



CHAPTER 12 //

# RESOURCES &

# LINKS



## Chapter 12: Resources and Links

### Trauma support for journalists

SANEF has established a relationship with the South African Depression and Anxiety Group (Sadag) to facilitate support for journalists whose work has exposed them to bullying, harassment and distressing crimes and court evidence.

▶ [sadag.org](http://sadag.org) | zane@sadag.org | 011 234 4837 or 0800 456 789 (24-hour Helpline)

### Ethics

Everything in this handbook rests on an assumption that journalists will report ethically. Your first point of reference should be the **SA Press Code** (see [presscouncil.org.za](http://presscouncil.org.za)) and the BCCSA Code (see [bccsa.co.za](http://bccsa.co.za)).

**Black, White and Grey** by Franz Kruger (Double Storey, Cape Town, 2004) contains a comprehensive explanation of ethics, with case studies.

### General law and courts information

**A Practical Guide to Media Law** by Dario Milo and Pamela Stein (LexisNexis, 2013)

**Don't Film Yourself Having Sex: legal advice for the age of social media** by Emma Sadleir and Tamsyn de Beer (Penguin, 2014)

The **websites of many major South African law firms** publish easy-to-read guidelines on multiple aspects of law. These are written for potential clients, but they provide regularly updated information prepared by specialists that any member of the public can use. You'll find similar material at [legalwise.co.za/help-yourself/legal-articles](http://legalwise.co.za/help-yourself/legal-articles)

### The Legal Resources Centre

*Conducts research and education about the ways Constitutional principles are 'promoted, protected and fulfilled' in policy and practice. They have offices in Johannesburg, Cape Town, Makhanda and Durban.*

▶ [lrc.org.za](http://lrc.org.za) | info@lrc.org.za | +27 11 836 9831 (head office in Johannesburg)

### Institute for Security Studies

*Information, research and statistics on crime and punishment in South Africa and on the African continent*

▶ [issafrica.org](http://issafrica.org) | iss@issafrica.org | +27 12 346 9740

### Centre for the Study of Violence and Reconciliation

*Research on crime and justice, and a useful article archive*

▶ [csvr.org.za](http://csvr.org.za) | info@csvr.org.za | +27 11 403 5650

### Parliamentary Monitoring Group

*Information on the progress of legislation through parliamentary committees.*

▶ [pmg.org.za](http://pmg.org.za) | info@pmg.org.za | +27 21 465 8885

### South African Human Rights Commission

*Publications, legislation, events, media releases and links to useful material*

▶ [sahrc.org.za](http://sahrc.org.za) | +27 11 877 3600

### Southern African Legal Information Institute (Saflii)

*Publishes all judgments provided by the courts online*

▶ [saflii.org](http://saflii.org)

### Polity information portal

*Aggregates legislation-relevant information*

▶ [polity.org.za](http://polity.org.za)

### Wits Centre for Applied Legal Studies

*Information on human rights and social justice cases. Their website carries a list of legal topic-related contact numbers and email addresses.*

▶ [wits.ac.za/cals/contact-us](http://wits.ac.za/cals/contact-us)

### University of Pretoria Centre for Human Rights

*Researches and publishes on all aspects of human rights in South Africa and Africa*

▶ [chr.up.ac.za](http://chr.up.ac.za)

### Government departments and other official resources

#### The *Government Gazette*

*Publishes Green and White Papers about proposed laws and the texts of new laws*

▶ [gpwonline.co.za/Gazettes/Pages/Government-Gazette.aspx](http://gpwonline.co.za/Gazettes/Pages/Government-Gazette.aspx)

#### Constitutional Court of South Africa

*For full texts of the most recent judgments and notices of forthcoming Concourt hearings*

▶ [concourt.org.za](http://concourt.org.za)

#### Government Communication and Information Systems

*Acts, bills, documents for public comment and useful government links. Also in-depth information about South Africa's Constitution and a downloadable, full text, printable version*

▶ [gcis.gov.za](http://gcis.gov.za)

### The Supreme Court of Appeal of South Africa

Archives recent cases and court judgments available in summary version, as a Word document or PDF.

▶ [supremecourtofappeal.org.za](http://supremecourtofappeal.org.za)

### National Prosecuting Authority

Information about the NPA, relevant speeches and documents, links to news articles written on the criminal justice system and list of related websites.

▶ [npa.gov.za](http://npa.gov.za) | [media@npa.gov.za](mailto:media@npa.gov.za) | +27 12 845 6000

### Department of Justice and Constitutional Development

News and events, judgments, important quick links, as well as publications and other information on special projects within the department

▶ [justice.gov.za](http://justice.gov.za) | +27 12 315 1111

### Department of Correctional Services

News, information, services and publications related to the DCS and its activities.

▶ [dcs.gov.za](http://dcs.gov.za) | +27 12 307 2998/2999

### Independent Police Investigative Directorate

Documents, policies and reports, as well as media releases and other information about lodging complaints with the Directorate; links to related government and security websites.

▶ [ipid.gov.za](http://ipid.gov.za) | +27 12 399 0000

### South African Law Reform Commission

Bulletins, reports and legislation, issue and research papers and current investigations regarding the law.

▶ [justice.gov.za/salrc](http://justice.gov.za/salrc) | [reform@justice.gov.za](mailto:reform@justice.gov.za) | +27 12 622 6300

### Other relevant bodies

#### Media Monitoring Africa (MMA)

Researches, reports and publishes a wide range of online reporting tools for journalists; runs training programmes on media and news subjects' rights

▶ [mediamonitoringafrica.org](http://mediamonitoringafrica.org)

#### Dullah Omar Institute for Constitutional Law, Governance and Human Rights

Based at UWC, focuses on children's rights, socio-economic rights, multilevel government, law and technology, criminal justice, and woman's rights.

▶ [dullahomarinstitute.org.za](http://dullahomarinstitute.org.za) | +27 21 959 2950/2951

#### Lawyers for Human Rights (LHR)

Staffed by 'specialist legal practitioners and activists dedicated to helping vulnerable, marginalised and

indigent people and communities'; has five offices around the country

▶ [lhr.org.za](http://lhr.org.za) | [info@lhr.org.za](mailto:info@lhr.org.za) | +27 12 320 2943

### Organisations for legal professionals

#### Organisation of South African Law Libraries

Useful information and links on law librarianship, as well as judgments

▶ [osall.org.za](http://osall.org.za)

#### Judicial Officers' Association of South Africa

Information about the courts, the judiciary and the Department of Justice and Constitutional Development around the country.

▶ [joasa.org.za](http://joasa.org.za)

#### LegalBrief Today

Comprehensive coverage of legal developments for legal professionals.

▶ [legalbrief.co.za](http://legalbrief.co.za)

#### Legal City

A legal services portal, this site has service information, discussions, tools and calculators – but you may have to register

▶ [legalcity.net](http://legalcity.net)

#### Law Society of South Africa

▶ [lssa.org.za](http://lssa.org.za) | +27 12 366 8800

#### Legal Practice Council

▶ [lpc.org.za](http://lpc.org.za) | +27 10 001 8500

#### General Council of the Bar of South Africa

▶ [gcbasa.co.za](http://gcbasa.co.za) | [info@gcbasa.co.za](mailto:info@gcbasa.co.za) | +27 11 784 0175

#### Paralegal Advice

A site originally based on the paralegal manual produced by the Black Sash and the Education and Training Unit and updated November 2015

▶ [paralegaladvice.org.za](http://paralegaladvice.org.za) | +27 11 648 9430

### Specialist resources and experts in specific areas

#### GBV and gender issues

##### See this useful explanatory article on conviction issues

Wykes M, Artz L. 'What's law got to do with it? Comparing the failure to deter or convict rapists in the United Kingdom and South Africa.' *International Review of Victimology*. 2020;26(2):212-233. doi:10.1177/0269758019886510

## Commission on Gender Equality

*Publications, speeches and statements, as well as information on projects around gender, governance and development.*

▶ [cge.org.za](http://cge.org.za)

## Tshwaranang Legal Advocacy Centre (TLAC)

*A registered NGO seeking to promote and defend the rights of women to be free from violence and to have access to quality effective services.*

▶ [tlac.org.za](http://tlac.org.za) | [tshwaranang@tlac.org.za](mailto:tshwaranang@tlac.org.za) | +27 11 403 4267/8230

## One in Nine Campaign

*NGO working for social justice with organizations and institutions involved in HIV/AIDS, violence against women, women's rights, human rights, and lesbian, gay and bisexual activism*

▶ [facebook.com/groups/10123398375](https://facebook.com/groups/10123398375)

## Lawyers Against Abuse

*A registered NGO with the aim to strengthen the justice systems' response to gender-based violence by providing legal services and therapy to victims, engaging with state actors and empowering communities.*

▶ [lva.org.za](http://lva.org.za)

## POWA

*A 'feminist, women's rights organisation that provides both services, and engages in advocacy in order to ensure the realisation of women's rights and thereby improve women's quality of life'*

▶ [powa.co.za/POWA](http://powa.co.za/POWA)

## Corruption

### Corruption Watch

An NGO working to fight corruption in South Africa, has created a helpful guide to understanding PRECCA ([corruptionwatch.org.za/publications-2/#other](http://corruptionwatch.org.za/publications-2/#other))

▶ [corruptionwatch.org.za](http://corruptionwatch.org.za) | [info@corruptionwatch.org.za](mailto:info@corruptionwatch.org.za) | +27 11 242 3900

## Migration and Citizenship

### Reporting on Migration in South Africa: A Guide for Journalists and Editors

*Publication by a group of refugee-rights organisations.*

▶ [scalabrini.org.za/resources/reporting-on-migration-in-south-africa-a-journalists-guide](http://scalabrini.org.za/resources/reporting-on-migration-in-south-africa-a-journalists-guide)

## Land and Housing

### The Land Claims Court website

*Information on judges, judgments, rules and practice directions, as well as quick searches of recent cases.*

▶ [justice.gov.za/lcc](http://justice.gov.za/lcc)

## The Socio-Economic Rights Institute of South Africa (SERI)

*NGO undertaking advocacy, litigation and research related to housing issues and has a number of useful publications including a guide to ESTA.*

▶ [seri-sa.org](http://seri-sa.org) | [sanele@seri-sa.org](mailto:sanele@seri-sa.org) +27 11 356 5860

## Hate speech & *crimen iniuria*

### Media Defence Module on Hate Speech

*The international organisation Media Defence offers downloadable guides on freedom of expression issues, including a module on hate speech.*

▶ [mediadefence.org/ereader/wp-content/uploads/sites/2/2020/12/Module-6-Hate-speech.pdf](http://mediadefence.org/ereader/wp-content/uploads/sites/2/2020/12/Module-6-Hate-speech.pdf)

