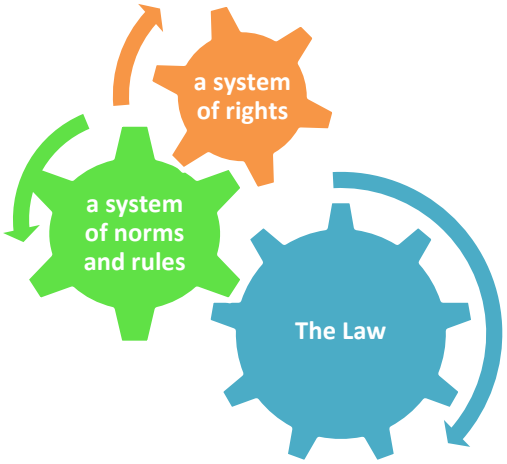


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Study Unit 1: What is 'law'

The relevance of law in daily life

Explain what the 'law' is:

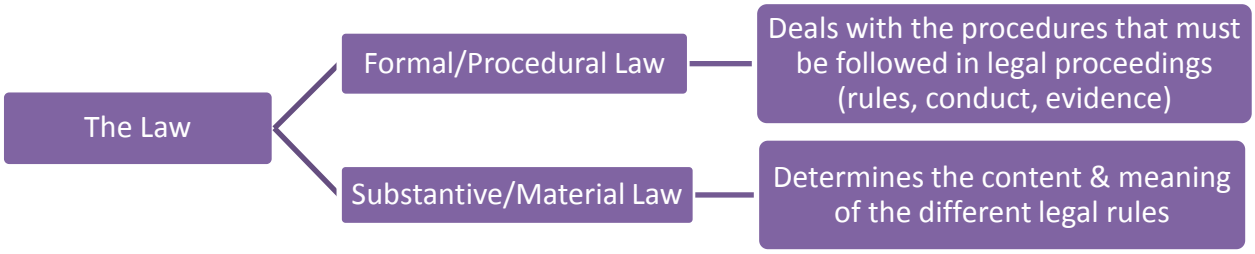
- The law governs behaviour/conduct,
- Should be obeyed by all of society and
- Is enforced by state organs
- By ignoring or disobeying the law we may be prosecuted and punished or ordered to pay compensation for damage or injury

Two methods used to divide SA law into two main divisions:

1. SA law can be divided into the two main divisions of public law and private law



2. SA law can be divided into two main divisions of formal (procedural) and substantive (material) law.



Normative systems that rule/govern human behaviour:

	To whom do the rules apply?	Sanction for non-compliance	Enforcer of sanction
The Law	Norms which the whole community regards as binding and must be obeyed	*Prosecution or punishment *Compensation to an injured party	State organ
Religion	A set of rules in accordance with the people who practice that religion	Every religion has its own sanction or punishment	Each separate religion
Individual morality	Norms/standards that every individual sets for himself	The sanction is personal and self-imposed	The individual
Community mores (collective morals)	Norms of a whole community or group within that community	Varying degrees of disapproval/rejection / discrimination by other members of the community	The Community

Justice: Equality before the law.
SA Law makes two distinctions:

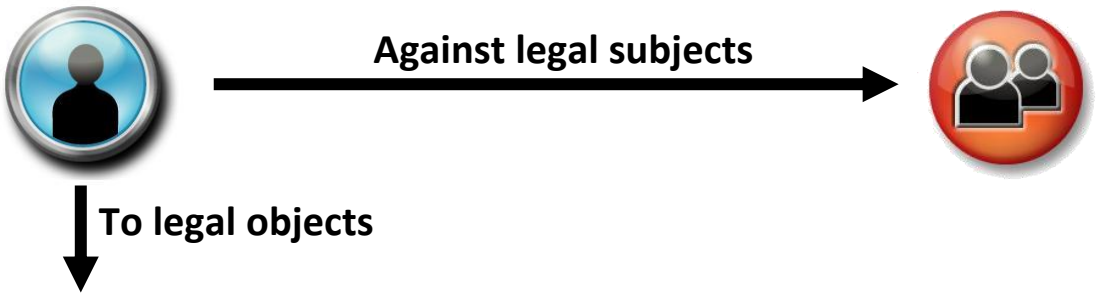
Formal Justice	Substantive Justice
Deals with the **procedures** that must be followed in legal proceedings (rules, conduct, evidence)	Concerns the **content** of the rule and not the way in which it is applied.
Basic requirements that must be met for formal justice to be achieved: • There must be **explicit rules** laid down to show how people must be treated in **specific cases** • The rules must apply **generally** (all people in the group under the same circumstances) • The rules must be applied **impartially** by a legal institution (judge may not be biased)	Here the content of the rule is looked at to determine whether it is just and fair. Examples: The apartheid rules were specific, applied to all and were applied impartially – however, the content of the rules were unjust and therefore justice was not served

