

SPECIFIC CRIMES (CRW2602)

STUDY UNIT 2 – CRIMES AGAINST ADMINISTRATION OF JUSTICE

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LEARNING OUTCOMES

DEMONSTATE YOUR UNDERSTANDING OF THE REQUIREMENTS OF THE FOLLOWING CRIMES:

- COMMON LAW PERJURY
- STATUTORY PERJURY
- DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
- CONTEMPT OF COURT

PERJURY (COMMON LAW)

DEFINITION:

THE UNLAWFUL, INTENTIONAL MAKING OF A FALSE DECLARATION UNDER OATH (OR IN A FORM ALLOWED BY LAW TO BE SUBSTITUTED FOR AN OATH) IN THE COURSE OF A LEGAL PROCEEDING

■ ELEMENTS OF THE CRIME:

- THE MAKING OF A **DECLARATION**
- WHICH IS **FALSE**
- **UNDER OATH** (OR IN A FORM EQUIVALENT TO AN OATH)
- IN THE COURSE OF A **LEGAL PROCEEDING**
- IN AN **UNLAWFUL** AND
- **INTENTIONAL** MANNER

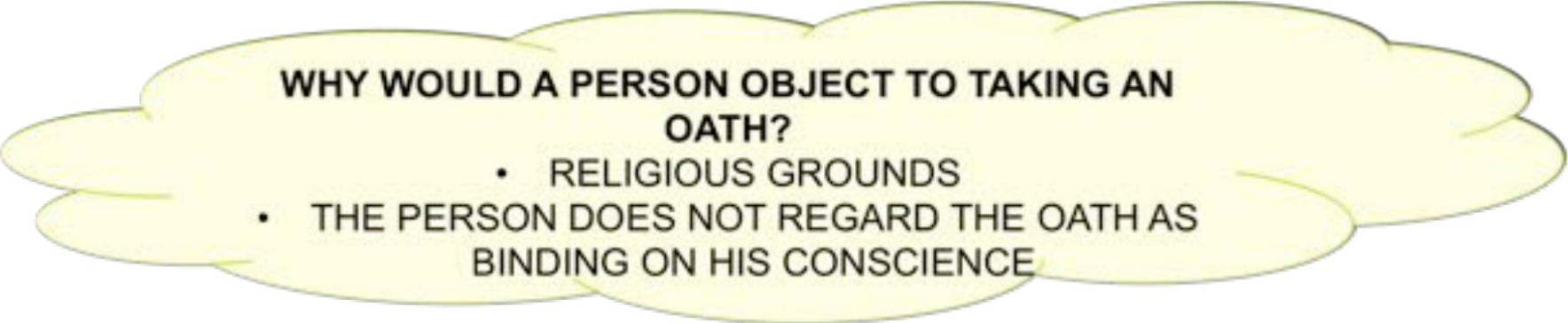
PERJURY (CL) – FALSE DECLARATION

- ▣ THE DECLARATION MUST BE OBJECTIVELY FALSE
- ▣ THE DECLARATION MAY BE **ORAL** OR IN **WRITING**
- ▣ THE FALSEHOOD MAY BE MADE EITHER **EXPRESSLY** OR **IMPLIEDLY**
 - ▣ IMPLIEDLY – THE PROSECUTION WILL RELY ON INNUENDO



UNDER OATH / SUBSTITUTED OATH

- THE DECLARATION MUST BE **UNDER OATH**, OR IN ONE OF THE FORMS ALLOWED TO BE SUBSTITUTED FOR AN OATH
- WAYS A WITNESS CAN UNDERTAKE TO SPEAK THE TRUTH:
 - COMMON METHOD = TAKING AN OATH
 - A PERSON MAY DECLARE THAT HE **SOLEMNLY CONFIRMS** THAT HIS EVIDENCE WILL BE THE TRUTH
 - YOUNG CHILDREN ARE MERELY **WARNED** TO SPEAK THE TRUTH



WHY WOULD A PERSON OBJECT TO TAKING AN OATH?

