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.

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

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
Sets out standards used to protect individuals from abuse by the state

Where does it come from:
- 1910: when Union of South Africa was formed
- 1961: South Africa becomes a republic
- 1983: Tricameral parliament
- 1996: First democratic constitution [Final constitution]

What does it contain:
- Governing of country at national, provincial and local level
- Administration of justice
- Functioning of police
- Elections
- Way in which finances are managed

Separation of powers
1. Judiciary: decides legal disputes
2. Executive: Applies and enforces the law
3. Legislative: Makes the laws
- Judiciary not afraid to enforce law, even against government officials
- Allows for a democratic government
- Checks and Balances system
- All governmental power not situated in one arm but rather shared
- Less Corruption

Unit 8: Fundamental Rights

Definition:
- Rights you are born with
- “Natural” right
- Cannot be taken away but can be limited

Application:
- **Horizontal Application:**
  - Individual/Group/Private Institution
  - Individual/Group/Private Institution

- **Vertical Application:**
  - STATE
  - Individual/Group of people/Private Institution

Categories:
- First generation rights: civil, procedural and political rights (blue rights)
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

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

Unit 10,11,12: Legal Disputes and Legal Profession

<table>
<thead>
<tr>
<th>Who are the parties</th>
<th>Civil Case</th>
<th>Criminal Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plaintiff vs. Defendant</td>
<td>Applicant vs. Respondent</td>
<td>State vs. Accused</td>
</tr>
<tr>
<td>Onus of proof</td>
<td>Balance of probabilities</td>
<td>Beyond a reasonable doubt</td>
</tr>
<tr>
<td>Outcome</td>
<td>Claim for financial damages (restitution)</td>
<td>If accused convicted, they must be punished (fine or imprisonment)</td>
</tr>
</tbody>
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Who are the role player’s:
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 1944) *Stare Decisis*
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.