## Youth justice issues

### Child Justice: Department of Social Development

*Documents and legislation regarding children's rights and justice and a Children's Services Directory.*

▶ [dsd.gov.za/index.php/17-children-services-directory](http://dsd.gov.za/index.php/17-children-services-directory)

## Prisoners' rights and rehabilitation

### NICRO

*Based in the Western Cape with offices in six other provinces, NICRO specialises in social crime prevention and offender reintegration for adults and children.*

▶ [nicro.pr@nicro.co.za](mailto:nicro.pr@nicro.co.za) | 021 422 1690

## Labour law issues

### Commission for Conciliation, Mediation and Arbitration

▶ [ccma.org.za](http://ccma.org.za) | [info@ccma.org.za](mailto:info@ccma.org.za) | 011 377 6650/6600

## Congress of South African Trade Unions

▶ [cosatu.org.za](http://cosatu.org.za)

## South African Federation of Trade Unions

▶ [saftu.org.za](http://saftu.org.za)

## Transitional Justice

*Transitional justice includes issues of legal cases related to the TRC and apartheid injustices.*

### The Foundation for Human Rights (FHR)

▶ [fhr.org.za](http://fhr.org.za) | [info@fhr.org.za](mailto:info@fhr.org.za) | +27 11-484-0390

## Legal Aid Board

▶ [legal-aid.co.za](http://legal-aid.co.za)

# Glossary

This is a glossary of terms used in this book as well as terms and words found in court documents and used in legal proceedings. It is designed for use as a quick reference book and the meanings provided are intended to help reporters and sub-editors make court proceedings and judgments understandable to their audience. They are not exact dictionary definitions and the glossary is not exhaustive, but an attempt to cover most terms and words journalists are likely to come across while working on court stories. Words and phrases from Latin and other languages are in italics and literal translations of Latin terms are inside quotation marks

## A

### Abduction

Unlawfully taking and/or detaining a minor out of the control of his or her custodian

### Absent heir

Someone who will benefit from a will but cannot be found.

### Absolution from the instance

A plea that can be made by a defendant before he or she gives any evidence. This plea argues that the plaintiff has failed to prove to the court that there is a case to answer, and that the court should throw the case out.

### Accessory before/after the fact

A person who knows a crime will be or has been committed, but still helps the criminal before or after the crime.

### Accomplice

A person who helps someone to commit a crime.

### Accrual system

One of the possible ways to enter into a marriage contract. In this system, the goods that you own before you get married remain your property. The goods (your estate) that you collect or 'accrue' after marriage belong to both spouses equally.

### Accused

A person charged with committing a crime.

### Acknowledgment of debt

A signed agreement in writing that one person owes another person or company money.

### Acquittal

A court's finding at the end of a criminal trial that the accused is not guilty of the crimes with which they were charged.

### *Actio quanti minoris*

An action brought by a buyer against a seller to have the price reduced because there is a latent (existing at the time of the sale but not obvious) defect in the goods bought.

### *Actio redhibitoria*

An action by a seller to have a sale set aside (cancelled) because the defects in the item that was bought are so many that they make the sale worthless.

### Action

In the legal world, another word for 'lawsuit'.

### Acts of Parliament

The laws of the country as passed by Parliament and signed by the President.

### Actus reus

'An illegal act'. To convict, the State has to prove that the accused knew the act was illegal and intended to commit it.

### Ad hoc

Anything done or decided on a temporary basis to deal with a particular situation.

### Ad hominem

An argument in court that attacks another person's character.

### Ad idem

'Of the same mind'. This means two parties in a contract understand and agree what is being discussed.

### Ad lib

To speak without preparing what you are going to say first: to speak 'off the cuff'.

### Adjudicator

A person appointed to decide the rights and wrongs of a situation or case. It's better to use the more precise terms judge, magistrate or commissioner, unless the hearing is formally named as an adjudication

### Admission

In court reporting this term has three meanings:

- (1) when an accused person formally agrees they are guilty (**admission of guilt**);
- (2) where one party admits to the truth of an allegation made by another party; and
- (3) when a legal practitioner passes examinations and completes probation, and is allowed to practice a branch of the law (admitted to the Bar).

### Adversarial system

The process of arguing a case where each party challenges and tests the arguments of the other and the presiding officer makes a ruling based on the arguments presented.

### Advocate

A law practitioner who can appear in any court (unlike an attorney who needs special permission to appear in the High Court). There is a distinction between advocates who practice without a fidelity fund certificate (and whom members of the public cannot approach directly) and advocates who practice with a fidelity fund certificate and can be approached directly by members of the public.

### Affidavit

A sworn statement made in the presence of a Commissioner of Oaths.

### Affirm

US term for a higher court supporting a lower court's decision. In South Africa we use 'uphold'.

### Agent

A person who has the authority to enter contracts on behalf of someone else as part of business practice.

### Aggravating (arguments, facts, factors, circumstances)

Things that make a crime worse, a sentence heavier or a damages claim higher.

### Aiding

Helping someone commit a crime. (Sometimes expressed as 'aiding and abetting' – but that second word is redundant.)

### Alibi

A defence put forward by the accused to show they were elsewhere

when the crime was being committed.

**Alienate**

To take away property by legal process.

**Alleged**

Something claimed but not yet proved in court. Take care when using: *See Section 11.12.*

**Amendment**

The act of making changes to documents or laws, or the change itself

**Animus**

The intention, firmly formed, to do something.

**Animus iniuriandi**

The intention to cause hurt or harm to somebody by offending but not through a physical attack

**Annuity**

A sum of money payable every year.

**Ante-nuptial contract (often shortened to ANC)**

A contract between two people who intend to marry out of community of property, signed before they marry and setting out the terms of their marriage agreement including financial and property matters.

**Appeal**

A legal challenge from either side to challenge the judgment in a court case and to ask a higher court to make a different finding.

**Appellant**

The person who brings an appeal.

**Applicant / Application**

A person (the applicant) brings a formal request (an application) to a court where a case will be decided on the basis of written evidence in the form of affidavits, rather than oral witness evidence.

**Arbitration**

The process of settling a matter without going to court. Both sides agree to accept the decision of a third party.

**Arbitrator**

The person who adjudicates a dispute outside the court system.

**Arraign**

The legal process of bringing an accused to court. This is an archaic (out of date) term: do not use.

**Arrest**

To take someone into custody using the approved legal process.

**Arson**

The crime of unlawfully setting fire to property.

**Articled Clerk**

(see Candidate attorney)

**Assent**

When the President signs a Bill from Parliament into law, making it an Act of Parliament, or a Premier signs a Bill from the provincial legislature into law, making it an Act of the Provincial Legislature.

**Assessor**

Assessors are appointed by the Minister for Justice to sit with a magistrate or judge and help the presiding officer in a trial because of their specialist expertise. Assessors are often practicing or retired legal specialists, but lay assessors are permitted, especially in complex civil cases.

**Attach**

To take (seize) somebody's goods or assets under the provisions of a court order.

**Attestation**

Signing as a witness to confirm that the signature of a person on a

document is genuine.

**Attorney**

A legal practitioner who can appear in both lower and higher courts and who can be hired directly by the public.

**Attorney General**

The head of the Attorney General's Office, which employs state attorneys.

**Attorney and own client costs**

Lawyers' fees and related costs on a case: the exact amount charged by the attorney to the client.

**Auction**

Public sale at which goods or property are sold to the person offering the highest amount of money.

**Audi alteram partem**

'Hearing both sides'. The basic legal practice of allowing each party to a dispute to present their side of the story. (Hearing all sides is also central to good journalism.)

**Autrefois acquit**

A defence which means the accused has already been acquitted of the crime and cannot be retried on the same grounds. This doctrine is known as 'double jeopardy' in the US.

**Autrefois convict**

A defence which means the accused has already been convicted of the same crime and therefore cannot be retried on the same grounds (also 'double jeopardy').

**B**

**Bail**

Money paid to the state as a guarantee that an accused person, if temporarily released until their case is heard, will turn up for their court date.

**Bankruptcy**

The legal situation of being unable to pay off debts.

**Bar**

The legal institution represented by advocates or counsel.

**Barrister**

UK term for an advocate. Do not use in SA court reports.

**Battery**

Assault – so do not write 'assault and battery'

**Bench**

Literally, the raised platform on which judges or magistrates sit. Also a metaphor for the institution of being a judge or a magistrate: e.g. to be 'appointed to the bench' means 'made a judge or magistrate'.

**Beneficiary**

A person who receives something as a benefit from someone else or from another person's estate, e.g. someone who inherits from a will.

**Bestiality**

The scheduled offence of a human having sexual intercourse with an animal.

**Bill of Rights**

Contained in Chapter Two of the Constitution of South Africa, this protects the fundamental rights and freedoms of individuals, based on human dignity and equality.

**Boedelscheiding**

('Separation of goods': Dutch). A court order that divides the joint estate of people married in community of property, but does not end to the marriage. It is rare today and was normally used to protect the wife where the husband was squandering the assets of a joint estate. Do not use the term: explain instead what the court order says.

**Bona fides**

'Good faith/honest intention'. Do not use in general news reports: rather say e.g. 'The judge questioned X's good faith in signing the contract'

**Breach of contract**

Failure to act according to the terms and conditions of a contract.

**Breach of promise**

Failing to keep a promise to marry someone.

**Breakdown (of a marriage)**

One of the legally defined grounds for divorce: when the partners cannot agree and the relationship can no longer be sustained.

**Bribery**

Paying money to someone to gain an unfair advantage.

**Brief**

The instruction given by an attorney to an advocate to represent a client in a dispute.

**Burden of proof**

Court convention about who carries the responsibility for proving that allegations are true, and the standard of proof that is applied.

**Burglary/burglar**

The English term for the crime of breaking into a house at night and entering it with the intention of stealing. Use 'robbery/ robber' instead.

**By-laws**

Local laws passed by a city or town council dealing with the running of the municipality, e.g., where cars may or may not be parked.

**C****Candidate attorney**

A person with a law degree who is undergoing a practical period of vocational training (called 'doing articles') in an attorney's office.

**Canvassing**

Parties talking to each other in an attempt to settle a case.

**Cartel**

A trust or syndicate. The activities of a cartel become illegal when its activities restrict trade or create monopolies.

**Case Law**

A collection of all judgments handed down at the end of all court cases. The principles and interpretations set out in case law can provide a basis for judgments in future, similar cases.

**Cause**

A lawsuit or action.

**Caution**

The warning that must be given to a person facing possible criminal charges that they are not obliged to say anything without their lawyer being present and that anything they do say will be used in the case.

**Cautionary rule**

A patriarchal but long-established convention that judges should not take at face value the evidence of a female rape complainant or the evidence of a child, because these are likely to be unreliable. The current Sexual Offences Act severely restricts its application.