- RELIGIOUS GROUNDS
- THE PERSON DOES NOT REGARD THE OATH AS BINDING ON HIS CONSCIENCE

- UNDER OATH / A FORM OF OATH IS THE BASIS OF THIS CRIME
THUS PERJURY CANNOT BE COMMITTED IF YOU ARE **NOT** UNDER OATH / A FORM OF OATH

IN THE COURSE OF LEGAL PROCEEDING

- THE CRIME IS ONLY COMMITTED IF THE FALSE DECLARATION IS MADE IN THE COURSE OF A LEGAL PROCEEDING
- EXTRAJUDICIAL, FALSE SWORN STATEMENTS ARE ALSO PUNISHABLE BUT **NOT AS COMMON LAW PERJURY**

EXTRAJUDICIAL STATEMENT:

A STATEMENT MADE OUTSIDE THE COURT CONCERNING A MATTER WHICH HAS NOTHING TO DO WITH THE DISPUTE DECIDED IN COURT

- PERJURY CAN BE COMMITTED BY MAKING A DECLARATION OUTSIDE THE COURT OR BEFORE THE CASE HAS BEGUN IF:
 - SUCH DECLARATION BE PERMISSIBLE AS EVIDENCE AT THE SUBSEQUENT TRIAL
 - THE MAKER OF THE DECLARATION FORESEES THE POSSIBILITY THAT IT MAY BE USED IN A SUBSEQUENT TRIAL

PERJURY (CL) UNLAWFULNESS

- IF THE WITNESS MAKES A FALSE STATEMENT AND SHORTLY AFTERWARDS ACKNOWLEDGES THAT THE STATEMENT WAS FALSE IT IS NOT A **DEFENCE** AGAINST PERJURY

PERJURY (CL) INTENT

- THE PERSON MUST KNOW OR AT LEAST FORESEE THE POSSIBILITY THAT HIS DECLARATION IS FALSE
- MERE NEGLIGENCE OR CARELESSNESS IS **NOT SUFFICIENT**

STATUTORY PERJURY - INTRO

- OFTEN DIFFICULT TO PROVE THAT A PERSON COMMITTED COMMON LAW PERJURY
- THE MERE FACT THAT SOMEBODY MADE TWO CONFLICTING STATEMENTS UNDER TWO OATHS DID NOT NECESSARILY MEAN THAT HE HAD COMMITTED PERJURY
- THE PERSON COULD ONLY HAVE BEEN IF THE STATE PROVED THAT ONE OF THE STATEMENTS WAS FALSE **AND** THAT HE KNEW THAT IT WAS FALSE (INTENDED TO LIE)

TO OVERCOME CERTAIN DIFFICULTIES REGARDING COMMON LAW PERJURY A NEW STATUTORY OFFENCE WAS CREATED **STATUTORY PERJURY**

STATUTORY PERJURY – ACT

■ CRIMINAL PROCEDURE ACT (SECTION 319 (3))

IF A PERSON HAS MADE ANY STATEMENT ON OATH WHETHER ORALLY OR IN WRITING, AND HE THEREAFTER ON ANOTHER OATH MAKES ANOTHER STATEMENT AS AFORESAID, WHICH IS IN CONFLICT WITH SUCH FIRST-MENTIONED STATEMENT, HE SHALL BE GUILTY OF AN OFFENCE AND MAY, ON A CHARGE ALLEGING THAT HE MADE TWO CONFLICTING STATEMENTS, AND UPON PROOF OF THOSE TWO STATEMENTS AND WITHOUT PROOF AS TO WHICH OF THE SAID STATEMENT WAS FALSE, BE CONVICTED OF SUCH OFFENCE AND PUNISHED WITH THE PENALTIES PRESCRIBED BY LAW FOR THE CRIME OF PERJURY, UNLESS IT IS PROVED THAT WHEN HE MADE EACH STATEMENT HE BELIEVED IT TO BE TRUE

STATUTORY PERJURY – WHAT THE STATE HAS TO PROVE

- THE STATE ONLY NEEDS TO PROVE:
 - THE PERSON ON TWO **DIFFERENT OCCASIONS** MADE **TWO STATEMENTS** UNDER OATH (WRITTEN / ORAL)
 - THE TWO STATEMENTS **CONFLICT** WITH EACH OTHER

DIFFERENCE BETWEEN COMMON LAW PERJURY AND STATUTORY PERJURY

COMMON LAW PERJURY	STATUTORY PERJURY
ONLY ONE STATEMENT IS USED TO DECIDE IF THE PERSON COMMITTED PERJURY	TWO STATEMENTS ARE USED TO DECIDE IF THE PERSON COMMITTED PERJURY
CAN ONLY BE COMMITTED IN THE COURSE OF A LEGAL PROCEEDING	NEITHER OF THE STATEMENTS NEED TO BE MADE IN THE COURSE OF LEGAL PROCEEDINGS (ONE OF THEM USUALLY IS)

