation (such as our Roman-Dutch law), and (3) English common law.
[5] Ibid.
[6] Ibid at 22.
[7] Ibid.
[8] Section 31 and Section 211 of the Final Constitution.
[9] Barratt et al op cit note 1 at 67-68.
[10] François Du Bios et al *Wille's principles of South African law* 9th ed (2007) 36.
[11] Ibid.

Secondary sources of law, on the other hand, are not binding authority. They do however have persuasive value. They can therefore be used to inform a magistrate or judge's decision.[12] The secondary sources of law in South Africa are:

- Foreign law and the writings of legal scholars.[13]

5.2 The Constitution

5.2.1 What is a constitution?

A constitution is a piece of legislation that is the highest authority in the country. It sets out the rules on how a country should be governed and includes the civil rights of its citizens.[14] All citizens, including the president, the legislature and the courts, are subject to this supreme Constitution and cannot act contrary thereto. All laws and conduct are subordinate to the Constitution and will be unconstitutional and invalid if they are in conflict with the Constitution.

5.2.2 The Interim and the Final Constitution

In 1994, toward the end of the Apartheid era, an interim constitution was enacted in South Africa.[15] This document was intended to enshrine human rights, including the right to equality and the right to vote, and to provide for the transition to democracy. It could not serve as the final constitution, because it was the democratically elected government's responsibility to draft and approve the final constitution.

The final Constitution replaced the interim constitution in 1996. Since this is the supreme law of South Africa (everything else is subject to it), it is more difficult to amend (change) the Constitution than any other piece of legislation.[16] Whenever someone uses the term "the Constitution" they are referring to this final constitution.

[12] Barratt et al op cit note 1 at Chapter 12.
[13] Ibid. Du Bois et al op cit note 10 at 36.
[14] Barratt et al op cit note 1 at 70-73.
[15] This is referred to as the Constitution of the Republic of South Africa, Act 200 of 1993.
[16] Barratt et al op cit note 1 at 73-74.

5.2.3 Important sections in the Constitution

5.2.3.1 Supremacy Clause

The supremacy clause confirms that the Constitution is the highest law in the country; stating that "any law or conduct inconsistent with the Constitution is invalid".[17]

5.2.3.2 The Bill of Rights

The Bill of Rights is found in Chapter 2 of the Constitution and sets out the civil rights of all people (such as the right to equality).

Section 36 of the Constitution provides for the limitation of these rights in circumstances that are "reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors".

5.3 Legislation

5.3.1 What is legislation?

Legislation is rules/law that is written down in a specific format. Firstly, a draft of a proposed law is prepared; this is called a "bill". This bill then needs to be voted in by the legislative authority (passed) and signed by the president for it to become legislation. A piece of legislation is also called an act or a statute.

5.3.2 What does it mean when legislation is enacted?

An act usually states when it will come into force. On that day, we say the act is enacted. This means that from that day the rules written in that act become law.

Most acts only have prospective effect, which means that it does not apply to situations that occurred before its enactment. An act may however have retrospective effect.

5.3.3 Amendment of legislation

An act may be amended (changed) by the legislative authority.[18] This is done by means of another act.

On the one hand, such an amending act can be specifically written to amend the former act; this is called an amendment act. For example, the Marriages Act of 25 of 1961 was amended by the Marriage Amendment Act 11 of 1964. (Note that the Amendment Act has the same name as the Act).

[17] Section 2 of the Constitution of the Republic of South Africa, 1996.
[18] See the definition under "Branches of government" below at 7.3.4.

On the other hand, the amendment of an earlier act may be incidental to the enactment of a subsequent act it. This is the case where some sections of the subsequent act are in conflict with the former act. These sections then change the former act. For example, the Marriages Act of 25 of 1961 was amended by the Child Care Act 74 of 1983.

5.3.4 Regulations

Sometimes legislation is drafted in broad terms and extra guidance is needed as to the implementation thereof. Such an act would then give a member of the executive authority,[19] such as a minister, the power to draft these guidelines. These guidelines are called regulations. Regulations are known as subordinate legislation, since they are subordinate to the legislation to which they pertain.[20]

5.4 Case law

5.4.1 What is case law?

Court cases are heard in courts by the judicial authority.[21] One party institutes legal proceedings. The presiding officer (called the judge or the magistrate depending on which court you are in) will make a decision on law and then resolve the factual dispute.[22] This decision is known as a judgment.

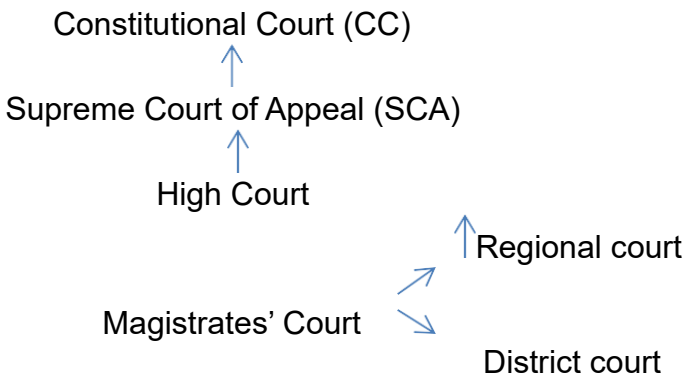
Please note that a legal judgment is written without an ‘e’ after the ‘g’, unlike for example if one were to trust a particular person’s judgement (here an ‘e’ indeed sits after the ‘g’) regarding where to get a decent bagel in Cape Town.

[19] See definition under “Branches of government” below at 7.3.4.
[20] Christo Botha *Statutory interpretation: An introduction for students* 5 ed (2012) 25.
[21] See definition under “Branches of government” below at 7.3.4.
[22] Barratt et al op cit note 1 at Chapter 7.

5.4.2 Hierarchy of courts

5.4.2.1 Hierarchy

In South Africa we have a hierarchy of courts. The hierarchy of the main courts are:



This hierarchy is important in the following instances:

- Jurisdiction
- Appeals
- Precedent

5.4.2.2 Jurisdiction

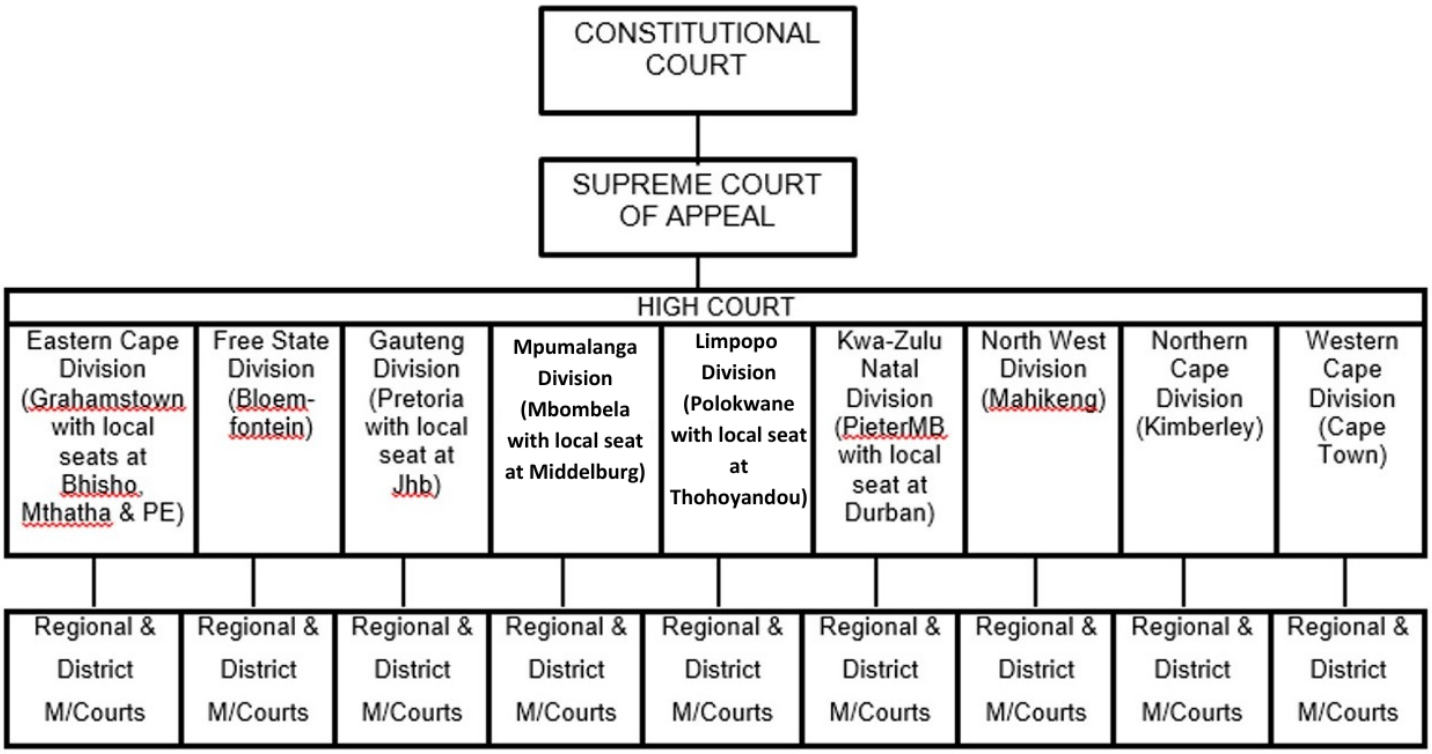
Certain courts can hear certain matters depending on where the cause of action[22] occurred, where the defendant lives, "the type of matter, or the value, severity or character of the order being sought". If a court is allowed to hear the matter, it is said that the court has jurisdiction over the matter.