Study Unit 2: Law and Rights **Understanding the difference between the concepts 'law' and 'rights'**

A legal subject is anyone who is subject to the norms of the law and who also may be the bearer of rights and duties.
A legal object may be anything that is of economic value to people (cost, usefulness, scarcity).

Every right concerns a relationship made up of two parts:

1. A relationship between a legal subject and the object of the right (person ↔ object);
2. A relationship between the legal subject who is the holder of the right, and other legal subjects (person ↔ person)



4 types of rights	
Real Rights	rights of **ownership**: owner's power to freely use, alienate and destroy his property rights of **pledge**: when we pledge something (give a movable thing as security for a dept) rights of **servitude**: example the right of way one person has been given over another's land
Personality Rights	The rights each one has to parts of his/her **personality**. The right to physical integrity, the right to your good name/reputation, the right to honour
Intellectual Property Rights	Relates to the **creations** of the human mind. A work of art, an invention, a trade mark, copyright.
Personal Rights	A personal right is a right to **performance**. Also called a claim. Delivery, payment, service. Action of doing or not doing something

The connection:

The content of a right is limited.

The rules of law decide what the powers of the holder of a right are and what the limits to the content of the right are

Study Unit 3: The History of our law Basic knowledge of the history of SA law

Classical Roman law: When the Roman Empire (culture and civilisation) was reaching its highest level of development

Canon Law: Roman law formed the foundation of church law (Roman Catholic Church).

The *Corpus Iuris Civilis*: The Emperor of the Eastern Roman Empire (Justinian) ordered the codification of early writings of the classical jurists and all the laws which had been passed during the time of the emperors (collected and written down as a code).



Study Unit 4: Families of law The different legal families of the world

LEGAL FAMILIES	MOST IMPORTANT FEATURES
Romano-Germanic (civil law)	Strong Roman-law basis as it played an important role in the development of these systems. *Examples*: French, German, Dutch legal systems
Anglo-American (common law)	Case law played an important role in the development of these systems and case law still plays an important part in their application. *Examples*: England, America, Australia, New Zealand
Socialist	Development influenced by historical and political elements (Marxism). The law is to there to serve social & economic policies in these systems. *Examples*: former USSR, Communist China
Religious	Has their origin in religious sources. *Examples*: Islamic, Hindu, Jewish legal systems
Indigenous	Mainly made up of unwritten customary laws with a focus on the community. *Examples*: African Indigenous Law
Mixed / Hybrid	Influenced and made up of various components or legal systems. *Examples*: South Africa, Scotland, Sri Lanka **SA law is classified as a hybrid legal system as it comprises of various legal systems:** • Roman-Dutch law (civil-law legal family) • English law (common-law family) • African Indigenous law (indigenous family)

LAW

PUBLIC LAW

(1) International law
(2) Constitutional law
(3) Administrative law
(4) Criminal law
(5) Law of procedure
    a. Civil procedure
    b. Criminal procedure
    c. Law of evidence

PRIVATE LAW

(1) Law of persons
(2) Family law
(3) Law of personality
(4) Law of patrimony
    a. Law of things
    b. Law of succession
    c. Law of obligations
        i. Law of contract
        ii. Law of delict
        iii. Enrichment

OTHER AREAS OF LAW

(1) Mercantile law
(2) Labour law
(3) Conflict of laws
(4) Legal Philosophy

DIVISIONS

PUBLIC LAW

→ Regulates relationships that are concerned with public interest (community)
→ State versus citizen

International law

- Concerned with relations between states (the law of war & peace, the law of international organisations such as the UN and the law of international treaties

Constitutional law

- Concerned with the institution of the state (how it is formed) and its organisation.
- Governs the powers of the organs of state (parliment, the courts, cabinet, etc)