**Caveat emptor**

'Let the buyer beware'. The principle that there is responsibility on buyers to take due care before they purchase anything.

**Caveat subscriptor**

'Let the signer beware'. The principle that anybody signing a contract carries the responsibility to read the 'small print'.

**Cede**

To give up something in return for something else, e.g. 'To get an overdraft he had to cede his insurance policies to the bank.'

**Certified copy**

Copy of a document that a Commissioner of Oaths (e.g. a police officer or lawyer) confirms with an official stamp and signature as a true and exact copy of the original.

**Chambers**

The offices used by judges, advocates or attorneys.

**Champertry**

The practice of lawyers taking a percentage of the settlement won by a party in court rather than charging set fees. It is widely used in the US. In South Africa, attorneys who comply with the Contingency Fees Act are entitled to take a percentage of the damages their client receives. Do not use without explanation.

**Charge sheet**

The details of an alleged offence.

**Child abuse**

Any action that breaches the rights of children in terms of Section 28 of the Constitution: maltreatment, neglect, degradation, abuse, exploitative labour, work or services that are inappropriate for a child of that age or risk the child's wellbeing, education, physical or mental health, or spiritual, moral or social development. Not limited to sexual abuse.

**Children's courts**

Special courts within the Magistrate's Court where the rights of children and problems relating to children are dealt with.

**Circuit court**

A travelling court. Because some towns do not have their own courts, the people and processes that make up a court travel to these places on a regular cycle during the year to hear cases.

**Circumstantial evidence**

Indirect evidence based on circumstances, not direct facts.

**Civil law**

The law relating to disputes between individuals.

**Clerk of the court**

The official in charge of a Magistrate's Court who issues summonses.

**Codicil**

An addition to a legal document that changes its provisions. Most often used of wills.

**Coercion**

Being forced to do something.

**Collateral**

(1) Security demanded by a creditor, such as a mortgage bond over a house  
(2) In family law, also the term for a relative by descent, e.g. uncle, niece or cousin.

**Collective bargaining**

A process in which employers, employees and their representatives sit together as equals and enter into an agreement which is then binding on all parties.

**Collusion**

Two or more parties agreeing among themselves to mislead a third party by withholding facts for purposes of fraud or dishonesty.

**Commissioner of Oaths**

A person such as an attorney, advocate, bank manager or police officer empowered to administer an oath or sign an affidavit.

**Committal**

Sending a person to prison for a limited purpose such as contempt of court or awaiting trial, or sending a person into some other form of

restraint such as psychiatric supervision.

### **Common law**

Law based on the 'common-sense' understanding of right and wrong, but refined over centuries by case law and precedent. English Common Law is one of the historic sources of South African law.

### **'Common law marriage'**

Popular label for a situation where partners have not married by any formal legal process or religious ceremony, but live together as a married couple and are accepted by the community as such. Don't use except in quoted speech as this situation is not formally recognised by South African marriage laws.

### **Community of property**

Legally defined situation where the assets, earnings and liabilities of a married couple are merged during the marriage.

### **Community service**

An alternative sentence for convicted criminals. Instead of sending them to jail, the court can instruct that they work for the good of the community.

### **Complainant**

The person whose complaint results in a court case.

### **Complaint**

The information given by the accuser (or aggrieved person) to the police, which forms the basis of the charge against the accused.

### **Compromise**

The settlement of a disagreement by both parties dropping some of their original demands.

### **Concealment**

Withholding information.

### **Concurrent**

At the same time: e.g. 'He was sentenced to six years for assault and three years for theft, to run concurrently' means the person will sit in jail for a maximum of six years.

### **Concurring judgment**

When the other judges hearing a case agree with the conclusion of the judge who is writing the judgment.

### **Condition**

A provision of a ruling, arbitration or judgment. Conditions can be either spelt out (**express**) or **implied**.

### **Condonation**

Permission from a court to bring a case after the cut-off date, or to have any non-compliance with the Rules of Court authorised.

### **Confession**

An admission of guilt.

### **Conflict of interest**

When a presiding officer has a private interest in, or relationship with, someone or something involved in a case and when the demands of one role could influence how they carry out the other. For example, a judge who is married to an accused person will be in a situation of conflict of interest if he tries that person's case.

### **Conjugal rights**

The patriarchal belief that it is the right of one marriage partner to have sex with the other. Current sexual offences laws in SA recognise that consent is required prior to intercourse and that rape can take place within a marriage.

### **Consent paper**

The written agreement between divorcing spouses, setting out the terms of the divorce, e.g. costs, custody, property rights, maintenance and access to children.

### **Consideration**

Any promise or act by one party in exchange for a promise or act by

the other party. Since 'consideration' has other non-legal meanings too, don't use; explain what was promised by whom in return for what.

### **Consignment**

When a wholesaler or other supplier lets a trader have goods for no payment. The smaller trader acts as an agent, and does not pay the supplier until the goods are sold on to a third party.

### **Consolidation of actions**

When two or more parties have the same complaint (action) against a third party their cases are heard together as one case.

### **Conspiracy**

When multiple people plan together to commit a crime, or one person incites, instigates, commands or procures anyone else to commit a crime.

### **Constitution**

The foundation and overriding set of principles of a country's laws.

### **Contempt of court**

The wilful (deliberate or uncaring) disregard for the processes, dignity, reputation or authority of the court.

### **Contingent**

Depending on circumstances.

### **Contract**

A voluntary agreement between two parties that is legally binding on those parties.

### **Contumacious**

Defiant, especially defying lawful authority. Don't use this old-fashioned word unless you are quoting – and even then, explain it.

### **Conveyance**

Registering fixed property in the deeds office.

### **Copyright**

Legally defined as an intellectual property right that goes with works of creativity that are given material form. If you own copyright on something it is your intellectual property and you control who else can use it.

### **Corporeals**

Physical objects you can touch and see, e.g. cars, land, houses.

### **Corpus delicti**

'Body of offence'. Everything that makes up the crime committed.

### **Corpus iuris civilis**

'Body of civil law'.

### **Costs**

The money that someone who brings or defends a case in court may be ordered to pay to cover the expenses of the case

### **Counsel**

Another term for an advocate.

### **Count**

Another word for charge.

### **Counter-claim**

When the defendant sets out what claim they have against the plaintiff.

### **Court day**

A working day as defined in relation to court practice, usually from Monday to Friday between 9am and 1pm and 2pm and 4pm, except on public holidays.

### **Court of first instance**

The first court to hear a case.

### **Covenant**

A binding agreement.



**Creditor**

A person to whom money is owed.

**Crime**

A violation of the law.

**Crime of aggression**

A United Nations-defined crime, where a person as leader or organiser takes part in, plans, or orders aggressive acts by one state against another.

***Crimen iniuria***

Damaging the dignity of a person and by so doing breaking the law: e.g. swearing, uttering racial slurs or committing indecent exposure.

**Crimes against humanity**

Any large-scale, systematic acts of persecution instigated or directed by any government or group against another group on political, religious racial, ethnic or gender grounds.

**Criminal**

A person who is convicted of a criminal offence.

**Criminal capacity**

Knowing right from wrong.

**Criminal law**

The law relating to order established by the State.

**Criminal Procedures Act**

The law setting out provisions for procedures and other matters related to criminal proceedings

**Criminal proceedings**

Steps taken by the State to give effect to criminal law.

**Criminal record**

A record of previous convictions.

**Cross-examination**

The process by which a witness's main evidence is questioned by the other side. The purpose of cross-examination is to test the evidence and the witness's credibility and to offer the court an alternative version.

**Culpable homicide**

Causing the death of another human being through neglect, carelessness or lack of foresight as opposed to setting out intentionally to kill them. Other legal regimes call this 'manslaughter'.

**Culprit**

Person responsible for a crime. Do not use of people until after they have been convicted.

***Cur ad vult***

(*Curia advisari vult*: 'The court wishes to consider it'). The phrase normally appears as a notation at the foot of law reports showing that the court took time to deliberate before delivering its judgment.

***Curator ad litem***

An officer appointed by the court to act on behalf of someone who is being sued but is unable to act in their own legal capacity, e.g. a minor or mentally disabled person.

***Curator bonis***

Court-appointed officer looking after the property of people who can't look after it themselves.

**Custody (of)**

The care, control and responsibility for children, documents or property.

**Custody (in)**

Locked up.

**Custom**

Tradition/social habits.

**Customary law**

Indigenous, legal practices developed over time through customs and tradition which are recognised by society.

**D****Damages**

Financial compensation.

***Damnum emergens***

Actual monetary loss incurred in a breach of contract.

***De facto***

'In fact or practice' (as opposed to *de jure* – see below). For example, if a manager is frequently absent, and a secretary or assistant takes most of the decisions, that secretary could be ruled to be the *de facto* manager. Do not use in court reports unless quoting a lawyer or judge. Say: 'The court decided that Mr. Khumalo was in practice (or in fact, or really) the manager of the business.'

***De homine libero exhibendi***

A court order instructing the authorities to bring a prisoner to court and explain why the person should continue to be detained. The SA equivalent of the English rule of Habeas Corpus. Explain for readers.

***De jure***

'In law', as opposed to 'in practice' (see above). For example, Mr Khumalo may have been working as the *de facto* manager, but if the title of manager was held by his absent boss, that boss was the *de jure* manager. Do not use except when quoting and explain.

**Debt collectors**

People or agencies hired by creditors to recover debts.

**Debtor**

Someone named in a civil judgment as owing money.

**Deceit**

Fraud, cheating, lying or collusion to defraud someone else.

**Declaratory judgment**

A judgment that sets out the rights of the parties in civil cases without ordering anything else to be done.

***Decree nisi***

A temporary order which gives the party against whom the order is made time to tell the court why the order should not be made permanent.

**Deed of sale**

A document to record the sale of property.

**Deed of transfer**

A document to record the fact that a property has been bought and registered in the name of the new owner.

**Deeds office**

A provincial office where all documents recording the ownership and description of properties within the province are lodged.

**Defamation**

Publishing something about someone that could injure their reputation, with the intention to injure that reputation and without good reasons for doing so. SA has one unified defamation law covering both speech and writing; we do not use the UK categories of 'libel' and 'slander'.

**Default judgment**

A judgment based on the evidence of one side only because the other party failed to appear in court.

**Defeating (obstructing) the ends of justice**

The crime of doing something that prevents justice from succeeding.

**Defendant**

Person being sued or charged.

**Deferral**

A delay.

**Deferred shares**

Shares in a company on which the payment of dividends is deferred for a fixed time or until the total dividends on ordinary shares reach a certain amount.

**Deliberate (verb)**

Discuss or weigh up the evidence towards a decision. Don't confuse with 'deliberate' (adjective) which means 'intentional'.

**Delict**

A civil crime related to neglecting duties or responsibilities in a way that adds up to wrongdoing and damages someone's personality, family or property.