From the above it is clear that there are two types of jurisdiction:

- Jurisdiction based on area.
- Jurisdiction based on type of matter.

[22] Cause of action refers to the reason for approaching a court.

Jurisdiction based on area:



A court is situated in a specific area and can only hear a matter that has occurred and/or for which the defendant lives in its designated area.

- Constitutional Court: There is only one Constitutional Court in South Africa and this court has jurisdiction over the whole country.
- Supreme Court of Appeal: There is only one Supreme Court of Appeal in South Africa and this court has jurisdiction over the whole country.
- High Court: The High Court is divided into divisions. Each High Court division has jurisdiction over its own provincial area.
- Magistrates' Courts: There are over 700 district Magistrates' Courts in South Africa and 9 Regional divisions; each having jurisdiction over a different province. District courts are grouped together in regional divisions and served by a Regional court. Each District has its own area of jurisdiction.

Jurisdiction based on the type of matter:

If a court has jurisdiction based on the area (as explained above), it also needs to be able to hear the type of matter (in other words it has to have both jurisdiction based on the area and on the type of matter).

- Constitutional Court: Matters relating to the Constitution and cases on appeal from lower courts
- Supreme Court of Appeals: Cases on appeal from the High Court ○ High Court: "Matters that fall outside the jurisdiction of Magistrates' Court" or matters that "are considered sufficiently complex or important to warrant the involvement of a superior court." [23] The High Court also hears cases on appeal from Magistrates' courts. ○ Magistrates' Courts:[24] ○ Regional courts:
    - Criminal matters: Regional courts can hear any type of criminal matter, except treason. They can order a fine of up to R600 000.00 or imprisonment of up to 15 years. A regional court can sentence a person to life imprisonment for certain offences.
    - Civil matters: Regional courts can hear civil matters with a claim value of between R 200 000.00 and R400 000.00. They can hear divorce and related family-law matters.
  - District courts:
    - Criminal matters: District courts can hear any type of criminal matter; except one for rape, murder or treason. They can order a fine of up to R120 000.00 or imprisonment of up to 3 years.
    - Civil matters: District courts can hear civil matters with a claim value of up to R 200 000.00. They cannot hear divorce matters.[25]

5.4.2.3 Appeal (and review)

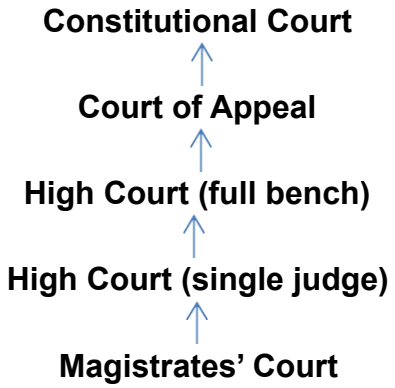
When a party approaches the court for the first time that court is referred to as the court of first instance (the court *a quo*) in that matter. Should that court make a

decision in the matter and one of the parties is unsatisfied with the decision, the party can take the matter on appeal. This means that another judge considers whether the court *a quo* came to the correct decision. The same hierarchy above is used to determine which court an unsatisfied party should approach to appeal against a

[23] Du Bois et al op cit note 10 at 125.
[24] Magistrates' Court Act 32 of 1944.
[25] Du Bois et al op cit note 10 at 128 – 129.

decision. The only difference is that, should a party appeal a high court decision, the appeal is first heard by two High Court judges who were not involved in the first hearing of the matter.

This is therefore the path to appeal:

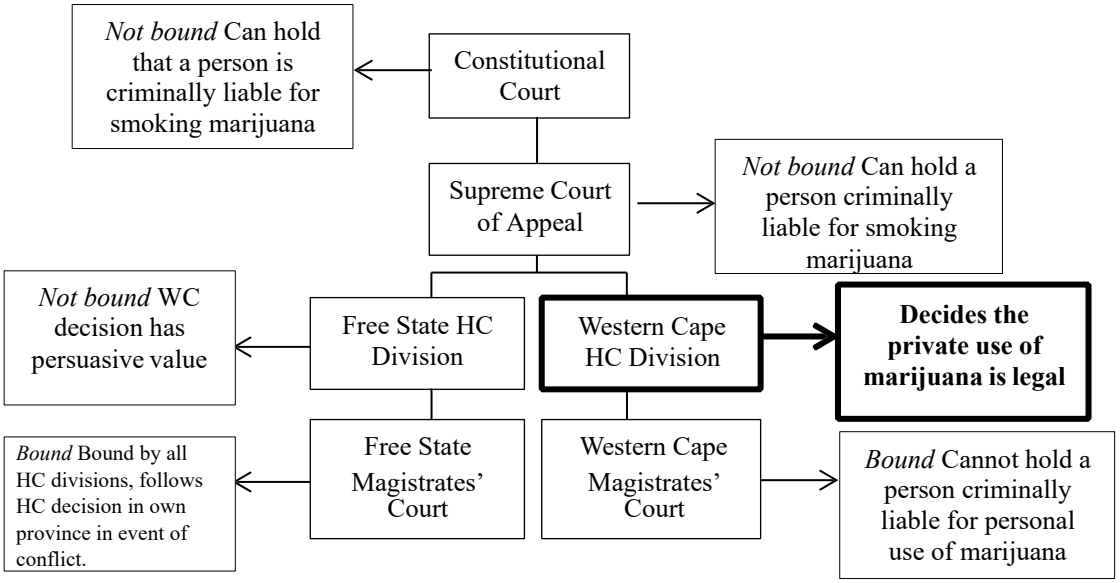


Other than taking the matter on appeal, a party may also take a matter on review. A matter can be taken on review if an irregularity is alleged. An example of an irregularity is when the judge might have been biased because one of the parties is his relative. The path of review is similar to that of appeal.

5.4.2.4 Precedent

Case law creates precedent (i.e. "an example or guideline that has to be followed").[26] This is because judgments made by courts higher up in the hierarchy must be followed by courts lower in the hierarchy (it is said to be binding on lower courts).
For example:

[26] Barratt et al op cit note 1 at 157. For more detailed rules on precedent, see Du Bois et al op cit note 10 at 76-92.



Not everything in a judge's decision is binding. Only the *ratio decidendi* needs to be followed by lower courts. This Latin term refers to the reasons provided by the court.[27] Should a judge make a comment about the law that is not necessary to resolve the issue before him this comment would not be binding (i.e. lower courts do not have to follow it). Such comments are known as *obiter dictum* (directly translated as "it was said incidentally").