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

DEFINITION

THE CRIME OF DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE CONSISTS IN UNLAWFULLY AND INTENTIONALLY ENGAGING IN CONDUCT WHICH DEFEATS OR OBSTRUCTS THE COURSE OR ADMINISTRATION OF JUSTICE

THE ELEMENTS OF THE CRIME

- ▣ ANY ACT WHICH
- ▣ DEFEATS OR OBSTRUCTS THE COURSE OF JUSTICE
- ▣ IN AN UNLAWFUL AND
- ▣ INTENTIONAL MANNER

DIFFERENCE BETWEEN DEFEATING AND OBSTRUCTING

DEFEATING	OBSTRUCTING
A PERSON CAN ONLY BE FOUND GUILTY IF IT IS PROVED THAT JUSTICE HAS IN FACT BEEN DEFEATED	NOT NECESSARY THAT THE ULTIMATE VERDICT SHOULD BE ONE OF DEFEATING ONLY OF OBSTRUCTING OR ATTEMPTING TO OBSTRUCT
EXAMPLE: AN INNOCENT PERSON HAS BEEN CONVICTED / A GUILTY PERSON HAS BEEN DISCHARGED	EXAMPLE: WHERE THE POLICE / PROSECUTION AUTHORITIES ARE MADE TO WASTE TIME AND ENERGY INVESTIGATING THE WRONG CHARGE / WRONG PERSON
DIFFICULT TO PROVE	EASIER TO PROVE

WAYS IN WHICH THE CRIME CAN BE COMMITTED

- UNLAWFULLY INDUCING (OR ATTEMPTING) A WITNESS TO GIVE FALSE EVIDENCE IN COURT
- REFUSE TO GIVE EVIDENCE IN COURT
- GIVE FALSE INFORMATION TO THE POLICE
- SOLICITING A COMPLAINANT BY UNLAWFUL MEANS TO WITHDRAW A CHARGE
- SOLICITING A PROSECUTOR BY UNLAWFUL MEANS NOT TO PROSECUTE
- IMPROPERLY INFLUENCING A PARTY TO A CIVIL CASE
- WHEN A PROSPECTIVE WITNESS DEMANDS MONEY TO GIVE A TRUE OR FALSE STATEMENT

WAYS IN WHICH THE CRIME CAN BE COMMITTED

- TAMPERING WITH DOCUMENTS OR EXHIBITS IN A CASE IN ORDER TO PREVENT TRUE EVIDENCE BEING PLACED BEFORE THE COURT
- MISLEAD THE POLICE IN ORDER TO PREVENT DETECTION OF A CRIME THAT MIGHT OTHERWISE BE REVEALED TO THE POLICE
- FABRICATION OF FALSE EVIDENCE

NO PENDING CASE NECESSARY

- IT IS NOT A REQUIREMENT FOR THE CRIME THAT THE CONDUCT SHOULD HAVE BEEN COMMITTED IN RELATION TO A SPECIFIC PENDING CASE
- IT IS NOT NECESSARY THAT A COURT CASE BE ENVISAGED BY THE POLICE OR A PRIVATE LITIGANT AT THE TIME OF THE CONDUCT

IT IS SUFFICIENT THAT THE PERSON SUBJECTIVELY FORESEES THE POSSIBILITY THAT HIS CONDUCT MAY, IN THE ORDINARY CASE OF EVENTS LEAD TO THE CASE BEING PROSECUTED OR AT LEAST BEING INVESTIGATED BY THE POLICE

- THERE **MUST** BE A POSSIBILITY OF A REAL COURT CASE

THE COURSE OR ADMINISTRATION OF JUSTICE

■ REQUIREMENT:

- A PROCESS WHICH IS DESTINED TO END IN A COURT CASE BETWEEN PARTIES OR BETWEEN THE STATE AND ITS SUBJECTS

BAZZARD 1992 (1) SACR 303 (NC)

- X PHONED THE POLICE AND TOLD THEM THAT HE HAD KIDNAPPED A GIRL WHOM HE WAS GOING TO KILL UNLESS A RANSAM WAS PAID TO HIM
- THE POLICE LAUNCHED A SEARCH AND TRACED X
- X ADMITS TO THEM THAT HE HAD NOT IN FACT KIDNAPPED ANYONE

IS THIS OBSTRUCTION OF JUSTICE?