**Delivery**

The physical transfer of possession to another.

**Dependant**

A person who relies upon another for financial support, usually a family member.

**Deponent**

The person who makes an affidavit or statement under oath.

**Deposition**

A sworn statement.

**Desertion**

Abandonment, e.g. of spouse, job, the army.

**Detention**

Holding someone in a prison or another authorised place such as a psychiatric observation ward.

**Diligence**

The legally defined duty to care

***Diligens pater familias***

A reasonable man; 'a careful head of his household'. This is the idealised fictional person whose thinking the courts have customarily used as a yardstick when making decisions. It is a gendered yardstick which many jurists question.

**Diminished responsibility**

A plea or judgment that a person cannot be held responsible for their actions for clear, legally acceptable reasons.

**Direct evidence**

Immediate evidence, either oral or documentary, relating to a dispute.

**Directing order**

Usually referred to as a **directive**. A court order telling the recipient to either do something or stop doing something.

**Director of Public Prosecutions**

The highest authority and final decision-maker in national prosecution structures.

**Discharge**

Sending someone out (of court). An accused is discharged if the case against him or her is dismissed (see below).

**Discovery**

Exchange of documents between parties so that they can fully prepare for a case.

**Dismissal**

Getting rid of, or ending something. In court reporting, cases are dismissed when they have been inadequately put together and are thrown out of court.

**Dispute**

A disagreement between two or more parties.

**Dissenting opinion**

An opinion by one or more judges that disagrees in some respect

with the majority decision of the other judges on the bench.

**Distribution**

In discussion of wills, the division of the personal estate of an **intestate** person (who has died without leaving a will) among their next of kin.

**District surgeon**

A doctor appointed by the State to a particular district to be in charge of specific tasks, e.g. **post mortem** examinations after suspicious deaths.

**Disturbing the peace**

The crime of disturbing another's common-law right to a reasonable degree of peace and security. The actual crime often relates to noisy or nuisance-causing activities by neighbours, or in public spaces.

**Divorce**

The formal act of dissolving a marriage.

**Dock**

The designated seat in a criminal court for the accused.

**Docket**

The police file containing the information relating to a crime under investigation or before the court.

***Dolus***

This term describes the intention of an accused person at the time an alleged crime is committed.

***Dolus directus***

'Direct intention'. The accused intended a certain act or result.

***Dolus eventualis/indirectus***

'Indirect intention'. The accused could foresee the consequences of his illegal acts but chose to ignore them.

**Domestic relationship**

Relationship between people that is similar to marriage but not formalised by law. Sometimes used instead of 'common-law marriage' and can also include same-sex relationships.

**Domestic violence**

Sexual, physical, economic and emotional abuse of a spouse, partner or family member.

**Domicile**

A place of residence that is recognised legally as the permanent address

***Domicilium citandi et executandi***

The address where a person will accept documents served on them.

**Duress**

Undue influence or pressure put on a person.

**E****Edictal citation**

The act of suing a person from a distance. Instead of issuing a summons on the person in the normal way, a court can direct that the summons be served by registered letter or by publication in a newspaper.

**Ejection order**

A court order instructing a tenant to **vacate** or get out of premises they are renting.

**Emoluments attachment order**

An order compelling an employer to take an amount from an employee's wages or salary at source to pay off a judgment debt. Sometimes incorrectly called a garnishee order. Do not use; explain that payments will be deducted from earnings.

**Estate**

The assets and liabilities owned by someone who has died. The term can also mean the assets and liabilities of a couple married in community of property.

**Estate duty**

Tax paid on an estate before final distribution is made.

**Estoppel**

A rule of evidence that says that if someone has previously asserted something on the record, or implied that they assert it by their specific or general behaviour, they cannot now deny it.

**Estreated**

When bail conditions are broken and the money paid as surety becomes the property of the State.

**Eviction order**

An order granted by a court to a landlord ordering the sheriff to legally evict a tenant from a property.

**Evidence**

Oral or written testimony presented in court.

**Ex gratia**

'As a favour'. Something that is paid out of kindness not because there is a legal right to it.

**Ex officio**

'By virtue of the office'. A person who enjoys certain powers by virtue of holding a particular position.

**Ex parte (application)**

Applications that may be brought and heard by the court without notice to the other party implicated in the application. This is usually the case in instances where the applicant is seeking an interdict to prevent harm..

**Ex post facto**

'After the fact'. Knowledge that is acquired after the action has taken place.

**Examination in chief**

The main evidence of each witness, presented before cross examination.

**Exception**

In a civil case, it is possible to apply for an exception – for the case to be set aside – if it can be demonstrated that the case is not about any wrong act for which a legal remedy exists.

**Executable assets**

Goods that can be sold to settle a debt.

**Execution**

The enforcement or carrying out of a judgment or sentence.

**Executor**

The person named to carry out the conditions of a will. They are the personal representative of the deceased (the **testator**). In an intestate estate (where someone dies without having made a will), the executor is appointed by the family of the deceased and is responsible for managing the estate of the deceased

**Exhibit**

An item of evidence (an object or document) to be displayed in court.

**Expert witness(es)**

Witnesses called not because they know about the specifics of the case but because they have specialist knowledge of a relevant area such as forensics, fingerprints or handwriting.

**Expropriation**

The forcible purchase or seizure of land (often by the State).

**Extenuating circumstances**

Circumstances relating to the crime or the accused, described as part

of the defence's submissions to the court to argue that the crime is less serious or the sentence should be less severe. The opposite of **aggravating circumstances**.

**Extortion**

Obtaining money or favours through threats.

**Extradition**

When a country hands over a person to another country to allow them to face trial.

**F**

**Fair comment**

One possible defence in a defamation action. The defendant argues that the comment was an honest one to make and was substantially based on fact.

**False imprisonment**

Putting someone in jail on legally unsound or untrue grounds.

**Family advocate**

A legal officer appointed by the Department of Justice to protect the rights and interests of children.

**Family court**

A special court to deal with family matters.

**Felony**

English law term for a crime. Do not use in SA court reporting.

**Fiction**

A legal term meaning something a court takes for granted, even though it may not have happened, to allow the court to deal with the matter. Courts use 'fictions' the same way scientists use hypotheses: to give them a basis for assuming jurisdiction or modifying rules. Fictions prevent a court's actions being too narrowly constrained by limited facts.

**Fidei commissum**

The successive right to the same property. For example, a person leaves a house to their daughter on condition that upon the daughter's death, the house is passed on to her eldest child.

**Fiduciary relationship**

A relationship, assumed by the law to be based on trust, between one person and another doing business on their behalf. For example, someone selling a house has a fiduciary relationship with the estate agent conducting the sale.

**Fixtures**

Property in or on a house or land which, though movable, cannot by law be taken away by the seller when the house is sold, e.g. light fittings, pool pumps.

**Forbidden degrees**

Degrees of relationship within which marriage is prohibited. For example, a sister cannot marry her brother; a father cannot marry his own daughter.

**Foreclosure**

A bank taking possession of a property bought with a bond because the borrower has defaulted on the bond repayments.

**Forfeit (verb)**

To give something up.

**Forfeiture of benefits**

When the judge in a divorce settlement orders the assets of the marriage to be divided up unequally. A judge will do this when they believe that equitable dissolution (equal shares) will benefit one party in a way that is not deserved. Such an order can be made whether the marriage was in or out of community of property. Don't interpret this as a finding of 'guilt'; it's simply about the fairness of dividing up assets.

**Forgery**

The criminal act of faking documents and signatures, or intentionally creating deceptive works of art not by the artist named.

**Fraud**

The crime of intentionally misleading someone or misrepresenting information to them so that they suffer – or risk suffering – a loss because of the deceit.

**Freehold**

Land that is bought and may be resold by the buyer.

**Friendly action**

Lawsuit brought by arrangement between parties to get a point settled.

**G****Garnishee order**

A term often used incorrectly for a court order attaching part of the salary of a debtor until the monies owed are paid off. Do not use and see Emoluments attachment order above.

**Grounds**

Reasons or basis for a decision.

**Guarantee**

A promise (often from a manufacturer) that an item actually does what it is supposed to. Often used more broadly for other promises about assured results.

**Guardian**

An adult appointed to take care of (and usually assume legal responsibility for) someone under the age of 18.

**Guardian's Fund**

All funds of minors, insane persons, unborn heirs, absent persons and persons whose identities are not known, are paid into the Guardian's Fund, which the Master of the High Court administers on their behalf.

**H*****Habeas corpus***

UK legal term for the right to be released or a request in court for this right to be granted. Do not use in SA court reports (see *De homine libero* above).

**Harassment**

Bullying, threats, unwanted interactions or intimidation that create ongoing distress for the target

**Heads of argument**

A document summing up the main points of evidence and law that a lawyer will cover in their closing arguments. Both sides submit a copy of their heads of argument to the presiding officer in advance.

**Hearsay evidence**

Evidence that is merely a report of what a third party told the witness, when that third party is not available to confirm or deny what was said. Usually not accepted by courts.

**Heir**

The person who inherits from the estate of a deceased person.

**High Court**

South African senior court that hears cases too serious or complex for a Magistrate's Court, as well as appeals from the Magistrate's and other lower courts.

**Hire purchase**

System of purchase where a buyer pays the seller for goods by instalments. The law assumes that the buyer does not own the

goods until the final instalment is paid. Until then, they are defined as merely hiring the goods.

**Homicide**

The killing of a human being. If this is lawful (e.g. in self-defence) it is known as **justifiable homicide**. If it is unlawful, it could be **culpable homicide** (unintentional) or **murder** (deliberate).

**Hostile witness**

A witness called by one side of a case who does not wish to assist that side.

**Housebreaking**

Forcing an entry into a property or premises with the intention of committing a crime inside.

**Household necessities**

Those goods and services judged so essential to running a household that the partner responsible for maintaining the household and caring for the family is allowed to run up debts in the other partner's name to buy them. For example, a wife could buy food on credit to feed her children and the husband would be legally liable to pay these debts.

**I****Identification parade**

A line-up of a group of people similar in appearance, where a witness is asked to point out the alleged perpetrator.

**Illegal**

An act directly forbidden by law.

**'Illegitimate' or 'illegal' (person)**

Do not use these terms to describe human beings. Only acts can be illegitimate or illegal.

**Immovables**

Fixed property such as land or houses. Opposite of movables.

**Impediment (e.g. to marriage)**

Something that restricts or hampers an action. An impediment to marriage might be that one or both parties are under the age of consent.

***In absentia***

When a legal process continues despite the fact that a party or parties (e.g. the accused) are not in court.

***In camera***

'In a closed chamber'. Description of evidence given or a hearing taking place in private. The judge decides who may attend and what, if anything, may be reported.

***In curia***

'In open court'.

***In flagrante delicto***

To be caught in the act, or red-handed.