5.4.3 Civil and Criminal Court cases

There are two types of cases: civil and criminal. Civil court cases can be divided into what are called 'applications' and 'actions'. The parties to an application are called: the Applicant (party who institutes the proceedings/approaches the court) and the Respondent (party against whom the proceedings are instituted). The parties to an action are called: the Plaintiff (party who institutes the proceedings) and the Defendant (party against whom the proceedings are instituted)

A party can institute proceedings in court against another party for one of the following reasons:

"1. to claim, or ask for, money from her, or

[27] Barratt et al op cit note 1 at 170.

2. to enforce his rights against her (in other words to force her to do something or not to do something)".[28]

A criminal case is where an alleged criminal (the accused) is prosecuted (taken to court) by the state.[29] In such cases, the judge decides whether the accused is guilty of the crime and, if so, what his punishment should be.

5.4.4 Onus

When litigating, parties have to provide evidence to prove their allegations. This is referred to as the onus or burden of proof.

This weight of this burden is heavier in criminal than in civil cases. In a criminal case, the state has to prove that the accused is guilty *beyond reasonable doubt*, whereas in a civil matter the person who makes the claim only has to prove their claim on a *balance of probabilities*.[30]

5.4.5 How a judgment is written

Judgements often follow the following format:

Facts - A judgment often begins with a summary of the facts of the case

Issues - Thereafter the legal issue is identified. In other words, what is the question of law that is in dispute?

Legal Principles – Which rules of law can be used to resolve this dispute? Here the judge sets out any relevant law from all the sources of law, i.e. legislation, common law, case law etc.

Application – The judge then applies the relevant legal rules to the facts/dispute before him.

Conclusion – The judge resolves the factual dispute based on the legal rules selected as being applicable.

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[28] Ibid at 162.

[29] There are exceptions where a civilian can prosecute the accused; this will be dealt with in more detail in Criminal law.

[30] Circumstances exist where the onus is not on the claimant to prove his case, but on the defendant to refute that claim on a balance of probabilities. This will be dealt with in more detail in the Law of Evidence.

Keep in mind that not all judgments are set out in this specific structure and order, but they (should) all contain these main elements.

When answering any problem questions in law school it is important to approach them in the same way that a judge approaches a case. Use this acronym (FILAC) to help structure your answers.

Sometimes not all the judges agree on the outcome of a legal dispute. In such situations, more than one judgment is written. The judgment that is binding (because most of the judges agreed with it) is called the majority judgment. The other judgment (the outcome of which will not be binding) is called the minority judgment.

5.5 Common law

Common law generally refers to law that is not written down as legislation.[31] As with common knowledge, common law is law that everybody knows exists but is not necessarily written down somewhere specific. South African common law is known as a hybrid system, since it is informed by Roman-Dutch law and influenced by English common law.

5.6 Customary law

Customary law refers to social norms and practices that a certain community considers law.[32] There are numerous different customary law systems in South Africa.[33] The laws are not written down; they differ from place to place.[34]

6 BRANCHES OF LAW

6.1 Public law

Public law governs the state and the vertical relationship between the state and individuals.[35]

[31] Barratt et al op cit note 1 at 226-227.
[32] TW Bennett *Customary Law in South Africa* (2004) 1.
[33] Ibid at 69.
[34] Ibid at 2, 44.
[35] Barratt et al op cit note 1 at 251-252.

6.2 Private law

Private law governs the horizontal "relationships among individuals, associations and corporations."[36]

7 IMPORTANT TERMS

7.1 General

7.1.1 Legal practitioner, lawyer, attorney, and advocate

You might be confused regarding the different names of individuals who work in the legal sphere. It might help to distinguish between the following terms:

A legal practitioner is the term given to both advocates and attorneys who have been admitted and enrolled in terms of the Legal Practice Act.[38]

A lawyer is a general term that refers to anyone who is operating in the legal sphere – as such, one who holds an LLB, even if one is not yet practising law, is a lawyer.

An attorney is the name for the legal practitioner who generally meets with clients and provides them with legal advice, but also presents cases in court (often in the Magistrates' Court). They also draw up contracts and conduct research to assist their clients. In addition to holding an LLB in order to be admitted as an attorney one must complete two years of practical legal training known as articles (in addition to board exams). Attorneys may represent their clients in court (but must have practiced for three years before they will be admitted to appear in the High Courts and before the SCA).

An advocate is the legal practitioner who argues on behalf of their client in court. Advocates are also referred to as 'counsel'. An advocate is a specialist lawyer. In order to be admitted as an Advocate one must complete a year of training with a practising Advocate known as pupillage in addition to the Bar exams. Clients do not interact directly with Advocates; rather it is their attorney who liaises with the Advocate.

[36] Ibid at 251.

7.1.2 Latin terms

As you read cases, you will become aware that judgments often include Latin terms that have been carried through from Roman-Dutch Law. You will become familiarised with them in due course but some examples are:

- *prima facie*: on the face of it; or based on the first impression.
- *inter alia*: among other things.
- *ratio* decidendi: the legal principle that the court uses to decide the outcome of a matter.
- *obiter dictum*: comments that a judge may make in the course of their judgment that do not directly relate to the issue at hand and so are not legally binding, but may be used in later cases as persuasive support for a particular interpretation or application of the law.

7.1.3 Patrimonial v Non-patrimonial loss

Patrimonial loss is a loss that reduces a person's financial position. Non-patrimonial loss does not affect a person's financial situation and is usually in the form of pain or suffering.

Also, bear in mind that you will encounter the adjective *matrimonial* in the Law of Persons and Family, as well as in Law of Succession, in the context of matrimonial property systems. Take care not to confuse the two similar-sounding adjectives with one another, since they have vastly different meanings in these contexts. As seen above the adjective *patrimonial* relates to a person's financial position, whereas the term *matrimonial* relates to matrimony or marriage.

7.2 Property Law

7.2.1 Subject v object

In law, the terms 'subject' and 'object' have very specific meanings. Persons are called legal subjects. A legal subject can have rights and duties, whereas a legal object, such as a car, cannot.

The term 'person' or 'legal subject' includes more than just human beings. It can be divided into two categories:

- Natural persons: human beings
- Juristic persons: Companies, organisations, trusts etc.

7.3 Constitutional law

7.3.1 Constitutionalism

"Constitutionalism is the idea that government should derive its powers from a written constitution and that its powers should be limited to those set out in the constitution."[37]

7.3.2 Rule of law

"The rule of law requires [everyone including] state institutions to act in accordance with the law."[38] This means that everyone "must obey the law"[39] and that the state "cannot exercise power over anyone unless the law permits it to do so."[42]

7.3.3 Separation of powers

The doctrine of the separation of powers requires the functions of government to be classified as either: legislative, executive or judicial and requires each function to be performed by separate branches of government. In other words, the function of making law, executing the law and resolving disputes through the application of law should be kept separate and, in principle, they should be performed by different institutions and persons.[40]

The state's power is therefore separated into independent parts with specific powers that should not overlap. This is done to make sure that the different sections of government are answerable to each other. The Constitution provides what is known as checks and balances, which gives each section of government the power to keep watch over the others.[41]

7.3.4 Branches of government

The legislative authority (or the legislature) makes written laws called legislation or acts. This is done when democratically elected representatives of the citizens of the country (members of parliament) meet and vote on whether a proposed law should be enacted. At national level, this authority vests in Parliament.

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[37] Iain Curry & Johan de Waal *The Bill of Rights Handbook* 5ed (2005) 8.
[38] Ibid at 10.
[39] Ibid at 11.
[40] Barratt et al op cit note 1 at 76-77.
[41] Ibid.

The executive authority is responsible for implementing the law and applying policies. At national level, this authority vests in the President and his cabinet/ministers.

The judicial authority (or the judiciary) refers to the courts and justice system. The courts are responsible for holding the legislative and executive authorities, as well as the citizens, accountable when they do not comply with the law.