Administrative law

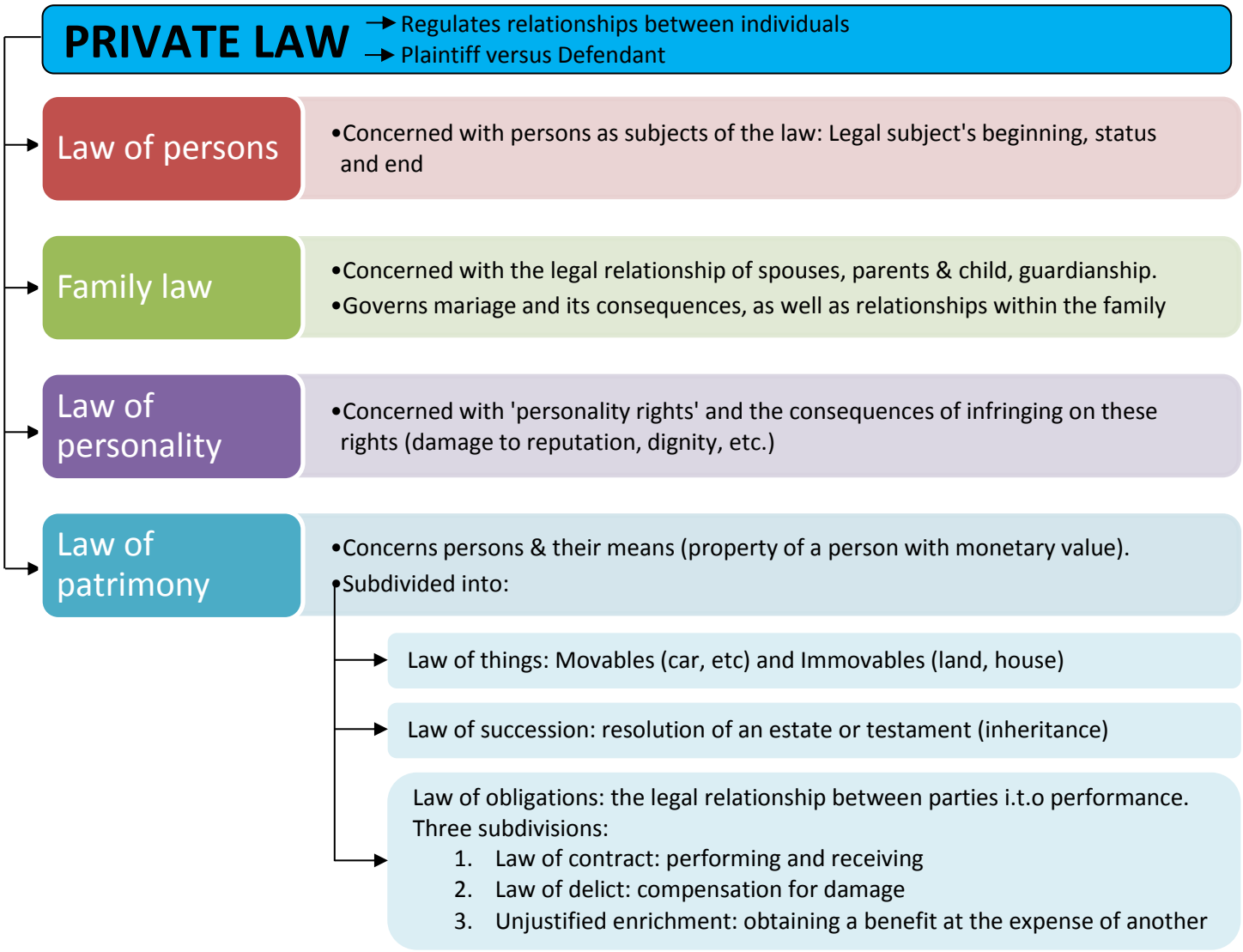
- Controls the administration of the state in general and determines the way in which state bodies should excersise their powers (non abuse of power)

Criminal law

- States which acts are criminal in nature and the penalties imposed by the state for the commission of these crimes

Law of procedure

- Subdivided into three dvisions:
  - Civil procedure: Determining the course of action for private-law disputes
  - Criminal procedure: Determining prosecution and trial
  - Law of evidence: Determining how evidence must be presented before the court



Study Unit 6: Where to find the law

Know what the authoritative sources of law is and demonstrate this understanding in examples

The death penalty in SA: The death penalty is regarded as cruel, inhumane and degrading and is in conflict with the provisions of the Constitution as set out in the Bill of Rights.