***In forma pauperis***

'As if they were destitute'. This ruling allows someone to sue without being held liable for costs, because the court is making the legal assumption that the person has no means of paying.

***In loco parentis***

'In the parent's place'. The term for the legal guardian of a minor.

***In re***

'In the matter of'; regarding; in this case.

***In rem***

An order about a matter (res: Latin = thing) of principle rather than against a specific person. The order can then be enforced against all instances of this kind, not just in the single case that has been ruled on.

**In situ**

Something is in situ if it is in the place where it was found or put.

**Incapacitated**

Lacking the ability to sue or be sued in a civil matter or to understand the charges put against them in a criminal case.

**Incest**

The crime of sexual intercourse between persons within the prohibited degrees of relationship (see above).

**Inchoate**

A process that has begun but is not complete.

**Incitement**

The crime of stirring up or provoking, e.g. a riot.

**Incorporeal**

Something that cannot be seen or touched, e.g. a legal right.

**Incriminate**

To make someone look as if they are to blame, or to involve them in guilt.

**Indemnify**

To make good a loss suffered by a person as a result of the act or default of another.

**Indemnity**

Protection, specifically protection from the legal or financial consequences of actions.

**Indictment**

A document containing formal criminal accusations.

**Informer**

A person who provides information to the police for reward or other motive.

**Injunction**

A court order to do something or stop doing something.

**Innuendo**

A hint or suggestion that something is the case without explicitly saying it.

**Inquest**

Court inquiry into the causes of a suspected unnatural death.

**Inquisitorial**

Proceedings such as commissions of inquiry set up to assemble information, not to determine innocence or guilt.

**In session**

Means a court is sitting. Be careful how you use the word 'proceeding'. This means that a case is still being argued or deliberated upon, but the court may not actually be in session, because the case has been postponed.

**Insanity**

A mental disorder that makes someone incapable of understanding what they are doing. Can be used as a plea.

**Insolvency**

The state of being unable to pay debts because what is owed is greater than what the insolvent person earns or owns.

**Inspection in loco**

Court inspection of a place that is relevant to a particular case.

**Instigation**

Incitement or encouragement to commit a crime.

**Instrument**

A document containing proof that a legal act has been performed or undertaken, e.g. issuing a cheque.

**Intention**

In law, a clearly formed aim to do something.

**Intention to defend**

A standard response to a summons. It notifies the plaintiff that the defendant intends to fight the case in court, thereby preventing the plaintiff from obtaining a default judgment.

**Inter alia**

'Among others/other things'.

**Inter vivos**

'Between living persons'. A term used in wills when, e.g. an estate is to be divided up among those of the named beneficiaries who are still alive.

**Interdict**

An order of the court to enforce someone's legal rights

**Interim order**

A court order that is only effective for a limited time.

**Interpleader**

If one person is sued by two different people over property. The person being sued may demand that the two claimants have their claims to the property legally tested, so that only one can sue him.

**Intestate**

Having died without a valid will.

**Intra vires**

'Within the powers'. Something is legal if the person or body doing it is acting within their legally defined powers, e.g. Parliament acts *intra vires* when it makes laws.

**Ipso facto**

Something obvious or true because of a fact that has already been presented.

**Irrebuttable (presumption of law)**

A legal assumption that cannot be contradicted by any other law or even by fact, e.g. a child under eight cannot be guilty of any offence.

**J**

**Jeopardy**

Danger.

**Joinder**

When two parties have similar cases against a third person, the cases can be combined and are then heard as a single case.

**Judge**

The presiding officer in a High Court, Supreme Court of Appeal or the Constitutional Court.

**Judgment**

The decision by a magistrate or judge on the case before them. This spelling of judgment is used throughout the handbook although the word may be spelt correctly as both judgment and judgement, with no distinction between the two versions of the word.

**Junior counsel**

A junior advocate.

**Jurisdiction**

The competence of a court to hear and determine an issue between parties. A court may have limitations on its jurisdiction due to the subject matter of the case, the amount in dispute, the territory in which alleged acts were committed, and/or the identity or status of parties involved in the case. There is a much looser, popular, usage of 'jurisdiction' to simply refer to powers, but in law the term is used very precisely.

**Juristic person**

A legal person: a body that is defined as having the same rights and responsibilities as a person for the purposes of legal action. The law often sets out whether a company or government department is a

'juristic person'.

### Jury

In legal systems outside South Africa, a group of citizens called together by the State and instructed (guided) by a judge to decide on cases and sentences. SA does not use the jury system.

### Juvenile

Under 18. Can be used as a noun or an adjective.

### Juvenile offender

Youth under the age of 18 found guilty of criminal behaviour.

## K

### Kidnap

To take away and hold someone against his/her will. Often kidnapping is accompanied by a demand for **ransom**: that money is paid before the person is released.

### Kin

A relation by blood.

### Knock-for-knock agreement

An insurance practice relating to vehicle accidents, where the insurance company of each party pays only the costs incurred by its own client.

## L

### Landlord

The owner of a property that is rented to another.

### Larceny

The old English law crime of theft. Don't use.

### Latent defect

A fault in a sold item that is not immediately apparent.

### Law report

With lower-case first letters, a report of a court case and judgment, published in a specialist journal so that it can be referred to by other legal practitioners. Capitalised (e.g. *SA Law Report*), the name of such a journal.

### Leading questions

Questions that suggest the answer they want: for example 'You are the killer, aren't you?'

### Lease

A contract determining the period and cost for the use of someone else's property.

### Legacy

A gift of goods to someone, stated in a will: an inheritance.

### Legal remedy

What the court can do to help a plaintiff, e.g. if you lose your job, the legal remedy would be to ask the court to have you re-instated or paid compensation.

### Lessee

A person who, by agreement, rents the property of another.

### Lessor

The owner of property that is rented.

### Lethal force

Force that kills.

### Letters of executorship

The document of authority issued to the executor of a deceased estate by the Master of the High Court.

### *Lex Talionis*

An ancient legal principle, found in both the Bible and Roman law,

which is the same as 'an eye for an eye; a tooth for a tooth'. In other words, the penalty should exactly match the injury suffered.

### Liability

A person's accountability for their conduct both in criminal and civil matters.

### Libel

In UK law, the written form of defamation. When reporting SA defamation cases, do not use.

### Lien

The right to hold on to property until payment is made for work done on it, e.g. a garage has a lien over your car until you pay for your repairs.

### Liquidation

The closing of a business and the sale of all its assets to pay creditors.

### Liquidator

A person appointed to close a company and sell its assets to pay debts.

### Litigants

The people contesting both sides of a civil case.

### Litigate

To start and carry on a lawsuit in court. Somebody who makes a habit of doing this can be described as litigious.

### *Locus standi*

The right to appear and bring a dispute to the court, e.g. insane persons do not have *locus standi* in court.

### *Lucrum cessans*

'The profit is forfeited'.

## M

### Magistrate

The presiding officer in a lower court.

### Magistrate's Court

The lower court, both district and regional.

### Magistrates Commission

The organisation that appoints, controls and disciplines magistrates.

### Maintenance

Money the court orders to be paid to an ex-spouse and dependants after a divorce, or to the mother of a man's children even if the pair are not formally married, to cover their living costs. Popularly called 'paggeld'.

### Maintenance Court

A Magistrate's Court set up to ensure that someone court-ordered to make maintenance payments does so in full on a monthly basis.

### Majority

The legal age of consent. When a person reaches 18 they become a major (adult) and can enter into legal agreements without the assistance of a guardian.

### Majority opinion/decision

The term used for the ruling agreed on by the larger number if there is disagreement between judges.

### *Mala fides*

'Bad faith'. Where a person knowingly acts dishonourably, causing damage or loss to another party, e.g. when a used-car salesman knowingly sells a car with faulty brakes which causes a fatal accident. Like intention (*mens rea*) in criminal cases, *mala fides* is often essential to find liability in civil cases.

**Malice**

Ill will, spite, evil motive. Intentionally committing a wrongful act without just cause.

**Malicious damage**

The crime of intentionally and illegally damaging someone else's property.

**Mandate**

An official order or instruction to do something on behalf of someone else.

**Manslaughter**

UK term for culpable homicide (unintentional killing). Do not use when reporting on SA cases.

**Maritime law**

Law relating to shipping and the seas.

**Marriage**

In SA law, the formal union (religious or civil) of two partners to found a family unit. Under customary and Muslim law, the union may include more than one wife; this legislation is currently in process of change.

**Martial law**

Law imposed by the army on a country after a military coup, or the general application of military law in times of war or national emergency.

**Master of the High Court**

The official who supervises the administration of deceased estates and acts as the guardian of minors in respect of their property.

**Matrimonial property regime**

The marriage system the parties agree on, e.g. out of community of property/ in community of property /subject to the accrual system.

**Mea culpa**

'My fault'. An acknowledgment of your fault or error.

**Measure of damages**

When a court has to award compensation it follows a set process by taking certain factors into consideration.

**Mens rea**

Intention (to commit a crime).

**Mercantile law**

Law relating to trade and business.

**Merits**

Usually refers to the strength of a case.

**Messenger of the court**

An official of the Magistrate's Court who has an administrative function.

**Minor**

A person under the age of 18, who cannot enter into contracts without assistance from a guardian.

**Miscarriage of justice**

Justice was not seen to be done.

**Misrepresentation**

To present facts in a (dishonest/exaggerated/inaccurate) way to persuade another party to act on those facts to their loss.

**Mitigation**

The reduction of harmful effects. **Arguments in mitigation** can include **extenuating circumstances** (see above).

**Modus operandi**

'Method of operating'. Criminals can sometimes be identified because they use the same *modus operandi* in successive crimes. But it's better to explain this than hit your readers with Latin.

**Modus vivendi**

'Way of living'. An arrangement where parties in conflict can live together peacefully.

**Moot point**

A point that is still under discussion or being argued. It could also be a point on which agreement is never reached.

**Mortgage bond**

Money borrowed to buy a house, against the value of that house.

**Motion**

Oral application to a presiding official for a ruling or order.

**Motion court**

Legal session to settle civil cases.

**Motion roll**

List of the cases to be heard by the judge during a motion court session.

**Murder**

The unlawful, intentional killing of another human.

**Mutatis mutandis**

'The things that need changing having been changed'. Precedents arise from specific cases. But they can be applied to other cases, allowing for the differences in detail. *Mutatis mutandis* is the phrase used to cover this allowing for differences.

**N**

**Natural justice**

Principles of justice derived from an intuitive understanding of what is fair, e.g. that people must be told what the charges against them are, that people must be given a chance to defend themselves and so on

**Natural person**

A human being. A natural person is not always a juristic person – a mentally incapacitated accident victim is still a natural person, and entitled to all the rights of every other human being. But they may not be a juristic person as they lack the ability to take decisions about their life.