7.3.5 Counter-majoritarian dilemma

As stated above, a court can decide that an act is in conflict with the Constitution and therefore invalid. The dilemma is, however, that the legislature (who enacts the law) is democratically elected, whereas the judiciary (judges and magistrates) is not. This means that a judge, who is not democratically elected, can decide to "overturn the will of a democratically elected and accountable legislature".[42]

7.4 Law of succession

7.4.1 Testate versus intestate

If someone passes away and they have executed a valid will, then that person dies testate. That is, the possessions/assets (the estate) of the deceased (the testator – the person whose will it is) are distributed according to what is stipulated in the will.

If someone passes away without executing a will or if they have executed a will but it is found to be invalid or inoperative for some reason, then they die intestate – without a valid will. That is, the possessions/assets (the estate) of the deceased are distributed according to the rules of succession law in South Africa. These rules can be found in the Intestate Succession Act 81 of 1987. It is possible that part of the estate will be devolved in terms of the rules governing intestate succession, even where there is a valid will. More often than not, this occurs because part of the will is inoperable (the nominated beneficiary cannot inherit or repudiates the benefit). It may be that certain clauses of the will are unlawful and therefore invalid.

7.4.2 Matrimonial (property) system

The term matrimonial (property) system refers to the rules that govern a marriage, especially with regard to the property owned by both spouses and how it will be divided

[42] D Davis "Democracy – its influence upon the process of constitutional interpretation" (1994) 10 *SAJHR* at 104.

upon their divorce. A couple chooses the system that will govern their marriage before they get married. There are three systems to choose from:

- Marriage in community of property
- Marriage out of community of property without accrual
- Marriage out of community of property with accrual

7.4.3 Marriage in community of property

This is the default matrimonial system in South Africa. If the parties do not wish this system to apply to their marriage, they must sign a contract in which they elect to be married out of community of property, either with or without accrual. This contract is called an ante nuptial contract. (In the US, it is also called a prenuptial agreement or a prenup).

When two people enter into a marriage in community of property, their estates merge. (A person's estate is all the money and property owned by that person.) This means that all their money and possessions are put together to form one estate, which is called a 'joint estate'. They both own this estate, i.e. all the money and possessions, equally.

A spouse therefore also shares any liabilities, such as debts, created by the other spouse. Due to this joint estate and shared liability, the consent of both spouses is necessary for certain important contracts.
Should the parties get divorced, that joint estate is shared on a 50/50 basis.

7.4.4 Marriage out of community of property

Should a couple elect to sign an ante nuptial agreement, the rules governing their marriage will differ. The can choose a marriage out of community either with accrual or without accrual.

Should they choose a marriage out of community without accrual it means that, unlike a marriage in community of property, their estates do not merge. They each remain owner of their own estates throughout the marriage. They are not liable for each other's debts and no consent is needed from one another to enter into important contracts.

Should the parties get divorced, they each keep their own estates, as was the case during their marriage.

7.4.5 Marriage out of community of property with accrual

This system functions exactly like the previous one while the marriage subsists. However, when the parties get divorced the rules of accrual apply. Accrual means that the parties share the value of the growth of their estates during the subsistence of the marriage. The effect of this is best illustrated with an example:

When A & B get married:

A's estate is worth R 50 000.00 B's estate is worth R 100 000.00

When A & B get divorced:

A's estate is worth R 100 000.00 B's estate is worth R 500 000.00 The amounts A & B's estates therefore grew during the marriage (the amount accrued to their estates) are:

A's estate[43]: R 100 000.00 – R 50 000.00 = R 50 000.00 B's estate: R 500 000.00 – R 100 000.00 = R 400 000.00

The amount B's estate grew more than A's estate:

Accrual to B's estate (R 400 000.00) – Accrual to A's estate (R 50 000.00)

= R 350 000.00

Amount A is entitled to (50% of the difference between the accrued amounts):

R 350 000.00 ÷ 2 = R 175 000.00

7.4.6 Civil union

Since 2006, marriages between persons of the same sex are recognised in South Africa by the Civil Union Act 17 of 2006. Homosexual and heterosexual couples can

[43] In reality the R50 000 that is subtracted here will be adjusted to reflect its real current value taking into account inflation etc.

get married in terms of this act and the effect of such a marriage is similar to that of civil marriages (heterosexual marriages in terms of the Marriage Act 25 of 1961).

7.4.7 Customary marriages

Customary marriages are marriages in terms of the Customary law of South Africa. Customary marriages allow polygamy, i.e. they allow one man to have more than one wife. Such marriages have been formally recognised in South Africa since 1998 by the Recognition of Customary Marriages Act 120 of 1998.

7.4.8 Muslim marriages

Muslim marriages are marriages in terms of Islamic Rites. Polygamy is also allowed in Muslim marriages. Imams (Muslim religious leaders)[44] may be designated as marriage officers under the Marriages Act[50]. In 2004 a Constitutional Court case legally recognised Muslim marriages and declared sections of the Marriage Act and Divorce Act unconstitutional.[45] Since 14 May 2024, Muslim marriages are legally recognised as a result of the promulgation of the Divorce Amendment Act 1 of 2024.[46]

7.4.9 Domestic Partnerships

There is no automatic legal protection of partners in a permanent opposite-sex partnership. However, the Constitutional Court has ruled[47] that a partner in a permanent opposite-sex partnership may benefit from the Intestate Succession Act and the Maintenance of Surviving Spouses Act where the partners have undertaken reciprocal duties of support. This judgment was given effect to by the Judicial Matters Amendment Act 15 of 2023, and since 3 April 2024, a partner in a permanent life partnership may benefit from the Intestate Succession Act and the Maintenance of Surviving Spouses Act where the partners have undertaken reciprocal duties of support.

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[44] 'Imam' *Merriam-Webster* available at *http://www.merriam-webster.com/dictionary/imam*, accessed on 20 January 2015. [50] Section 3.

[45] See for example *Daniels v Campbell* (2004) BCLR 735 (CC) where a monogamous Muslim marriage was recognised for the purposes of intestate succession. The meaning of intestate succession will be explained to you in the Law of Succession.

[46] *Women's Legal Centre Trust v President of the Republic of South Africa and Others* (CCT 24/1) [2022] ZACC 23 (24 June 2022).

[47] *Bwanya v Master of the High Court Cape Town* 2022 (3) SA 250 (CC).

8 SURVIVING LAW SCHOOL

8.1 Time management

8.1.1 Readings

Readings, consisting primarily of case law, will be prescribed for each subject. It is necessary to read the prescribed readings before attending class. Do not get behind on your readings or think that you will be able to read them before the exams. This is a common mistake and students end up spotting or ignoring the case law, relying on their notes and textbooks to get them through. This will not be sufficient. Several courses rely heavily on case law and these cases might not be discussed in sufficient detail in class or in the textbooks.

Use your time between classes to do your reading. Expect to put in many additional hours at night and over weekends in reading and summarising cases, textbooks and other readings.

8.1.2 Assignments

Do not leave your assignments for the last minute. Submit your assignments a day before the deadline. Computers that crash and files that become corrupted will not be an excuse for not submitting on time. Use an online file storage provider like DropBox or iCloud to store your assignments online.

8.2 Note taking

Go to every class and take notes. This cannot be emphasised enough. Do not sit passively in class listening and hoping to get an understanding of the work. You might think you will remember what was said in class, but you will definitely not remember everything. Your notes form the basis of understanding from which you will study. Listen out for sections that lecturers emphasise in class and mark these in your notes. Summarise and complete your lecture notes, with the help of your textbook and cases, *every night* so that you keep up to date.

8.3 Answering questions

When answering questions, you should use the same structure that judges use in case law. Since the facts are already set out in the question, start with the 'I' of FILAC.

I: what does this question really ask me?

L: what does the law say about this question? I.e. what is said about this in the sources of law, i.e. case law, legislation, common law? (Your textbook, prescribed readings and class notes might help you with this answer). Usually the common law and legislation set out the rules and the case law shows us how these rules have been applied to actual situations. Focus on cases with similar facts to the set of facts of the question.

