

INTRODUCTION TO LAW NOTES

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Unit 1: What is the Law?

Characteristics:

1. Governs human behaviour
2. Obeyed by all society
3. Enforced by state organs
4. Ignoring/Disobeying the law will result in punishment: [civil=compensation; criminal=imprisonment]

Other Normative Systems

1. Religion
2. Individual Morality
3. Community Mores

Formal Justice

1. Rules that govern actions in court
2. Deals with *procedures* we follow
3. Requirements for formal justice:
 - Explicit Rules
 - Applied Generally
 - Applied Impartially

Substantive Justice:

1. Deals with the *content* of the law
 2. Material law
 3. Substantive justice can be applied fairly in formal justice but doesn't make the law just.
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Unit 2: Laws and Rights

1. **Real right:** right of ownership in material objects

E.g.: House, car

2. **Personal right:** right to performance:

E.g.: right to delivery or right to receive payment (claim) in a contract of sale.

3. **Intellectual Property Right:** right to creations of your mind

E.g.: literature

4. **Personality Right:** right to part of your personality

E.g.: right to physical integrity, right to reputation, right to dignity

5. **Connection between law and rights:**

- Law determines what contents of right are and what the powers of the holder of the rights are.

- Law prescribes what the limits to the right are

Unit 3: The Story of our Law

Layer 1: Roman law becomes Roman-Dutch law

- Roman Empire
- Germanic tribes invade
- Roman Catholic Church helps keep Roman law alive
- Justinian codifies Roman law
- Renaissance caused a revival of Roman law
- Spread across Europe (Netherlands)

Layer 2: Roman-Dutch law comes to the Cape:

- Roman law received in the Netherlands
- Jan van Riebeeck comes to the Cape with Dutch East India Company
- Artyckelbrief and Placataens
- Dutch jurists: Voet & De Groot

Layer 3: English law comes to the Cape

- Occupy Cape
 - Sends advocates and judges to England for training
 - English becomes official language
 - English spreads across South Africa
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Unit 4: Families of Law

Romano-Germanic

Basis: Roman law [Civil Law System]

E.g.: France, Germany, Netherlands

Anglo-American

Basis: Case Law [Common law system]

E.g.: England, America, Australia, New Zealand

Socialist:

Basis: Marxism, social economic policies

E.g.: Communist China and the former USSR

Hybrid/Mixed

Basis: Various legal systems [Roman-Dutch; English; Indigenous law]

E.g.: South Africa, Scotland, Sri Lanka

Unit 5: Divisions of Law

PUBLIC LAW: Concerned with the relationship between the state and individuals

E.g.:

1. **Public International law:** concerned with relations between states
2. **Constitutional law:** concerned with the institution of the state (how the state is formed) and its organisation. It also governs the powers of the organs of state (parliament)
3. **Criminal law:** states which acts are crimes and what the penalties are, that are imposed by the state for the commission of these crimes.

PRIVATE LAW: Concerned with the relationship between individuals

E.g.:

1. **Law of Persons:** concerned with persons as subjects of the law: a legal subjects beginning, status and end.
2. **Law of Personality:** concerned with personality rights, such as the right to physical integrity, reputation and dignity.
3. **Law of Patrimony:** the relationships in terms of this law concern persons and their means (whatever a person has that can be given a value in money)
 - a. **Law of things (property):** things are classified as movable (car) or immovable (land). Ownership is considered to be the most comprehensive right in property and is the most complete real right
 - b. **Law of succession:** concerned with who inherits from a person who dies, via testate (valid will) or intestate (no will) succession.
 - c. **Law of obligations:** an obligation is a legal relationship between 2 or more parties in terms of which one party has a right against another party for performance and the other party has a corresponding duty to perform.
 - Agreement (ex contractu)
 - Delict (ex delicto)
 - Unjustified enrichment

Other areas of law:

1. **Mercantile law (Commercial law):** contains both, aspects of public and private law.
 2. **Labour law:** concerned with the relationships between employer and employee and includes all labour legislation.
 3. **Conflict of laws:** concerned mainly with the question of which private law system applies if more than one private- law system is involved.
 4. **Legal philosophy (jurisprudence):** the field of law, which looks at law, from a philosophical perspective.
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Unit 6: Sources of law

Authoritative:

1. **Legislation:** constitution; law written down; law contained in acts
 2. **Case law:** decisions made in court; principle of Judicial Precedence: decisions made by higher courts are binding on lower courts
 3. **Custom:** unwritten; passed from generation to generation; recognized by the constitution
 4. **African indigenous law:** unwritten; passed from generation to generation; recognized by the constitution
 5. **Common law:** consists of Roman-Dutch and English law; largely unwritten
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Unit 7: The Constitution and You

What is the constitution:

- Document setting out structure and function of government

- Such as right to equality, human dignity, life, freedom of expression, freedom and security
 - Second generation rights: socioeconomic issues (**red rights**)
 - Such as right to education, access to health care services and to sufficient food and water
 - Third generation rights: rights relating to the environment (**green rights**)
 - Right to unpolluted air
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Unit 9: Limitation of rights

Why are rights limited?

- Due to their formulation/ description
- Due to a State of Emergency

Rights that cannot be limited:

- Life
- Human dignity
- Equality
- Safety and security
- Slavery
- Children
- Arrest, detained, accused person

Application of Section 36 of the Constitution “*Limitation Clause*”

1. Law that limits must be of general application
2. Must be reasonable and justifiable

Must check following factors:

- Nature of right
 - Nature of limitation
 - Connection between right and limitation
 - Purpose of limitation
 - Importance of limitation
 - How much of a limitation will it be
 - Could purpose have been achieved in a less restrictive manner
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Unit 10,11,12: Legal Disputes and Legal Profession

	Civil Case	Criminal Case
Who are the parties	Plaintiff vs. Defendant Applicant vs. Respondent	State vs. Accused
Onus of proof	Balance of probabilities	Beyond a reasonable doubt
Outcome	Claim for financial damages (restitution)	If accused convicted, they must be punished (fine or imprisonment)
Who are the role player's:		

Legal representative:	Attorney or Advocate (high court)	State Prosecutor State Advocate
Presiding Officer:	Magistrate Judge (high court)	Magistrate Judge

- Advocates appear in the higher courts because, in order for a case in the Magistrates Court to progress to High Court the feasibility of the court case must increase in price to R. 100 000 and upwards

Court Structure:

1. Constitutional Court (CC)
2. Supreme Court of Appeal (SCA) or Appellant Division (pre 1994) } **STARE**
3. High Court (HC) } **DECISIS**
4. Magistrate's Court (MC)

□ South African court function according to *stare decisis* (Judicial Precedence), where decisions made by higher courts (CC) are legally binding on all lower courts.

□ However decisions made in higher courts in certain cases can be challenged by lower courts due to the time lapse between cases. Such as a decision of a case made by the SCA in 1945 may be challenged by a decision of a similar case made by Magistrates Court in 2005 as it is more recent and its decision would have the interests of 1996 constitution entrenched in it.