**Necessities**

Those things essential to a specific context. This is a general term, but courts are concerned with the definition of necessities in different contexts when, e.g., they are deciding on divorce settlements or damages.

**Negligence**

The failure to act when the 'reasonable person' would have acted.

**Negotiable instrument**

A legal document such as a cheque, promissory note or bill of exchange that can legally be transferred between parties. An instrument can be made non-negotiable, either by court ruling or, e.g., by crossing a cheque.

**Nemo iudex in sua causa**

'No person may be a judge in his own matter'.

**Non compos mentis**

'Not of sound mind'. Mentally disabled or out of your senses by reason of, for example, drink or drugs.

**Notarial deed**

A document drafted by a notary.

**Notary**

A person qualified to draft specific agreements and contracts, such as ante-nuptial contracts.

**Nuisance**

Unlawful interference with another's use or enjoyment of their

property.

### ***Nulla bona***

'No goods'. When there are no assets that the sheriff can take and sell to settle unpaid debts.

## O

### **Oath**

Promise before your deity; in court, that you will tell the truth. Non-believers swear an **affirmation**.

### ***Obiter dictum***

'Said in passing'. A remark made by a judge while reading their judgment that is not part of, or essential to, the judgment, but merely an aside.

### **Obligation**

Legal tie between two or more persons or a duty owed by one person to another.

### **Occupation**

- (1) The actual possession of property or use of something.
- (2) A person's job or way of earning a living.

### **Offence**

Any public wrong punishable under criminal law.

### **On all fours**

Legal jargon meaning that one case is similar to a previous case in all important respects of facts or findings. Used when lawyers argue that the judge must follow an existing judgment.

### **Onus**

The burden of proof.

### **Option**

The right to buy property if desired within a certain time.

### **Oral submission**

Spoken evidence.

### **Ordinances**

Laws made at provincial level.

### **Out of court settlement**

Before a case starts or before it is completed, the parties agree to resolve the dispute without the help of the court.

### **Overrule**

When a higher court puts its own judgment in place of an earlier judgment.

### **Ownership**

The right to exclusive enjoyment of a thing.

## P

### **Pact**

Agreement, promise.

### ***Pari passu***

'With equal step'. Creditors are paid at the same time and without favouritism.

### **Particulars of claim**

In civil cases, a document, usually drafted by a lawyer, setting out what it is the plaintiff wants.

### **Party-and-party costs**

These are the legal costs that are determined by a tariff covering what the fee is for certain items, e.g. telephone calls or attending court.

### **Passing-off**

Selling goods or services or carrying on business in such a way that the public is misled about the identity of the business or the goods. For example, selling sports shoes bearing a forged Nike logo. This is illegal under intellectual property laws (see Copyright).

### **Patent**

Protection of a commercial idea by registering it with the Registrar of Patents, Designs, Trademarks and Copyrights in Pretoria.

### **Patent defect**

An easily identifiable flaw or defect. Opposite of latent defect (see above).

### **Patrimony**

In legal terms, property inherited from a male ancestor. More generally, inheritance.

### **Peace officer**

A person designated by the justice minister to keep the peace through enforcing the law. If 'police officer' is equally accurate, use that better known term instead.

### **Pending**

Still going on.

### **Perjury**

The crime of giving an intentionally false statement under oath.

### **Perpetrator**

The person who commits a crime. Do not use unless and until someone is convicted.

### ***Persona non grata***

'Person not in favour'. Someone who is not welcome or is unacceptable.

### **Personal right**

A right a person gets in his individual capacity only.

### **Persuasive authority**

An influential decision, authority or *obiter dictum* that may be used to persuade the court to decide a matter in a particular way.

### **Petition**

A formal written request, e.g. to the court, to grant a certain order.

### **Plaintiff**

Someone who brings a civil law suit.

### **Plea**

Response or answer to a charge or a particulars of claim.

### **Plead**

- (1) To allege something in a cause
- (2) To make a plea
- (3) To argue a case in court.

### **Pleadings**

The documents filed in a civil case containing the facts of the case.

### **Pledge**

The act of providing or pawning an article as security against a short-term loan.

### **Possession**

Having physical control of something.

### **Post mortem**

'After death'. Referring to the medical examination ordered by a magistrate to determine the cause of death of a person.

### **Postponement**

Arranging for something to take place at a later time.

### **Power of Attorney**

A document appointing someone else as your agent to perform certain acts which you would normally do. If the scope of the acts is unlimited, this is known as **General Power of Attorney**, while if the acts are restricted, this is known as a **Special Power of Attorney**.



**Precedent**

An authoritative example of a process or a decision; a rule for future guidance.

**Pre-emption**

The right to make an advance purchase (e.g. of shares), or take advance action before others know about a situation. Courts may make a pre-emptive order to stop someone doing something before the activity has even begun.

**Preference shares**

Shares with a fixed annual dividend or amount.

**Prejudicial**

Likely to bias or damage.

**Prerogative**

Special and exclusive right.

**Prescription**

Civil cases must be brought to court within a specified period of time. Once that time has elapsed, the case may no longer be brought. Courts say the time has **prescribed**.

**Presiding officer**

Judge, magistrate, commissioner or chief.

**Presumption**

Assumption or a deduction that there are grounds for believing something.

**Prima facie**

On first appearance or 'on the face of it'. Indicates how something looks before further and more detailed investigation and may be used in court in a request for further investigation.

**Privilege**

Circumstances that legally protect an act or statement. Conversations between lawyer and client are privileged to remain confidential; statements made in open court are privileged to be published even if in other circumstances they might be considered defamatory.

**Pro Bono**

Legal services offered free to worthy causes or clients.

**Pro Deo**

A term used to refer to a private advocate appointed and paid for by the State to defend someone who faces a serious charge such as murder, and cannot afford to pay for his or her own legal defence.

**Pro non scripto**

'As if it were not written'. When the court can ignore certain clauses in a contract or take them as if they had not been written in the first place.

**Probate**

(1) Certificate granted when a will has been proved and registered in the Master's Office of the High Court  
(2) Action commenced when the validity of a will is disputed.

**Probation**

Court order putting an offender (someone who has been found guilty) under the supervision of a probation officer for a period of from one to three years instead of sending that person to jail. Probation can also be applied in place of part of a prison sentence, or following some other punishment.

**Probation officer**

Officials working for the departments of justice and correctional services to supervise the integration of convicted criminals back into society and ensure that they keep to the terms of their probation.

**Procurement**

The crime of enticing or entrapping someone to become a prostitute. Archaic, do not use in reports; describe what happened.

**Promissory note**

An unconditional, written, signed promise to pay a certain sum of money to a specified person on demand or sometime in the future.

**Proof**

Confirmation or evidence that supports the facts.

**Property**

Any thing capable of being owned.

**Provocation**

Acts or words, such as insults or teasing, likely to cause a 'reasonable person' to lose control of themselves.

**Proxy**

Written permission to vote, speak, or sit on a body in the place of someone who cannot be present.

**Public interest**

If proved along with truth, this is a defence to a claim for defamation. It means society was in some way better off by knowing the information or reading the comment, or would have been worse off if it had not been published.

**Public Protector**

A constitutional officer investigating any claim of misconduct, impropriety or maladministration by the State at any level of government.

**Puisne**

Younger, later-born or junior, e.g. ordinary judges may be legally referred to as puisne judges. Archaic. Do not use in news-writing.

**Pupil advocate**

A trainee advocate who learns the practical aspects of the job by working as an apprentice for a period of time before writing a final exam, after which they may practice. This period is called pupillage.

**Putative father**

The man believed to be the father of a child born outside a formal marriage, or alleged to be so in maintenance proceedings.

**Putative marriage**

A marriage that was null and void from the start for any one of many legal reasons, but which still has certain legal consequences because one or both of the parties married in good faith.

**Q**

**Quantum of damages**

Determining what the sum of money is that may be claimed.

**Quash**

To annul or set aside.

**Queen's Counsel**

British senior barrister, known as a QC, equivalent to a Senior Counsel (SC) in South Africa. Do not use when describing SA lawyers in SA cases.

**Quid pro quo**

'Something for something'. Compensation or consideration.

**R**

**Ratio decidendi**

'The reason for deciding'. The principle upon which a case is decided.

**Real right**

A right relating to property that can be legally asserted against anyone interfering with it.

**Reasonable doubt**

The kind of doubt that might legitimately be held by a 'reasonable person' (see below). Reasonable doubt, defined in this way – and

not any and every conceivable doubt – is what a judge weighs when deciding a case.

**Reasonable man (see also *Diligens pater familias* above)**

The fictional yardstick for legal judgments: would a reasonable person have acted in this way or foreseen these consequences?

**Rebut**

To argue against. Avoid using in reports; too many people assume it means the same as refute (see below).

**Rebutting evidence**

Evidence given to disprove or counteract or argue against previous evidence.

**Rebuttable presumption of death**

After a period of seven years, a person who has disappeared in strange circumstances is assumed to be dead, unless evidence can be brought forward to contest this assumption.

**Rebuttable presumption of law**

Law may be displaced by evidence to the contrary, such as a presumption of innocence or sanity.

**Reception order**

An order issued by a magistrate for a mentally ill person to be held in a psychiatric institution.

**Records**

Documents of completed court proceedings.

**Redemption**

Buying back property that has been subject to a mortgage or charge.

**Redress**

Compensation.

**Refute**

To prove that an argument is false.

**Registrar of Deeds**

The official who manages the safekeeping of all deeds to fixed property. There is one in every provincial division of the High Court.

**Registrar of the High Court**

The High Court official who attends to the running of the court.

**Regulations**

Practical instructions about the application of Acts of Parliament.

**Rehabilitative justice**

Sentencing regime that aims to bring someone convicted of a crime back as a constructive participant in society

**Rejoinder**

The response by a defendant to the plaintiff's replication.

**Remand**

When cases are postponed, accused people are remanded: either **remanded on bail** (set free against a surety) to await trial, or **remanded in custody** (jailed) to await trial. Never use the word 'remanded' alone in a report.

**Remedy**

Legal help or relief sought by a plaintiff.

**Remission**

Cutting the length or severity of a sentence.

**Replication**

The response of the plaintiff to the defendant's reply to the plaintiff's original claim.

**Representative**

Someone duly authorised to act on behalf of another person.

**Repugnancy clause**

A culturally biased colonial provision that barred customary laws whose terms 'shocked or disgusted' the authorities.

**Repugnant**

Revolting, unacceptable, undesirable.

**Res iudicata**

'Decided case'. When an issue that has been adjudicated upon by a competent court cannot be re-opened between the same parties except through an appeal or new trial.

**Rescinding (of an order)**

Cancelling or annulling the order.