A: How does the law (mentioned in 'L') apply to this set of facts? What is the effect of these rules on the set of facts? Look at the cases you mentioned. How are they similar to your set of facts? How do they differ from your set of facts? Will that make a difference to how the rules are applied?

C: Answer the question formulated in 'I', as well as the actual question asked in your question.

You do not have to write down all of the legal rules applicable and then apply them. You can apply each legal rule as you state it. Your format will then be something like this: Issue: Did Sam drive negligently? Legal rule 1: Negligence means that the reasonable man would foresee a certain outcome and prevented it. Application of legal rule 1: A reasonable person could have foreseen that, when they are driving past a school, children might walk into the road and a driver must avoid hitting the children by driving slowly. Legal rule 2: Negligence further means that the person did not act as the reasonable man would have. Application of legal rule 2: Sam did not act as the reasonable person **because he drove past the school very fast** (explaining *why* this is the outcome of the application is very important) Conclusion: Sam drove negligently.

Remember, law is different from humanities, commerce and science:

- Answers are point based, focus on providing as many points as possible. ○ State authority for each claim or statement.
- Show that you have a broad knowledge of the subject: do not just attack the obvious issue in the question. Introduce the issue by explaining the surrounding law; explain how the answer could be different if what you are saying is incorrect.

8.4 Writing essays

Some tips for writing essays or assignments:

- Use headings.
- Formulate a strong introduction and conclusion than link to each other.
- Each paragraph should have a topic sentence (i.e. the first sentence of the paragraph summarises the point of the paragraph and the other sentences elaborates on that point).
- Write short concise sentences (no more than 3 lines).
- Avoid the use of adjectives, adverbs and descriptive writing.
- Use the FILAC method.
- Follow Research, Writing, Style And Referencing Guide For Law Students. http://www.law.lib.uct.ac.za/sites/default/files/image_tool/images/60/resources /Research-Writing-Style-and-Referencing-Guide-2014.pdf.[48]
- Attend legal writing classes in FSAL.
- Always reference all sources.

8.5 Getting help

Do not be afraid to approach a lecturer or a tutor for help, either in person or by email. Always email the respective lecturer or tutor beforehand to arrange a meeting.

Should you struggle with anything that is not subject-specific, you are welcome to contact Richard Cramer (Richard.Cramer@uct.ac.za).

Other important websites:

[48] The reference style of the UCT law faculty is based on the South African Law Journal.

- Wellness centre (https://uct.ac.za/students/support-health-counselling/student-wellnessservice)
- We also have a psychologist available during the week in the law school. Please speak to your course administrator, course convenor or course lecturer for further information.
- Writing centre (https://ched.uct.ac.za/writing-centre)
- Discrimination and harassment office: (https://uct.ac.za/staff/support/discrimination-andharassment)

GOOD LUCK WITH YOUR FIRST YEAR OF LAW SCHOOL!

ANNEXURE 1

KHAN v MINISTER OF LAW AND ORDER 1991 (3) SA 439 (T) 1991 (3) SA p439 A

Citation	1991 (3) SA 439 (T)
Court	Transvaal Provincial Division
Judge	Du Plessis J
Heard	August 29, 1990
Judgment	September 5, 1990 B
Annotations	Link to Case Annotations

Flynote : Sleutelwoorde

Criminal procedure - Search and seizure - Application in terms of s 31(1) of the Criminal Procedure Act 51 of 1977 for the return of a vehicle seized in terms of s 20 of the Act - Entitled to return unless C continued possession unlawful - *Onus* on State to prove on a balance of probabilities that possession unlawful - Vehicle constructed from parts belonging to applicant and stolen parts - Principal portion stolen - Parts belonging to applicant acceding to stolen portion - Applicant's continued possession unlawful - State discharging *onus* and application accordingly refused.

D Ownership - Acquisition of - *Accessio* - Determination of principal object - Thing ultimately formed to be viewed and decision reached as to what component gives it its identity - Such component being principal and other components accessories - Car consisting of a rear portion, including the interior, which could positively be identified as E having been stolen; the engine and inner front portion, which could positively be identified as belonging to the applicant, and other components, some of which were probably from the same stolen vehicle as the rear portion of the car and others which had been obtained from a different sour ce - Identity conferred by stolen rear portion - Components belonging to applicant accordingly acceding to stolen F vehicle.

Headnote : Kopnota

The applicant had been dispossessed of his motor vehicle by a member of the South African Police. He brought an application in terms of s 31(1) of the Criminal Procedure Act 51 of 1977 for the return of the vehicle. The applicant's supporting affidavit contained sufficient averments to render the initial seizure of the vehicle in terms of s 20 read with s G 22 of Act 51 of 1977 unlawful. The vehicle, which had been registered as a built-up vehicle, consisted of a rear portion, including the interior, which could positively be identified as having been stolen; the engine and inner front portion, which could positively be identified as belonging to the applicant; and other components, some of which were probably from the same stolen vehicle as the rear portion of the car and others which had been obtained from a different source. It was contended by the applicant that the components and rear portion identified as H having been stolen had acceded to the applicant's car and the applicant as owner was therefore entitled to possession of the car.

Held, that the respondent bore the *onus* of proving on a balance of probabilities that the applicant was not entitled to the return of the said vehicle in terms of the section of the Act on the basis that the applicant's continued possession of the vehicle would be unlawful.

I *Minister van Wet en Orde en 'n Ander v Datnis Motors (Midlands) (Edms) Bpk*1989 (1) SA 926 (A) applied.

Held, further, that the thing that had been formed ultimately had to be viewed and a decision reached as to what gave that thing its identity: the component that gave the thing its identity would then be the principal thing and the other components would be regarded as having acceded to that thing.

Held, further, that with regard to the present facts the principal component was that portion of the car which had been stolen to which had J been added a modified engine

1991 (3) SA p440

DU PLESSIS J

A and small portions of the body so that under the circumstances the vehicle could not be said to be that belonging to the applicant but rather the stolen vehicle identified by the respondent.

Held, accordingly, that the respondent had discharged the *onus* of establishing that the applicant's continued possession of the vehicle would have been unlawful and the application had to be dismissed. B

Case Information

Application in terms of s 31(1) of the Criminal Procedure Act 51 of 1977. The facts appear from the reasons for judgment.

A J Bam for the applicant. *H J de Wet* for the respondent. C *Cur adv vult*.

Postea (September 5).

Judgment

Du Plessis J: During July 1989 Sergeant Van Dyk of the South African Police seized a certain BMW 320i motor vehicle registration NBD286T D which, at the time, was possessed by the applicant. The applicant now applies for an order directing the respondent to return the vehicle. Although the applicant makes the allegation that the seizure of the vehicle was unlawful, Mr *Bam* on behalf of the applicant argued the matter on the basis that the respondent is obliged to return the vehicle to the applicant in terms of the provisions of s 31(1) of the Criminal E Procedure Act 51 of 1977.

The respondent's answering affidavits do contain sufficient allegations to render the initial seizure lawful in terms of s 20 read with s 22 of the said Act. The vehicle having been seized from the possession of the applicant, the respondent bears the *onus* of proving F that he is not, in terms of s 31(1) of the said Act, obliged to return it to the applicant. (See *Minister van Wet en Orde en 'n Ander v Datnis Motors (Midlands) (Edms) Bpk*1989 (1) SA 926 (A).)

It is common cause that no criminal proceedings were instituted in connection with the vehicle and the respondent thus has to prove that the applicant may not lawfully possess the vehicle (see s 31(1)*(a)* of G the Act). This the respondent set out to achieve by endeavouring to prove that the vehicle is a stolen vehicle. It is clear that if the respondent establishes that the vehicle is stolen, the applicant will, by reading the respondent's affidavits, have knowledge of that fact, and would therefore not be able to lawfully possess it. (See *Minister van Wet en Orde v Datnis Motors (supra*).)