- HE HAD NOT FALSELY ACCUSED ANYBODY OF HAVING COMMITTED A CRIME
- HE HAD NOT PUT IN MOTION ANY LEGAL PROCESS
- HE TRIED ONLY TO PLAY THE FOOL WITH THE POLICE BY REPORTING TO THEM A NON-EXISTING / FICTIOUS CRIME

COURT HELD THAT HE HAD NOT COMMITTED A CRIME

ACTIVITY

X WAS INVOLVED IN A CRASH WITH HIS CAR CAUSED BY HIS OWN NEGLIGENCE – HE COLLIDED WITH A STATIONARY VEHICLE (NO PASSENGERS). IN AN ATTEMPT TO ESCAPE THE CONSEQUENCES OF HIS DEED HE GOES TO THE POLICE AND FALSELY CLAIMS THAT HIS CAR HAS BEEN STOLEN

DOES X'S BEHAVIOUR RESULT IN THE DEFEATING OR OBSTRUCTING OF THE COURSE OF JUDGMENT?

INTENTION

- THE PERSON MUST SUBJECTIVELY HAVE **FORESEEN THE POSSIBILITY THAT HIS CONDUCT MIGHT DEFEAT OR OBSTRUCT THE ADMINISTRATION OF JUSTICE.**
- HE MUST HAVE BEEN AWARE OF THE FACT THAT IT MIGHT INTERFERE WITH JUDICIAL PROCEEDINGS WHICH WERE TO TAKE PLACE IN THE FUTURE, OR WOULD AT LEAST HAMPER OR FORESTALL THE INVESTIGATION OF THE OFFENCE
- INTERFERING WITH WITNESS – MUST BE AWARE THAT THE PERSON HE IS APPROACHING AND INFLUENCING IS IN FACT A WITNESS

ATTEMPT

- A PERSON CAN BE CHARGED WITH AN ATTEMPT TO COMMIT THIS CRIME
- THE CHARGE OF ATTEMPTING TO COMMIT THIS CRIME IS MORE COMMON THAN CHARGES OF HAVING COMMITTED THE COMPLETED CRIME

CONTEMPT OF COURT

DEFINITION:

CONTEMPT OF COURT CONSISTS IN THE UNLAWFUL AND INTENTIONAL:

- 1) VIOLATION OF THE DIGNITY, REPUTE OR AUTHORITY OF A JUDICIAL BODY OR JUDICIAL OFFICER IN HIS JUDICIAL CAPACITY, OR**
- 2) THE PUBLICATION OF INFORMATION OR COMMENT CONCERNING A PENDING JUDICIAL PROCEEDING, WHICH HAS THE TENDENCY TO INFLUENCE THE OUTCOME OR THE PROCEEDING OR TO INTERFERE WITH THE ADMINISTRATION OF JUSTICE IN THAT PROCEEDING**

ELEMENTS OF THE CRIME

- ❑ THE VIOLATION OF THE **DIGNITY/REPUTE/AUTHORITY** OF THE **JUDICIAL BODY** OR THE **JUDICIAL OFFICER** **OR**
- ❑ THE **PUBLICATION OF INFORMATION OR COMMENTARY CONCERNING A PENDING JUDICIAL PROCEEDING**
- ❑ IN AN **UNLAWFUL AND**
- ❑ **INTENTIONAL MANNER**

UNUSUAL CHARACTERISTICS

- THE ACTS BY WHICH THE CRIME IS COMMITTED CAN BE DIVIDED INTO VARIOUS GROUPS – SOME HAVE DISTINCTIVE REQUIREMENTS
 - EXAMPLE: THE REQUIREMENT THAT A CASE MUST BE ***SUB IUDICE*** (THE LEGAL PROCESS HAS NOT YET BEEN COMPLETED) IN THE CASE OF THE **PUBLICATION OF INFORMATION** WHICH IS POTENTIALLY PREJUDICIAL TO THE JUST TRIAL OF A CASE
- SOME CASES OF CONTEMPT OF COURT ARE TREATED AS CIVIL CASES IN CIVIL COURTS
- SOME CASES ARE HEARD ACCORDING TO AN UNUSUAL DRASTIC PROCEDURE (CONTEMPT IN *FACIE CURIAE*)

REASONS FOR THE EXISTENCE OF THE CRIME

1) VIOLATION – JUDICIAL BODY / OFFICER

NOT TO PROTECT THE DIGNITY OF AN INDIVIDUAL JUDICIAL OFFICER

PROTECT THE ADMINISTRATION OF JUSTICE

THE VIOLATION OF THE JUDICIAL OFFICER'S DIGNITY UNDERMINES THE RESPECT OF THE PUBLIC FOR THE COURT AND THE ADMINISTRATION OF JUSTICE