**Rescission**

The cancellation of a contract, order or ruling and the return of the parties to the positions they would have been in if it had never been made. The term also describes the situation when a court alters or amends its own judgment on the basis that it erroneously granted an order or there was an error in the judgment. A court will only rescind an order under the most exceptional circumstances.

**Respondent**

Party against whom any application or appeal is filed.

**Restitution in integrum**

A court order that places a person in the same financial position as he was before the wrong was committed against him.

**Restorative justice**

Sentencing regime that gives a criminal the opportunity to make amends to those they have hurt

**Retributive justice**

The older concept of sentencing as simply deciding on a punishment befitting the crime with no thought of rehabilitation.

**Reverse**

To overrule a judgment and turn it into its opposite on appeal.

**Review**

When a higher court checks the decision of a lower court to make sure the correct procedures were followed and the correct conclusions arrived at.

**Revocation**

A person recalling or withdrawing a grant, deed, will or consent they have issued.

**Rider**

An addition to a legal judgment as explanation, qualification or commentary on something, but without any legal effect. Most often added by juries to verdicts in countries that use a jury system.

**Right**

The freedom to act or not act, or to possess something, or to exercise some capacity (such as speaking freely) in such a way that it is protected by law. If you have the freedom to do something, nobody can stop you from doing it; likewise if you have the right to possess something, it cannot be taken away from you. This describes a position where rights are **absolute** (completely unrestricted) – but legal systems often modify some rights to ensure they do not interfere with other rights.

**Right of appearance**

Right of attorneys to appear in particular courts – for instance, an attorney may not appear in the High Court unless they have right of appearance.

**Robbery**

The crime of stealing another's property by force.

**Roll (Court Roll)**

The diary/timetable of court cases.

**Rules:**

- **Rule 21 (Motion Roll):** High Court rule whereby a party can apply to court for an order compelling the other party to disclose further particulars or for the court to dismiss the action or strike out the defence, whichever is applicable.

- **Rule 43 (Motion Roll):** High Court rule in matrimonial matters allowing a spouse to seek relief through a court order for maintenance while the court action is pending, a contribution towards costs of the action, interim custody of a child or interim access to a child.
- **Rule 53 (Motion Roll):** Notice of motion calling for a decision or proceedings of a lower court or tribunal to be reviewed by a High Court.

**Note:** *These are the most common rules cited during day-to-day court proceedings. Consult a lawyer about the meaning of other rules.*

#### **Rule nisi**

A temporary order. If the person against whom it is made does not oppose it before the return date, the order becomes permanent.

#### **Rule of law**

A constitutional regime in which fair laws exist, are respected and are justly implemented; where no person can be punished without being heard and all people are treated equally by the law.

## S

#### **Sabotage**

The crime of deliberately damaging State property or disrupting public services or the functioning of government or security forces. Strikes within the terms of the labour laws are not crimes under the sabotage laws.

#### **Sale in execution**

A sale that occurs after a court order giving the sheriff the right to seize property, which is then sold at a public auction to pay outstanding debts.

#### **Search and seizure**

The process of police or the prosecuting authority, supported by a valid court order, entering property to look for and carry away evidence that can be used in a subsequent trial.

#### **Sedition**

The crime of speech or action designed to undermine the authority of the State and endanger public order.

#### **Senior Counsel (S.C.)**

After having practiced at the Bar for a number of years, the most experienced advocates apply to the Bar to be recognised as senior members at the Bar. If their application is successful, they become known as Senior Counsel or 'Silks'.

#### **Sentence**

Punishment.

#### **Separation**

Formal or informal decision by two married people to live apart without divorcing.

#### **Separation of powers**

A basic principle of democracy: that Parliament and the Executive (the presidency) should not be able to pressure the judiciary: judges should be free to reach verdicts based on the rule of law and court officers should not be political appointees.

#### **Sequestration**

When a court-appointed trustee administers the property of an insolvent person and liquidates (turns into cash) the person's estate so that creditors can be paid.

#### **Service of process**

The delivery of court documents to where a defendant lives.

#### **Servitude**

A right – such as a right of way – granted by the law to third parties over someone else's property, irrespective of the wishes of the

property owner. If community members need to cross someone's property to reach their own homes or to access a basic service such as a road, the path that allows them to do this is called a servitude over the owner's property. Since servitude has other, non-legal meanings, don't use – explain the situation.

#### **Set down (date)**

The court date on which a trial begins and/or continues.

#### **Setting aside**

When a court to which a matter has been referred from another court disagrees with the original findings, and decides the findings are of no further force or effect.

#### **Settlement**

The agreement between the parties concerned to end a dispute.

#### **Sexual harassment**

The crime of forcing unwanted sexual attention on another person in the workplace. The attention can include looks, gestures, remarks or jokes, touching or displaying suggestive images.

#### **Sheriff**

An officer of the High Court who serves documents on members of the public who owe money, and undertakes all work emanating from such orders, such as attaching, removing and storing assets which are thereafter **Sold in Execution**.

#### **Shoplifting**

The crime of stealing from shops or stores.

#### **Silks (see Senior Counsel above)**

Senior advocates who no longer wear ordinary black gowns in court but robes made of finer fabrics (historically, silk).

#### **Slander**

The UK claim of spoken defamation. Do not use when reporting SA defamation cases; this separate claim does not exist here.

#### **SLAPP suit**

Strategic Lawsuit against Public Participation. Term for defamation proceedings brought by well-resourced litigants to raise the cost of, deter and delay media coverage or community activism about their activities, rather than with any intention of winning damages.

#### **Sodomy**

Anal intercourse, which used to be criminalised in South Africa. It is no longer a crime.

#### **Specific performance**

When parties enter into a contract, there is normally an agreement to do something (= performance) exactly as it is described (= specific) in the contract.

#### **Stamp duty**

A form of tax on certain legal documents, paid by purchasing special stamps and sticking them on to the documents.

#### **Stare decisis**

To stand by existing legal decisions.

#### **State advocate**

Advocates employed by the State to appear in the High Court on its behalf.

#### **State attorney**

An attorney employed by the State to deal with legal matters on its behalf.

#### **State evidence**

The facts presented by the State to prove its case in a criminal trial.

#### **State legal adviser**

A legal adviser who advises ministers, MECs and government departments and assists with the drafting of legislation.

#### **Statement**

An account of what happened in a crime, written by an accused or a

witness. If produced according to correct legal procedure, this document can be used in evidence.

#### Statements of claim

The document in which a plaintiff describes what it is that he wants the court to do for him should he win the case.

#### Statute of limitations

A rule setting down the time limit within which legal action must be taken. If action is not taken within this period, the State loses the right to prosecute.

#### Statutory law

Law made by Parliament.

#### Stay of proceedings

An application brought to court to interrupt or to prevent a claim or action from continuing.

#### Strict liability

Liability for injury or damage irrespective of the intention or care/negligence of the person causing it.

#### Struck off the roll

To remove an attorney from the rolls of the High Court for misconduct. This means they can no longer practise.

#### *Sub iudice* (sometimes spelled *judice*)

'Under consideration'. The *sub iudice* rule sets out the timeframe within which a court case is defined as being under consideration, and bars certain types of public or media comment designed to influence the outcome or discredit the proceedings during this period. It does not apply to non-court proceedings, and its restrictions have been significantly moderated by the constitutional right to freedom of expression.

#### *Sub rosa*

Something done, spoken or decided in secret. Unlike *in camera*, *sub rosa* refers to agreements to keep things secret that may not necessarily have any legal force.

#### Submission

Point made by a witness or a lawyer to be considered by the presiding officer.

#### Subpoena

('Under penalty') A written instruction from the court to a witness saying they must come to court to give information and if they do not, they may be punished. It can be used as a noun or as a verb.

#### Substituted service

If a court process cannot be served directly on a person, a court may instruct that the process is served by an alternative method such as registered mail or published announcement.

#### Subversion

Undermining or overturning something. In law, the crime of plotting to overthrow the State by force.

#### Sue

To begin legal proceedings against another party.

#### Summary trial

A trial where there is no preparatory examination. Examples of summary trials include cases where spot fines are paid, admissions of guilt and plea bargains.

#### Summons

Court order for someone to appear before it.

#### Surety

- (1) An undertaking by a third party to pay the creditor of another should that person fail to do so. So a person without funds may ask a wealthier friend to 'stand surety' for their bail.
- (2) Another word for bail.

#### Surrender

To give up. In law as opposed to war, it's a transitive verb: someone 'surrenders themselves' to the police or 'surrenders their car' to the Sheriff.

#### Suspect

A person who it is thought may have committed a crime. Because of this uncertainty, use the term with care in reports.

#### Suspended sentence

Part or all of a prison sentence that the court rules does not have to be served immediately. Sentences are suspended for a fixed period of time, during which the convicted person must not re-offend, and may have to meet other conditions, such as attending counselling or rehabilitation. If they break these conditions, the suspension ends and the full sentence must be served.

#### Suspension

This term applies specifically in labour law and occurs when an employer instructs an employee not to report for duty while an investigation into that employee's conduct is carried out at the workplace.

#### Suspensive sale

The purchase of land or property by installment without a bond. Ownership only passes to the purchaser when the full amount has been paid.

## T

#### Tacit emancipation

Giving full adult rights to a minor whom the court finds is financially independent and capable of running their affairs in the same way as an adult. This includes the right to enter into contracts and to marry.

#### *Tacit hypothec*

The implied claim a creditor has to the property of a debtor. 'Tacit' means it does not have to be spelt out in detail.

#### Taxing

An attorney's bill that has been determined in line with a tariff of fees set down by the court.

#### Taxing master

The official who has the duty to ensure that an attorney's claims are not inflated.

#### Tenant

A person who leases/rents property.

#### Term

- (1) Provision of a contract
  - (2) A fixed period
  - (3) The duration of a prison sentence.
- Make sure you clarify through context which meaning your report intends

#### Test case

A case whose outcome can determine an issue of law.

#### Testimony

Evidence.

#### Theft

To take away someone else's property or assets without consent

#### Time immemorial

Forever. A legal cliché. Do not use.

#### Timeous

On time; to schedule.

#### Title

Right to ownership or property.

**Tort**

A wrong that damages a person's legally protected interests. Similar in meaning to, but not quite the same as, a **delict** (see above). Don't use either unless you are quoting a lawyer; rather explain the wrong and its impact.

**Torture**

To cause someone physical or psychological pain. Torture is defined by international law and no-one in South Africa, including police and security force members, is permitted to use it.

**Trap**

A situation or device set up to catch someone unawares. The root of the term '**entrapment**', which means action by the authorities where someone is tricked into committing an illegal act so they can be arrested.

**Treason**

The crime of conspiring to overthrow the State.

**Trespass**

The crime of being on land or inside a property without lawful reason or the permission of the owner.

**Trial**

The hearing of a case in court.