H There are disputes of fact on the papers and the matter must therefore be approached in accordance with the guide-lines set out in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*1984 (3) SA 623 (A) at 634E - 635A. (See also *Ngqumba en 'n Ander v Staatspresident en Andere; Damons NO en Andere v Staatspresident en Andere; Jooste v Staatspresident en Andere*1988 (4) SA 224 (A) at 259I - 263D.)

I It is the applicant's case that he became owner of the car in the following manner. He purchased the wreck of a 1985 model BMW 320i. He then entered into an agreement with a concern called Morris Panel Beaters in terms of which the latter would rebuild the wreck so as to appear to be not a 1985 but a 1988 model of the said type of car. This Morris did by cutting the 1985 wreck through just in front of the Jwindscreen pillars of the car,

1991 (3) SA p441

DU PLESSIS J

A and by then joining the rear portion of a 1988 model to the front portion of the wreck. The entire car thus formed was then sprayed the colour of the 1988 portion, namely dolphin grey.

The applicant in his founding affidavit alleges that he assembled the engine and 'other mechanical parts' of the car. It was fitted with a gearbox, supplied by Morris and registered in the applicant's name as a B built-up vehicle.

Van Dyk, having seized the car, inspected it thoroughly and also had it inspected by different experts in the employ of BMW South Africa. The combined evidence of these experts, insofar as it stands to be accepted in accordance with the guidelines set out above, shows that virtually the entire body of the car is that of a 1988 model BMW 320i. The only C 1985 body components are the inner portion of the front housing the engine compartment, that is the portion on which the front axle is bolted, the inside panels to which the shock absorbers are attached and the front panel to which the radiator is attached. The portions of the body visible from the outside, such as mudguards, bonnet, front fender D and the valance are all those of a 1988 model. Components such as the radiator itself, the wheel rims, the lower control arm, the front studs, the intake manifold and the entire steer ing mechanism all bear marks which show that they were manufactured during 1988. Although the car bears the chassis number of the 1985 wreck and this number is engraved E on the windows of the car, it is common cause that this engraving on the windows was done after the joining of the two different portions.

On one of the windows, a portion of a number previously engraved thereon could be discerned. Through a process of elimination, the experts on behalf of the respondent were able to ascertain that this F number probably belonged to a 1988 model 320i vehicle. Having thus ascertained the probable identity of the 1988 vehicle, they were able to also ascertain the code number of the keys that would fit this particular 1988 model. The keys were then cut in the BMW factory and it was found that these keys fit all the door locks and the ignition lock of the seized vehicle. The keys did not fit the boot lock which was, in G any event, not original.

The experts further found that the 1988 vehicle identified in this manner was stolen during 1988 from one Rheeder. Rheeder's own keys (those of his stolen car) also fitted the relevant locks, and the colour of the seized car was the same as that of Rheeder's stolen car.

H The respondents in my view succeeded in proving that the rear portion of the applicant's car is that of the stolen vehicle. As to the front portion it is, of course, possible that the 1988 components of the front portion of the body were not stolen, but on the facts as a whole it must be regarded as more probable than not that the 1988 components of the front portion of the body also

belong to the stolen vehicle of Rheeder. The differential and gearbox of the applicant's car both had their I original identification numbers removed and the gearbox was also manufactured in 1988. These components are also on the probabilities stolen. It is difficult to conceive of any other probable explanation as to why the numbers were removed, especially in view of the fact that these components are used in conjunction with a substantial part of a J body that is clearly stolen. **1991 (3) SA p442**

DU PLESSIS J

A The experts on behalf of the respondent initially thought that the engine also was that of a 1988 model, because they thought that the engine numbers were unevenly punched on the engine and also because the engine is a so-called 'motoronic' as opposed to a 'jetronic' type of B engine. In the 1985 models the jetronic engines were used, while in the 1988 models the motoronic engines were used. Having read this latter allegation, the applicant for the first time in his replying affidavit alleged that the engine of his car had been modified from a jetronic fuel injection and ignition system engine to a motoronic system. Although the applicant does not directly say so, he seems to imply that he did the modification.

The respondent properly filed a further affidavit in which it is C stated that the 1985 engine number appearing on the engine is not unevenly punched, and is in all probability the original number. It is also admitted in the further affidavit that it is possible, though difficult, to modify the 1985 jetronic engine so as to appear to be a 1988 motoronic engine. The applicant's failure to make the allegation in D respect of this modification in his founding affidavit does cast some doubt on his veracity, but I do not think that this allegation of the applicant can be summarily rejected on the papers. It must therefore be assumed that the engine is that of a 1985 model.

The present vehicle therefore consists of a rear portion, including the interior, which can positively be identified as being portion of E Rheeder's stolen vehicle. The engine and inner front portion of the body, on the other hand, can positively be identified as portion of the applicant's 1985 wreck. The other components probably are also those of Rheeder's stolen car although some, for instance the gearbox and the differential and some minor parts, might, although stolen, emanate from a different source.

F Mr *Bam*, on behalf of the applicant, submitted that on these facts the other components acceded to, and now form part of the applicant's car and that he, through *accessio*, became the owner thereof and is entitled to possession of the vehicle.

Where one movable is joined to another in such a manner as to form an entity, the owner of the principal thing becomes the owner also of the G thing joined to it (die bysaak). (See Van der Merwe *Sakereg* 2nd ed at 242.) Deciding which of the things is the principal thing ordinarily is a matter of pure and simple common sense. Our common law authorities have devised a number of rules or guidelines to be followed in deciding which of the former separate things is the principal thing. (See the H authorities quoted by *Van der Merwe (op cit* at 230).)

There is a dearth of South African authority on the guidelines to be followed in identifying the principal thing (die hoofsaak). The reported cases that there are were decided on facts which did not really admit of any doubt. (See for instance *JL Cohen Motors (SWA) (Pty) Ltd v Alberts*1985 (2) SA 427 (SWA); *Cooper v Jordan* (1884) 4 EDC 181; *Doli v Mamkele* I *1926 EDL 269.)*

In *Aldine Timber Co v Hlatwayo* 1932 TPD 337, Barry J (with whom Maritz J concurred) followed two of the guidelines referred to by the Roman law authorities and decided that the more valuable thing, which in terms of bulk forms the greater part of the thing that was ultimately formed by J the joining of the two components, must be identified as the **1991 (3) SA p443**

DU PLESSIS J

A principal thing to which the other acceded. I am not entirely sure that this was not, as is argued by the learned authors Van der Merwe and De Waal (see 1986 *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* 66 at 70), rather a case of *specificatio* than of *accessio*. I do not, in any event, understand Barry J to have authoritatively laid down that the value and bulk test should be followed in all instances, but rather that he used B this test because, on the other possible tests, doubt existed.

I agree with *Van der Merwe and De Waal (op cit*) (and see also Van der Merwe *Sakereg* 2nd ed at 230 - 1) that the principal thing is that one that gives the ultimate thing its character, form and function. Grotius *Inleidinge* 2.9.1 seems to apply a pure value test, although the word that he uses, namely 'waerdiger' might also carry the meaning of C 'worthy' in the sense of that portion of the whole that really gives the whole its identity. (See Scheltinga's *Dictata on De Groot*.) *Voet* 41.1.14 merely says that the matter must be decided on what accedes to what or, put differently, on what is added for purposes of adorning the other. Huber *RHR* 2.6.2 gives various examples. Of these examples, one, the D diamond added to the ring, clearly indicates that he applies in essence the character, form and function test. In my view the authorities show that the decision really is an application of common sense. One must view the thing that was ultimately formed, and decide what is the identity of that thing, and the component that gives the ultimate thing its identity will be the principal thing, while the other will have E acceded to it. It is also in cases of doubt that the various guidelines, depending upon the facts of each case, need be used.

Applying to the present facts the character, form and function test, I am of the view that the vehicle can be said to be a 1988 model, to which a 1985 engine modified to conform to a 1988 engine was added and to F which small portions of a 1985 body were added.

Under the circumstances the car cannot be said to be that of the applicant, because the stolen parts were added to his 1985 wreck. In my view it was the other way around and the car in character, identity, form and function is Rheeder's stolen 1988 model.