Where to find the law? Different sources:

(1) Authoritative sources

a. **Legislation, statutory law, acts of parliament**.
Examples: The Companies Act, Labour Relations Act
ALL law is subject to the Constitution (the supreme law of the land). No other law may conflict with it.
The acts (laws) passed by parliament are contained in the *Government Gazette*

b. **Court decisions** to substantiate the above or substitute lack thereof.
The cases of the higher courts are reported in law reports – best one is the *South African Law Reports.*
The *ratio decidendi* (the reasons for the decision) will bind lower courts dealing with the same disputes.

- A decision of the Supreme Court of Appeal will be binding on all High Courts and lower courts
- Decisions by High Courts will be binding on lower courts
- Decisions of the Constitutional Court bind ALL other courts

When considering and ranking various court decisions we apply the principle of **judicial precedent** based on two requirements:

- An effective system of law reporting (to enable lower courts to establish what higher courts have held)
- A hierarchy of courts where each court is bound to the decisions of the courts above it

c. **Common law** of the country not contained in legislation:
    - Roman-Dutch common law and how it is interpreted in our courts
    - Ancient Roman law, especially the law contained in *Corpus Iuris Civilis*
    - English law where applicable
    - Indigenous law

d. **Custom law** not made up of written rules but developed within the community and carried down from generation to generation. To be recognized as a legal rule it must meet these requirements:
    - The custom must be reasonable
    - The custom must have existed for a long time
    - The custom must be generally recognized and observed by the community
    - The content of the custom must be clearly defined

e. **African Indigenous law** recognized in various statutes and need not meet criteria under d.

(2) Other sources

Different persuasive influences can be utilized:

- Other modern legal system (particularly those related to ours) to look for similar legal principles
- Consulting foreign law when interpreting the provisions of the Bill of Rights
- Views of published legal writers, journals such as the *South African Law Journal*

Study Unit 7: The Constitution **Demonstrate constitutional issues in real life situations**

Some of the responsibilities and powers of the government:

- Expected to protect citizens' rights
- Expected to develop and advance the country politically and economically
- Expected to look after the wellbeing/interests of inhabitants by regulating, for example, matters such as health, environment, education, tourism, housing and population development
- To do these things government require certain powers that are balanced with the rights of the individual

A Constitution: the rules by which a country is governed is stipulated in a constitution, which also **sets out the structure and functions of government** as well as the **standards required to protect the individual** against abusive power by the state. A detailed plan (blueprint) for the running of our country on a sound democratic basis.

South African Constitution history

- 1910 Constitution when the Union of South Africa was formed
- 1961 Constitution when South Africa became a Republic
- 1983 Constitution with the establishment of a tricameral Parliament

} Non democratic (apartheid era)

- 1993 Interim Constitution (came into effect on 27 April 1994) → Opposition, pressure & sanctions
  Not written by a democratic gov
  Existence was limited to 2 years
  Constitutional Assembly tasked to write up the final Constitution
- 1996 The Constitution of the Republic of SA

Our Constitution broadly entails:

- Governing of the country at national, provincial and local level
- Legislative powers and processes of each of the above
- Administration of justice by all the different courts
- Rules relating to regular elections
- Function of the police, the army and other security services
- Manner of which the finances of the country must be managed
- Provisions regarding the powers of national leaders
- Establishment of institutions such as the Human Rights Commission to support our democracy
- Sets out the 9 provinces of the country, the 11 official languages, the national symbols (flag)
- The Bill of Rights (list of all fundamental (basic) rights protected by our Constitution

Why is the Constitution important?

It is the foundation of our democracy. To ensure that our democracy succeeds, a number of special features are built into our Constitution:

Features to take note of:

- **It is the supreme law** of South Africa and ALL are ruled by it
- **All legislation may be challenged** i.t.o. the Cons, in a court, and changed / removed if found to be in conflict with the Cons
- The state has a **separation of powers**:
  - The legislative authority (makes laws)
  - The executive authority (applies & carries out laws)
  - The judicial authority (decides legal disputes)
- The Cons sets out the **structure of the judiciary**
  - Constitutional Court
  - Supreme Court of Appeal
  - High Courts
  - Magistrates' Courts
- The Cons has set up **state institutions** to support our democracy:
  - The Public Protector
  - The Human Rights Commission
  - The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
  - The Commission for Gender Equality
  - The Auditor-General
  - The Electoral Commission
  - The Independent Authority to Regulate Broadcasting