2) PUBLICATION OF INFORMATION – PENDING CASE

THE COURT SHOULD COME TO THE DECISION ONLY ON THE GROUNDS OF PERMISSIBLE EVIDENCE BEFORE THE COURT

THE COURT SHOULD NOT BE INFLUENCED BY THE DISCLOSURE OF FACTS OR COMMENTS FROM OUTSIDE (SUCH AS THOSE IN THE PRESS)

ACTS

DISTINGUISH BETWEEN CONTEMPT IN FACIE CURIAE AND CONTEMPT EX FACIE CURIAE

ACTIONS OR
REMARKS OUT OF
THE COURT

IN THE FACE OF THE COURT –
PRESENCE OF JUDICIAL
OFFICER DURING A SESSION
OF THE COURT

EXAMPLE OF CRIMES EX FACIE CURIAE:

- ❑ SCANDALISING THE COURT BY THE PUBLICATION OF ALLEGATIONS WHICH, ARE LIKELY TO BRING JUDGES/MAGISTRATES/ THE ADMINISTRATION OF JUSTICE THROUGH THE COURTS GENERALLY INTO CONTEMPT OR UNJUSTLY TO CAST SUSPICION THE ADMINISTRATION OF JUSTICE
- ❑ FAILURE TO COMPLY WITH COURT ORDER
- ❑ WHERE A PERSON FALSELY PRETENDS TO BE AN OFFICER OF THE COURT, SUCH AS AN ADVOCATE, ATTORNEY OR DEPUTY SHERIFF

ACTS

EXAMPLE OF CRIMES *EX FACIE CURIAE*:

- WHERE SOMEONE INTENTIONALLY OBSTRUCTS AN OFFICER OF THE COURT, SUCH AS A MESSENGER OF THE COURT, IN THE EXECUTION OF HIS DUTIES
- WHERE SOMEONE BRIBES OR ATTEMPTS TO BRIBE A JUDICIAL OFFICER, LEGAL REPRESENTATIVE OR WITNESS
- WHERE A WITNESS WHO HAS BEEN SUMMONED DELIBERATELY FAILS TO APPEAR AT THE TRIAL

UNLAWFULNESS

WHEN CONDUCT WILL NOT AMOUNT TO CONTEMPT OF COURT:

- STATEMENTS BY MEMBERS OF CERTAIN BODIES SUCH AS THE LEGISLATIVE ASSEMBLY WHEN PRESENT IN THE ASSEMBLY – ARE **PRIVILEGED AND CANNOT AMOUNT TO CONTEMPT**
- FAIR COMMENT ON THE OUTCOME OF A CASE OR ON THE ADMINISTRATION OF JUSTICE IN GENERAL DOES NOT CONSTITUTE CONTEMPT OF COURT

INTENT

- INTENTION IS AN ESSENTIAL ELEMENT OF THE CRIME **EXCEPT** IN CASES WHERE THE EDITOR OF THE NEWSPAPER IS CHARGED WITH THIS CRIME ON THE GROUND OF THE PUBLICATION IN HIS NEWSPAPER OF INFORMATION CONCERNING A PENDING CASE, WHICH TENDS TO INFLUENCE THE OUTCOME OF THE CASE
- THE FORM OF NEGLIGENCE WILL BE SUFFICIENT TO ESTABLISH CONTEMPT OF COURT

ADMINISTRATION OF JUSTICE BY THE COURTS

- **THE LANGUAGE COMPLAINED OF MUST BE DIRECTED AT A JUDICIAL OFFICER IN HIS JUDICIAL CAPACITY, OR AT THE ADMINISTRATION OF JUSTICE BY THE COURTS**
- **THE FOLLOWING DOES NOT AMOUNT TO CONTEMPT OF COURT:**
 - **CRITICISM OF THE PERFORMANCE OF A MERE ADMINISTRATIVE FUNCTION LIKE THE ACTIONS OF THE POLICE**
 - **CRITICISM OF ALLEGED UNREASONABLENESS IN ACTS OF PARLIAMENT**

FORMS OF THE CRIME

CONTEMPTS IN *FACIE CURIAE* (OPEN COURT):