It was, in the alternative, raised in the applicant's papers that, in G the event of a dispute of fact being found, the matter should be referred to oral evidence. The issues, however, are such that the applicant should clearly have foreseen a dispute of fact arising on the papers.

The following order is therefore made:

The application is dismissed with costs.

H Applicant's Attorneys: *D Maartens & Co*. Respondent's Attorneys: *State Attorney*.

ANNEXURE 2

WILLS ACT 7 OF 1953

[ASSENTED TO 25 FEBRUARY 1953] [DATE OF COMMENCEMENT: 1 JANUARY 1954]

(English text signed by the Governor-General)

as amended by

Wills Amendment Act 48 of 1958 General Law Amendment Act 80 of 1964 Wills Amendment Act 41 of 1965
Law of Succession Amendment Act 43 of 1992 General Law Amendment Act 49 of 1996

ACT

To consolidate and amend the law relating to the execution of wills.

Definitions

In this Act, unless the context otherwise indicates-

'amendment' means a deletion, addition, alteration or interlineation;

[Definition of 'amendment' inserted by s. 2 *(a)* of Act 43 of 1992.]

'competent witness' means a person of the age of fourteen years or over who at the time he witnesses a will is not incompetent to give evidence in a court of law;

'Court' means a provincial or local division of the Supreme Court of South Africa or any judge thereof;

[Definition of 'Court' amended by s. 1 of Act 49 of 1996.]

'deletion' means a deletion, cancellation or obliteration in whatever manner effected, excluding a deletion, cancellation or obliteration that contemplates the revocation of the entire will;

[Definition of 'deletion' inserted by s. 2 *(b)* of Act 43 of 1992.]

'internal law' means the law of a state or territory, excluding the rules of the international private law of that state or territory;

[Definition of 'internal law' inserted by s. 2 *(c)* of Act 43 of 1992.]

'Master' means a Master, Deputy Master or Assistant Master of the Supreme Court appointed under section 2 of the Administration of Estates Act, 1965 (Act 66 of 1965);

[Definition of 'Master' substituted by s. 2 *(d)* of Act 43 of 1992.]

'sign' includes the making of initials and, only in the case of a testator, the making of a mark, and **'signature'** has a corresponding meaning;

[Definition of 'sign' substituted by s. 2 *(e)* of Act 43 of 1992.]

'will' includes a codicil and any other testamentary writing. **2**

Formalities required in the execution of a will

(1) Subject to the provisions of section 3 *bis* -

(a) no will executed on or after the first day of January, 1954, shall be valid unless-

(i) the will is signed at the end thereof by the testator or by some other person in his presence and by his direction; and

(ii) such signature is made by the testator or by such other person or is acknowledged by the testator and, if made by such other person, also by such other person, in the presence of two or more competent witnesses present at the same time; and

(iii) such witnesses attest and sign the will in the presence of the testator and of each other and, if the will is signed by such other person, in the presence also of such other person; and

(iv) if the will consists of more than one page, each page other than the page on which it ends, is also so signed by the testator or by such other person anywhere on the page; and

[Sub-para. (iv) amended by s. 20 *(a)* of Act 80 of 1964 and substituted by s. 3 *(b)* of Act 43 of 1992.]

(v) if the will is signed by the testator by the making of a mark or by some other person in the presence and by the direction of the testator, a commissioner of oaths certifies that he has satisfied himself as to the identity of the testator and that the will so signed is the will of the testator, and each page of the will, excluding the page on which his certificate appears, is also signed, anywhere on the page, by the commissioner of oaths who so certifies: Provided that-

(aa) the will is signed in the presence of the commissioner of oaths in terms of subparagraphs (i), (iii) and (iv) and the certificate concerned is made as soon as possible after the will has been so signed; and

(bb) if the testator dies after the will has been signed in terms of subparagraphs (i), (iii) and (iv) but before the commissioner of oaths has made the certificate concerned, the commissioner of oaths shall as soon as possible thereafter make or complete his certificate, and sign each page of the will, excluding the page on which his certificate appears;

[Sub-para. (v) amended by s. 1 *(a)* of Act 48 of 1958 and substituted by s. 20 *(b)* of Act 80 of 1964 and by s. 3 *(c)* of Act 43 of 1992.]

(b) no amendment made in a will executed on or after the said date and made after the execution thereof shall be valid unless-

(i) the amendment is identified by the signature of the testator or by the signature of some other person made in his presence and by his direction; and

(ii) such signature is made by the testator or by such other person or is acknowledged by the testator and, if made by such other person, also by such other person, in the presence of two or more competent witnesses present at the same time; and

(iii) the amendment is further identified by the signatures of such witnesses made in the presence of the testator and of each other and, if the amendment has been identified by the signature of such other person, in the presence also of such other person; and

(iv) if the amendment is identified by the mark of the testator or the signature of some other person made in his presence and by his direction, a commissioner of oaths certifies on the will that he has satisfied himself as to the identity of the testator and that the amendment has been made by or at the request of the testator: Provided that-

(aa) the amendment is identified in the presence of the commissioner of oaths in terms of subparagraphs (i) and (iii) and the certificate concerned is made as soon as possible after the amendment has been so identified; and

(bb) if the testator dies after the amendment has been identified in terms of subparagraphs (i) and (iii) but before the commissioner of oaths has made the certificate concerned, the commissioner of oaths shall as soon as possible thereafter make or complete his certificate.

[Sub-para. (iv) amended by s. 1 *(b)* of Act 48 of 1958 and substituted by s. 3 *(e)* of Act 43 of 1992.]

[Para. *(b)* amended by s. 3 *(d)* of Act 43 of 1992.]
[Subs. (1) amended by s. 1 of Act 41 of 1965 and by s. 3 *(a)* of Act 43 of 1992.]

(2) Any amendment made in a will executed after the said date shall for the purposes of subsection (1) be presumed, unless the contrary is proved, to have been made after the will was executed.

[Sub-s. (2) substituted by s. 3 *(f)* of Act 43 of 1992.]

(3) If a court is satisfied that a document or the amendment of a document drafted or executed by a person who has died since the drafting or execution thereof, was intended to be his will or an amendment of his will, the court shall order the Master to accept that document, or that document as amended, for the purposes of the Administration of Estates Act, 1965 (Act 66 of 1965), as a will, although it does not comply with all the formalities for the execution or amendment of wills referred to in subsection (1).

[Sub-s. (3) added by s. 3 *(g)* of Act 43 of 1992.]

(4) The certificate of a commissioner of oaths referred to in subsection (1) *(a)* (v) or *(b)* (iv) may be in the form set out in Schedule 1 or 2, as the case may be. [Sub-s. (4) added by s. 3 *(g)* of Act 43 of 1992.]

2A Power of court to declare a will to be revoked

If a court is satisfied that a testator has-

(a) made a written indication on his will or before his death caused such indication to be made;

(b) performed any other act with regard to his will or before his death caused such act to be performed which is apparent from the face of the will; or

(c) drafted another document or before his death caused such document to be drafted,

by which he intended to revoke his will or a part of his will, the court shall declare the will or the part concerned, as the case may be, to be revoked.

[S. 2A inserted by s. 4 of Act 43 of 1992.]

2B Effect of divorce or annulment of marriage on will

If any person dies within three months after his marriage was dissolved by a divorce or annulment by a competent court and that person executed a will before the date of such dissolution, that will shall be implemented in the same manner as it would have been implemented if his previous spouse had died before the date of the dissolution concerned, unless it appears from the will that the testator intended to benefit his previous spouse notwithstanding the dissolution of his marriage.

[S. 2B inserted by s. 4 of Act 43 of 1992.]

2C Surviving spouse and descendants of certain persons entitled to benefits in terms of will

(1) If any descendant of a testator, excluding a minor or a mentally ill descendant, who, together with the surviving spouse of the testator, is entitled to a benefit in terms of a will renounces his right to receive such a benefit, such benefit shall vest in the surviving spouse.