  These institutions are independent and serve to protect the people from power abuse
- **It includes the Bill of Rights** which protect the fundamental rights of each person

Study Unit 8: The Bill of Rights Identify fundamental rights and demonstrate understanding

The Fundamental Rights categories:

1st Generation Rights	2nd Generation Rights	3rd Generation Rights
• 'Blue Rights' • Civil rights • Procedural rights • Political rights • To protect us from abuse of state powers • Ex: right to equality, human dignity, life, freedom of expression, security	• 'Red Rights' • Relates to socio-economic issues • Ex: right to education, access to healthcare, sufficient food and water	• 'Green Rights' • Related to group instead of individual issues • Ex: right to clean or unpolluted air, the right to an environment that is not harmful to health or wellbeing

A fundamental right: Each person is born with human dignity, which automatically grants natural rights (fundamental too each person) that the state cannot take away – ever.

Application of fundamental rights:

Vertical Application

State

↕

Individual/
Group of people/
Private institution

Horizontal Application

Individual/
Group of people/
Private institution ↔ Individual/
Group of people/
Private institution

Basic outline of the Bill of Rights

- Equality: Everyone is equal before the law and has the right to equal protection and benefit of the law and includes the full and equal enjoyment of all rights and freedoms
- Human Dignity: Everyone has inherent dignity and the right to have their dignity respected and protected
- Life: Everyone has the right to life
- Freedom and the security of the person: Everyone has the right to freedom and security of the person as well as the right to bodily psychological integrity
- Slavery, servitude and forced labour: No one may be subjected to slavery, servitude or forced labour
- Privacy: this right includes the right not to have their person/home/property searched, possessions seized or the privacy of their communications infringed
- Freedom of religion, belief and opinion: Everyone has the right to freedom of conscience, religion, thought and opinion
- Freedom of expression: this right includes freedom of the press, freedom to receive or impart info or ideas, artistic creativity, academic freedom & scientific research. This does NOT extend to propaganda of war, incitement of violence, advocacy of hatred

- Assembly, demonstration, picket and petition: to be peaceful and unarmed
- Freedom of association
- Political rights: Every citizen is free to make political choices and has the right to free and fair elections where everyone can vote
- Citizenship: No person may be deprived of citizenship
- Freedom of movement and residence: this includes leaving the country or residing anywhere of choice within SA. Every person has the right to a passport
- Freedom of trade, occupation and profession: Although everyone has a right to this the practice thereof may be regulated by law
- Labour Relations: Everyone has the right to fair labour practices, including joining a union
- Environment: Everyone has a right to an environment that is not harmful to their health/wellbeing and to have the environment protected for the benefit of present and future generations
- Property: No one may be deprived of property except i.t.o. law of general application and no law may prevent arbitrary deprivation of property
- Housing: Everyone has the right to have access to adequate housing and may not be unlawfully evicted or have their homes demolished
- Healthcare, food, water and social security: Everyone has a right to these benefits and no one may be refused emergency medical treatment
- Children: Aimed at the best interests concerning children younger than 18 years
- Education: Everyone has the right to basic education and further education must be made accessible
- Language and Culture: Everyone has the right to use the language and to participate in the cultural life of their choice
- Cultural, religious and linguistic communities
- Access to information: Everyone has the right of access to information held by the state or any information held by anyone required for the exercise of protection of any rights
- Just administrative action: which is lawful, reasonable and fair
- Access to courts
- Arrested, detained and accused persons: Any person arrested for allegedly committing an offense has the right to remain silent, be duly informed of rights and reasons for detention, may not be coerced to confess, to be brought before a court asap, has the right to a legal practitioner, may challenge the lawfulness of proceedings, has a right to decent upkeep while detained, has the right to contact and be visited by person of choice, has the right to a fair trial

Study Unit 9: Limitation of Fundamental rights

The ways in which fundamental rights may be limited in examples

1. The law that limits the right must be of general application (apply to everyone)
2. The limitation must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom (there must be good reason to limit the right within the context of democracy)
3. The following must be taken into account:
    a. Nature of the right
    b. Purpose of the limitation and its importance
    c. Nature of the limitation and the extent thereof
    d. The relation between the limitation and the purpose of the limitation must be justifiable
    e. Is there an alternative, less restrictive way of setting the limitation?