- ❑ SHOUTING AT WITNESSES DURING CROSS-EXAMINATION
- ❑ A LEGAL REPRESENTATIVE'S CONDUCTING OF A CASE UNDER THE INFLUENCE OF ALCOHOL
- ❑ CONTINUAL CHANGING OF ONE'S SEAT AND TALKING LOUDLY IN COURT
- ❑ GRABBING AND TEARING A COURT DOCUMENT TO PIECES
- ❑ **FALLING ASLEEP IN COURT DOES NOT AMOUNT TO CONTEMPT**

DRASTIC PROCEDURE

IN THE CASE OF CONTEMPT IN *FACIE CURIAE* THE COURT HAS THE POWER TO CONVICT THE WRONGDOER SUMMARILY AND SENTENCE HIM – THE DRASTIC PROCEDURE MUST BE APPLIED WITH GREAT CAUTION

COMMENTARY ON PENDING CASES

PUBLISHING INFORMATION OR COMMENTARY CALCULATED TO INFLUENCE THE OUTCOME OF A CASE THAT IS STILL UNDER CONSIDERATION OF THE COURT

- THE PRESS IS FULLY ENTITLED TO PUBLISH THE EVIDENCE DELIVERED IN THE COURSE OF A TRIAL
 - EXCEPTION: THE PRESS **MAY NOT** WHILE THE CASE IS STILL IN PROGRESS PUBLISH INFORMATION RELATING TO THE MERITS OF THE CASE WHICH DID NOT FORM PART OF THE EVIDENCE IN COURT
 - A JOURNALIST MAY NOT PUBLISH HIS OWN OPINION OF THE VERDICT (GUILTY / INNOCENT)
- THE JUDGE, ASSESORS / MAGISTRATE SHOULD NOT BE INFLUENCED BY INFORMATION OR COMMENTARY EMANATING FROM SOURCES OUTSIDE THE COURT

COMMENTARY ON PENDING CASES

WHEN IS A CASE *SUB IUDICE*?

FROM THE MOMENT THAT THE CASE COMMENCES
UNTIL IT REACHES ITS FINAL CONCLUSION
(INCLUDES LAST POSSIBLE APPEAL)

- TEST TO ASCERTAIN WHETHER THE PUBLICATION IS CALCULATED TO INFLUENCE THE OUTCOME OF THE CASE:
 - WIDE TEST
 - DOES NOT MATTER WHETHER THE PUBLICATION REACHED THE EARS OF THE COURT
 - DOES NOT MATTER WHETHER IT INFLUENCED THE COURT

LIABILITY OF NEWSPAPER EDITOR

- THE EDITOR WOULD BE **NEGLIGENT** IF THE REASONABLE PERSON IN HIS POSITION COULD **FORESEE** THAT THE INFORMATION WHICH HE PUBLISHES MIGHT DEAL WITH A PENDING CASE OR THAT IT MIGHT SCANDALISE THE COURT

SCANDALISING THE COURT

- CAN BE COMMITTED WITHOUT THERE BEING ANY PENDING CASE
- COMMITTED BY PUBLICATION – WRITING OR ORALLY OF ALLEGATIONS WHICH **OBJECTIVELY** SPEAKING ARE LIKELY TO BRING JUDGES, MAGISTRATES OR THE ADMINISTRATION OF JUSTICE THROUGH THE COURTS GENERALLY INTO CONTEMPT OR TO CAUSE SUSPICION ON THE ADMINISTRATION OF JUSTICE
- WHETHER THE ADMINISTRATION OF JUSTICE WAS IN ACTUAL FACT BROUGHT INTO DISREPUTE IS **IRRELEVANT**
- **EXAMPLES:**
 - THE IMPUTING OF CORRUPT OR DISHONEST MOTIVES OR CONDUCT TO A JUDGE IN THE EXECUTION OF HIS JUDICIAL DUTIES
 - THE IMPROPER AROUSING OF SUSPICION RE THE INTEGRITY OF SUCH ADMINISTRATION OF JUSTICE
 - SEE CASE: S V MOILA IN STUDY GUIDE

FAILURE TO COMPLY WITH A COURT ORDER

- A PARTY IN A CIVIL CASE AGAINST WHOM THE COURT HAS ISSUED AN ORDER AND WHO DELIBERATELY FAILS TO OBEY THE COURT ORDER = CONTEMPT OF COURT
- THE SUCESSFUL OPPONENT HAS TO APPLY TO THE COURT TO SENTENCE THE PARTY WHO FAILS TO COMPLY