(2) If a descendant of the testator, whether as a member of a class or otherwise, would have been entitled to a benefit in terms of the provisions of a will if he had been alive at the time of death of the testator, or had not been disqualified from inheriting, or had not after the testator's death renounced his right to receive such a benefit, the descendants of that descendant shall, subject to the provisions of subsection (1), *per stirpes* be entitled to the benefit, unless the context of the will otherwise indicates.
[S. 2C inserted by s. 4 of Act 43 of 1992.]

2D Interpretation of wills

(1) In the interpretation of a will, unless the context otherwise indicates-

(a) an adopted child shall be regarded as being born from his adoptive parent or parents and, in determining his relationship to the testator or another person for the purposes of a will, as the child of his adoptive parent or parents and not as the child of his natural parent or parents or any previous adoptive parent or parents, except in the case of a natural parent who is also the adoptive parent of the child concerned or who was married to the adoptive parent of the child concerned at the time of the adoption;

(b) the fact that any person was born out of wedlock shall be ignored in determining his relationship to the testator or another person for the purposes of a will;

(c) any benefit allocated to the children of a person, or to the members of a class of persons, mentioned in the will shall vest in the children of that person or those members of the class of persons who are alive at the time of the devolution of the benefit, or who have already been conceived at that time and who are later born alive.

(2) In the application of this section 'will' means any writing by a person whereby he disposes of his property or any part thereof after his death.

3 .....

[S. 2D inserted by s. 4 of Act 43 of 1992.]

[S. 3 repealed by s. 5 of Act 43 of 1992.]

3 *bis* Validity of certain wills executed in accordance with the internal law of certain other states

1) A will, whether executed before or after the commencement of this section, shall-

(a) not be invalid merely by reason of the form thereof, if such form complies with the internal law of the state or territory-

(i) in which the will was executed;

(ii) in which the testator was, at the time of the execution of the will or at the time of his death, domiciled or habitually resident; or

(iii) of which the testator was, at the time of the execution of the will or at the time of his death, a citizen;

(b) so far as immovable property is disposed of therein, not be invalid merely by reason of the form thereof, if such form complies with the internal law of the state or territory in which that property is situate;

(c) so far as therein a power conferred by any instrument is exercised or a duty imposed by any instrument is performed, not be invalid merely by reason of the form thereof, if such form complies with the internal law of the state or territory in which such instrument was executed;

(d) so far as it revokes a will or a portion of a will which by virtue of the provisions of paragraph *(a)* , *(b)* or *(c)* is not invalid, not be invalid merely by reason of the form thereof, if such form complies with the internal law referred to in the paragraph in terms of which the revoked will or portion is not invalid;

(e) not be invalid merely by reason of the form thereof, if it was executed on board a vessel or aircraft and such form complies with the internal law of the state or territory in which such vessel or aircraft was registered at the time of such execution, or with which it was otherwise most closely connected at that time.

(2) Any requirement of the internal law of any other state or territory in terms of which a testator of a particular age or nationality or having any other personal qualification is to observe special formalities in the execution of a will, or a witness to a will is to possess certain qualifications, shall be construed as a requirement relating to form only.

(3) If there are in force in any state or territory two or more systems of internal law relating to the form of wills, the internal law is to be applied for the purposes of this section shall be the internal law determined in accordance with any relevant rule in force in the state or territory in question or, if there is no such rule in force therein, the internal law with which the testator was most closely connected at the time of his death, if the matter is to be determined by reference to the circumstances prevailing at his death, or at the time of the execution of the will in any other case.

(4) The provisions of this section shall not apply in respect of-

(a) a will made by a South African citizen otherwise than in writing; and

(b) a will made by a person who died before the commencement of this section.

(5) The provisions of this section shall not affect the validity of a will which but for such provisions would be valid.

[S. 3 *bis* inserted by s. 2 of Act 41 of 1965 and amended by s. 6 of Act 43 of 1992.]

4 Competency to make a will

Every person of the age of sixteen years or more may make a will unless at the time of making the will he is mentally incapable of appreciating the nature and effect of his act, and the burden of proof that he was mentally incapable at that time shall rest on the person alleging the same.

4A Competency of persons involved in execution of will

(1) Any person who attests and signs a will as a witness, or who signs a will in the presence and by direction of the testator, or who writes out the will or any part thereof in his own handwriting, and the person who is the spouse of such person at the time of the execution of the will, shall be disqualified from receiving any benefit from that will.

(2) Notwithstanding the provisions of subsection (1)-

(a) a court may declare a person or his spouse referred to in subsection (1) to be competent to receive a benefit from a will if the court is satisfied that that person or his spouse did not defraud or unduly influence the testator in the execution of the will;

(b) a person or his spouse who in terms of the law relating to intestate succession would have been entitled to inherit from the testator if that testator has died intestate shall not be thus disqualified to receive a benefit from that will: Provided that the value of the benefit which the person concerned or his spouse receives, shall not exceed the value of the share to which that person or his spouse would have been entitled in terms of the law relating to intestate succession;

(c) a person or his spouse who attested and signed a will as a witness shall not

CLASS EXERCISE – PROBLEM QUESTION RELATING TO CASE

2026

Ayanda consults you. She bought a car from Dodgy Motors. Because she needed reliable transport to travel to university, she had some repairs carried out, which included fitting a new gear box, four new tyres and she also added new seat covers for front and back seats.

Now, six months later, Ayanda has received a letter of demand from Jacob, the owner of the car. It turns out that the car was stolen from Jacob and sold on to Dodgy Motors. Ayanda is willing to return the car to Jacob but wants to know whether she may keep the parts that were installed at her expense.

Explain the legal position to Ayanda. **(10 marks)**

CLASS EXERCISE – PROBLEM QUESTION RELATING TO LEGISLATION

2026

Study the provision of the Wills Act 7 of 1953 below and the factual scenario that follows, and answer the question posed.

Section 2A of the Wills Act:

If a court is satisfied that a testator has-

(a) made a written indication on his will or before his death caused such indication to be made;

(b) performed any other act with regard to his will or before his death caused such act to be performed which is apparent from the face of the will; or

(c) drafted another document or before his death caused such document to be drafted,

by which he intended to revoke his will or a part of his will, the court shall declare the will or the part concerned, as the case may be, to be revoked.

Factual Scenario:

Oliver committed suicide on 1 February 2021. After his death, a file marked 'Personal Documents' was found in his room. The file contained Oliver's original, validly-executed will (dated 1 June 2020). In terms of this will, Farleigh would inherit all of Oliver's assets.

On closer inspection, it appears that Oliver did the following to the will:

- He crossed out his signature with a red pen
- He placed the date (1 February 2021) in the same red ink next to the crossed-out signature and
- He wrote in the same red ink on the back of the will: "I now leave all my property to Venetia"

Question: Did Oliver validly revoke his will?

REVISION EXERCISE- T/F TEST

2026

QUESTIONS

1. Roman-Dutch law is a source of South African law.

   _____

2. South Africa has a hybrid legal system, based on Roman-Dutch law and principles from English law.

   _____

3. The Constitution is the highest authority in the country.

   _____

4. The Bill of Rights is an act that is yet to be signed by the President.

   _____

5. A High Court does not hear appeals.

   _____

6. In a criminal matter the alleged criminal is called the defendant.

   _____

7. In a criminal matter the state has to prove that the alleged criminal is guilty on a balance of probabilities.

   _____

8. The term *obiter dictum* refers to the decision made by a concurring judge.

   _____

9. The relationship between a person and a big company is governed by private law.

_____

10. The Gauteng Division of the High Court is bound by a decision of the Free Stare Division of the High Court.

_____

11. District Magistrates' Courts can hear divorce matters.

_____

12. Section 37 in the Constitution provides for a limitation of rights.

_____

13. For a Bill to become legislation, it must be signed by the President.

_____

14. Spouses who are married out of community of property with accrual are allowed to sign important contracts without one another's consent.

_____

15. A person who is hit with a baseball bat can claim for non-patrimonial loss.

_____