**Tribunal**

A statutory body that hears specified disputes such as those concerning labour or income tax. It employs very similar processes to a court. One example is the CCMA.

**Trust**

An arrangement whereby one person (the trustee) is given the powers to manage and control property or assets on behalf of someone else.

**U****Uberrimae fides fidei**

'The utmost good faith'. Meaning that the parties state all relevant information that may have an impact on the agreement even when they are not asked specifically about it.

**Ultra vires**

'Beyond their powers'. Describes a situation where a person or body exceeds the authority or rights legally granted to them.

**Unconstitutional evidence**

Evidence obtained in a way that breaches a person's constitutional rights, e.g. by torturing them; before their rights were explained; or without the relevant court order.

**Undue influence**

Inappropriate, excessive and improper influence on someone to say or do something that would not otherwise have been done or uttered.

**Unenforceable**

Something that the courts cannot make happen. A contract may be valid but unenforceable – e.g. SANEF could sell its members pieces of land on Mars, using a legally worded, correctly signed contract document. But we do not yet have the technology to make the land available.

**Unilateral**

One-sided. The other side may not agree, or may not even be aware that a statement was made or a document issued.

**Unjust enrichment**

Obtaining goods or money in a dishonest or unethical way.

**Urgent interim relief**

An application for immediate temporary assistance from the court, usually to give an applicant time or the opportunity to prepare.

**Usher**

A court official who escorts people in and out of the courts.

**Usufruct**

The right to enjoy a property and the benefits from it until a predetermined future date.

**Uttering**

The crime of passing or attempting to pass off forged documents or counterfeit objects as genuine.

**V****Valuator**

A person who estimates the monetary value of something to determine or certify its market value.

**Vendor**

Seller.

**Verdict**

Presiding officer's decision at the end of a case.

**Versus**

One party against another. This is shortened to 'v' in court cases, e.g. The State v Bloggs. Use when quoting court documents but not in ordinary reporting; say, 'the State against..'.

**Vest**

Legal power authorising someone to act in a certain way.

**Vexatious (action or litigation)**

When someone has no case whatsoever but still brings a dispute to court – often to annoy the other side. This is always a waste of the court's time. A presiding officer can declare individuals **vexatious litigants** if they do this repeatedly.

**Vicarious liability**

The liability or responsibility of one person for an act committed by another. It most often applies in the context of an employer being liable for the wrongful act of an employee, where the wrongful act was committed in the course of the employee's work.

**Victim**

Anyone who has suffered loss or injury as a result of a crime, including the violation of their rights. For crimes such as rape or sexual assault, it is often preferable to say 'survivor'.

**Viva voce**

Evidence given orally.

**Voetstoets**

Buying something as it is, with all its defects and all its advantages. The seller cannot be held liable for defects afterwards.

**Void**

Something that has no binding effect and cannot be legally enforced.

**Voidable**

A contract that can be cancelled.

**W****Waive/ Waiver**

To abandon a known right/ the document or text containing the abandonment .

**Ward**

An infant under the care of a guardian.

**Ward of court**

An infant brought under the care of the court through a court order even though the parent or guardian is alive.

**Warrant**

Permission from a judge for the police to arrest, search, etc.

**Warrant of arrest**

A document issued by a magistrate or Justice of the Peace authorising the police to arrest the person named in it.

**Warranty**

A guarantee or promise made by a manufacturer to repair goods if they don't work properly or fail within a set period of time. (We often use 'guarantee'; warranty is the formally correct term.)

**Will**

A document stipulating how a person's property or estate will be disposed of after that person dies.

**Winding up**

(see **Liquidation** above)

**Witness**

A person called to give evidence.

**Witness protection**

A system set up by the State to protect the identity and safety of State witnesses where they are at risk, using guards, safe houses and even relocation and new identity details.

**Writ**

A written order issued by a court.

**Table 1: Scheduled Offences**

SCHEDULE	TYPES OF OFFENCES	ARREST CONDITIONS	BAIL IMPLICATIONS
1	Treason; sedition; public violence; murder; culpable homicide; rape; indecent assault; bestiality; robbery; kidnapping; child- stealing; assault causing a dangerous wound; arson; malicious injury to property; breaking or entering premises intending to commit a crime; theft; knowingly receiving stolen property; forgery and offences relating to the coinage; escaping from custody on a Schedule 1 offence; inciting or attempting to commit a Schedule 1 offence; any other offence punishable by a six-month jail term without the option of a fine.	A private person or police officer can arrest a suspect without a warrant	
2 Part 1	Any offence relating to the illegal possession, transport or supply of drugs or liquor; any offence relating to the illicit dealing in or possession of precious metals or stones (i.e. gold, platinum and diamonds); breaking or entering; theft.		Police bail may be granted
2 Part II	Treason; sedition; murder; rape; robbery; assault where a dangerous wound is inflicted; breaking or entering; theft; receiving stolen goods; forgery; uttering if the amount exceeds R200; any offence relating to the illegal dealing or possession of precious metals or stones; any offence relating to the illegal possession, transport or supply of drugs; any offence relating to the coinage; and, or any conspiracy, incitement or attempt to commit any offence in this schedule.		Police bail may not be granted
2 Part III	Sedition; public violence; murder; kidnapping; child-stealing; housebreaking; intimidation; any conspiracy, incitement or attempt to commit any of these offences; and, or treason.		Police bail may not be granted
3	Any contravention of a by-law or regulation made by or for a city, town or regional council. Any traffic offence: Driving at a speed exceeding the prescribed limit; driving a vehicle without lights or means of identification; leaving or stopping a vehicle where it may not be left or in a condition in which it may not be left; driving a vehicle at a time and place when it may not be driven; driving a defective vehicle or causing undue noise; owning or driving an unlicensed vehicle; and, or driving a vehicle without a valid licence.		Police bail may be granted
5	Treason; murder; attempted murder involving the infliction of grievous bodily harm; rape; any offence in terms of the Drugs and Drug Trafficking Act where the value of the drug in question is worth more than R50 000, or the value of the drug is worth more than R10 000 where the offence was committed by a syndicate or where the offence was committed by a law enforcement officer; any offence relating to the smuggling, dealing of ammunition, firearms, explosives or armament or the possession of automatic, semi-automatic firearms, explosives or armaments; any offence of being in possession of more than 1 000 rounds of ammunition; any offence relating to exchange control, corruption, extortion, fraud, forgery, uttering or theft involving amounts of more than R500 000, or R100 000 if committed by a syndicate or group in furtherance of a common purpose or conspiracy, or R10 000 if committed by a law enforcement officer, whether in conspiracy or common purpose with others or not; indecent assault on a child under the age of 16; and, or a Schedule 1 offence where the accused has been convicted of a previous Schedule 1 offence or which was committed while out on bail on a Schedule 1 offence charge.		Bail hearing must take the form of an inquiry in court where the applicant must satisfy the court that they do not need to remain in custody and that they will return to stand trial.
6	<p>Murder when: It was planned or premeditated; the victim was a law enforcement officer or a person who was due to give material evidence to a Schedule 1 case; the victim was killed by the accused during or after the commission or attempted commission of rape or robbery with aggravating circumstances; and, or the offence was committed by a person or group acting with common purpose or conspiracy.</p> <p>Rape when: The victim is raped more than once whether by the accused or co-perpetrators; by more than one person where the persons acted with common purpose or conspiracy; by a person who is charged with having committed two or more offences of rape; and or, by a person who knew he had HIV or Aids; where the victim is a girl under the age of 16; or a physically disabled woman or mentally ill woman; and, or where grievous bodily harm is inflicted.</p> <p>Robbery involving: The use by the co-accused or any co-perpetrators or participants of a firearm; the infliction of grievous bodily harm by the accused or any of the co-perpetrators or participants; and, or the taking of a motor vehicle.</p> <p>Indecent assault on a child under 16 involving the infliction of grievous bodily harm. An offence referred to in Schedule 5 and the accused has previously been convicted of an offence in Schedules 5 or 6 or which was allegedly committed while they were released on bail in respect of a Schedule 5 or 6 offence.</p>		Bail hearing must take the form of an inquiry in court with the applicant showing that there are exceptional grounds for bail to be granted
7	Public violence culpable homicide; bestiality; assault involving the infliction of grievous bodily harm; arson; housebreaking; malicious injury to property; robbery, other than a robbery with aggravating circumstances, where the amount involved is less than R20 000; theft, if the amount exceeds R2 000 but is less than R20 000; any offence relating to the illegal possession of drugs; any offence relating to extortion, fraud, uttering or forgery if the amount is not more than R20 000; and, or any attempt, conspiracy or incitement to commit an offence in this schedule.		Conditional bail may be authorised by the Director of Public Prosecutions or prosecutor before the accused's first appearance

**Table 2: Differences between criminal cases, civil cases and commissions of inquiry**

Difference	Criminal case	Civil case	Commission of inquiry hearing
Who brings the case	The State.	An individual or organisation as plaintiff.	There is no 'case'. A commission of inquiry merely investigates.
Purpose	To detect and punish an offender. To deter further crime of this type on behalf of society.	To decide whether there has been a fault and on whose part. To fix a remedy or penalty or otherwise put things right between the parties.	To uncover evidence about an issue, incident or problem. To assemble and synthesise that evidence to draw conclusions about causes and make recommendations about remedies and to avoid similar occurrences in future.
Terminology	Alleged wrongdoer is a 'suspect' or 'the accused'.	Alleged wrongdoer is 'the defendant'	There are no wrongdoers or aggrieved parties. All those presenting information are witnesses.
Legal Assumptions	Court must treat accused as innocent until proven guilty. State has to prove guilt.	Defendant may have to disprove plaintiff's claim and prove own innocence.	As above.
Burden of proof	Beyond reasonable doubt.	Balance of probabilities.	Presiding officer determines facts in a report compiled after analysing and synthesising all evidence presented.
Bench	One judge, red robe, who can appoint two assessors in complex cases.	One judge, black robe; two for a civil case on appeal.	Presiding officer – normally a serving or retired judge – wears civilian clothing.

**Table 3: Minimum sentences**

Schedule	Statutory minimum sentence
Part i of schedule 2 (s51 (2) (a) (i)-(iii))	First offender not less than 15 years; Second offender not less than 20 years; and Third or subsequent offender not less than 25 years.
Part iii of schedule 2 (s51 (2) (b) (i)-(iii))	First offender not less than 10 years; Second offender not less than 15 years; and Third or subsequent offender not less than 20 years.
Part iv of schedule 2 (s51 (2) (c) (i)-(iii))	First offender not less than 5 years; Second offender not less than 7 years; and Third or subsequent offender not less than 10 years.



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*SANEF encourages input or comment on any inaccuracies a reader may find in the book. Every effort will be made to correct mistakes when we are alerted to them. Updates on changes in relevant areas of law and court reporting will be made by SANEF to the online version as we learn of them.*

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