Study Unit 10: The influence of the Constitution on SA law

Demonstrate understanding of the influence of the Constitution, esp the Bill of Rights, on our law with examples

Cases where the Constitution influenced our law:

(1) Pretoria High Court ruled certain sections of the Electoral Act 73 of 1998 unconstitutional. Upon appeal the Constitutional Court declared these sections unconstitutional. Parliament was instructed to change these sections to allow for registered voters to give notice of intention to cast their vote from outside South Africa

(2) In 2005 the Constitutional Court declared the definition of marriage i.t.o. common law and the Marriage Act 24 of 1961 unconstitutional on the grounds of the right to equality and the right to human dignity. It gave Parliament 2 years to change the position.
The Civil Union Act 17 of 2006 also came into operation in 2006 which allowed same-sex and heterosexual couples to enter into a marriage or a civil union partnership i.t.o the Act and allows civil unions the same consequences of a marriage as stipulated in the Marriage Act 25 of 1961

Study Unit 12: Different legal disputes

Different kinds of legal disputes and understanding of basic differences between criminal and civil cases

	CIVIL CASE	CRIMINAL CASE
Parties involved	Plaintiff versus Defendant	State versus Accused
How cases are proved	Plaintiff must be able to prove case on a balance of possibilities	State must prove its case beyond a reasonable doubt
Purpose of proceedings	Aims to claim for financial damages to compensative for medical expenses, damages to a car, etc	Aims to convict a person(s) of a crime and, if convicted, punish the person(s) by means of a fine or prison time
Other role players	Plaintiff, defendant, their legal representatives (attorneys or advocates), magistrate or judge – depending on the severity of the case	State prosecutor (or advocate), accused, accused representative (attorney or advocate), magistrate of judge – depending on the severity of the case

Study Unit 13: The legal profession and the courts -understand the profession and structure of the courts

Attorney:	Qualified lawyer who can advise clients and represent them in court Apply to the High Court to be admitted to the legal profession Must obtain LLB degree, practical legal training for at least 2 years in a private firm, legal aid clinic or community-aid centre, and have successfully completed the attorneys admission exam All practicing attorneys must belong to the Law Society in their province and must be subject to the rules laid down by the Law Society in their province Other duties may include transfer of properties, drafting of wills and other legal documents, etc May request permission to appear in High Courts and Constitutional Court
Advocate:	Qualified lawyer who can advise clients and represent them in court Apply to the High Court to be admitted to the legal profession Must obtain LLB degree, practical legal training with an already qualified advocate All practicing advocates must belong to the professional Bar Council Successfully complete the Bar Council exam Automatic right to appear in High Court and Constitutional Court

State Prosecutor:	Also referred to public prosecutor conducts the state's case in magistrate's court
State Advocate:	Conducts the state's case in the High Court May also serve as legal advisor to the state and be involved in drafting legislation
Presiding Officer:	In Magistrate Court (civil or criminal) it is a magistrate In High Court (civil or criminal) it is a judge

Our judicial system is made up of:

* Constitutional Court (only constitutional matters)
* Supreme Court of Appeal
* High Courts (has different divisions)
* Magistrates' Courts (district and regional courts)
* Other courts established/recognised i.t.o. an act of parliament

3 Basic legal principles that form part of the legal process:

- **Principle** of judicial precedent:
  - An effective system of law reporting (to enable lower courts to establish what higher courts have held)
  - A hierarchy of courts where each court is bound to the decisions of the courts above it
    - Common law
    - Custom law
    - African Indigenous law
- **Appeal**:
  In a civil matter a party may lodge an appeal with a higher court if not satisfied with the lower courts' decision
  In a criminal matter an appeal may be lodged against the conviction and/or sentence with a higher court
  The higher court merely studies the recordings of the court *a quo* and then listens to arguments made by legal representatives
  An appeal is upheld: the decision of the court *a quo* is set aside
  An appeal is dismissed: the decision of the court *a quo* is confirmed
  Appellant: person(s) lodging the appeal
  Respondent: responding to the appeal
- **Review**:
  If there has been an irregularity in the procedure, the case can be reviewed by a higher court (translation concerns, accused not given opportunity to present case, etc)