

Reporting the Courts



THE MANDALA FOUNDATION FOR HUMAN RIGHTS



Netherlands institute for Southern Africa

Reporting the Courts

A desk guide and glossary

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edited by Gwen Ansell and Paddi Clay

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This text is a General Glossary of Terms used in its accompanying text *Reporting the Courts—A handbook for South African journalists* written by Kevin Ritchie and edited by Gwen Ansell, ISBN 1-92043-01-7

Law provides the framework without which it would not be possible beyond the most primitive of levels, for society to function. Almost everything we do has legal consequences, carrying with it rights and corresponding functions. Law is where the heart of society beats.

Judge Nigel Willis

(*Mail and Guardian* October 4, 2002)

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1. GLOSSARY

This is a general Glossary of terms used in its accompanying text *Reporting the Courts—A handbook for South African journalists* by Kevin Ritchie edited by Gwen Ansell, ISBN 1-92043-01-7, and of terms and words found in court documents and used in legal proceedings.

The Glossary is 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 reporters and sub-editors are likely to come across while working on court stories.

Italics denote words and phrases from Latin and other languages. Literal translations of Latin terms have been indicated with quotation marks.

A

Abduction

Taking away or detaining a child under the age of 14 without permission and against the will of the parent or guardian.

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 a criminal 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 money.

Acquittal

A court's finding at the end of a criminal trial that the accused is not guilty of the crimes with which he was 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, 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. In other words, to speak 'off the cuff'.

Adjudicator

A person appointed to decide the rights and wrongs of a situation or case. In court reporting, the more precise terms judge, magistrate or commissioner are preferable.

Administrator

A person who looks after business or public affairs. In the courts, used specifically of someone tasked with looking after the affairs of other persons or businesses that have been judged unable to do this for themselves.

Admission

In court reporting has three meanings:

- (1) when an accused person agrees he or she is guilty (an admission of guilt)
- (2) where one party admits to the truth of an allegation made by the other party
- (3) when a legal practitioner passes examinations and completes probation, and is allowed to practise a branch of the law (admitted to the Bar).

Admission of guilt

(see above) A formal agreement by an accused that he or she is guilty.

Adversarial system

The process of arguing a case where each party attacks and tests the arguments of the other.

Advocate

A practitioner who can appear in any court (unlike an attorney who needs special permission to appear in the High Court). Members of the public cannot approach an advocate directly, but must be referred by an attorney.

Affidavit

A sworn statement.

Affirm

US term for a higher court supporting a lower court's decision. Replace with 'uphold'.

Agent

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

Aggravating (facts, factors, circumstances)

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

Aiding and abetting

To help someone commit a crime.

Alibi

A defence provided 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. The use of this word requires care: see Section 9.3.5 of *Reporting the Courts—A handbook for South African journalists*.

Amendment

Making changes to documents or laws.

Animus

The intention, firmly formed, to do something.

Animus injuriandi

The intention to injure or harm by offending, not physically.

Annuity

A sum of money payable every year.

Ante-nuptial contract

(Often shortened to ANC.) A contract between two people who intend to marry, signed before they marry. It sets 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 and Application

These terms are used when 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 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 term so 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 practising 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 the person who the document belongs to 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. This amounts to precisely the amount charged by the attorney to the client.

Auction

Public sale in which goods or property are sold to the person who offers the highest amount of money.

Audi alteram partem

'Hearing both sides'. The basic legal practice of allowing each party to a dispute to present his or her side of the story. It 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. This also falls under double jeopardy.

B**Bail**

Money paid to the state as a guarantee, so that an accused person may be temporarily released until his or her case is heard.

Bankruptcy

The legal situation of being unable to pay off debts.

Bar

Term for the legal institution represented by advocates or counsel.

Barrister

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

Battery

Assault.

Bench

Literally, the raised platform on which judges or magistrates sit. Also a term that refers to the institution of being a judge or a magistrate. E.g. He has been appointed to the bench (made a judge/magistrate).

Beneficiary

A person who receives something.

Bestiality

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

Bilking

The crime of leaving a hotel without first paying the bill.

Bill of Rights

Found in chapter 2 of the Constitution of South Africa. This protects the fundamental rights and freedoms of individuals based on human dignity and equality.

Boedelscheiding

A Dutch phrase meaning separation of goods. This is a court order dividing the joint estate of people married in community of property, but does not put an end to their marriage. It is rare today and was normally used to protect the wife where the husband was squandering the assets of the joint estate. Do not use the term: explain what the court order is instead.

Bona fides

'Good faith/honest intention'. Do not use in general news reports: rather say, "The judge questioned the honesty of his intentions ..."

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

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

By-laws

Local laws passed by a city or town council dealing with the running of the municipality, e.g. where you may and may not park.

C**Candidate attorney**

A person with a law degree who is undergoing a practical period of 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 those acts 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

A warning given to a person facing possible criminal charges that they are not obliged to say anything without their lawyer being present.

Cautionary rule

An old-established convention that judges should not take at face value the evidence of a female complainant in a rape case or the evidence of a child, because these are likely to be unreliable. Jurists have pointed out that this convention breaches the Bill of Rights and the proposed new Sexual Offences Act will abolish it.

Caveat emptor

'Let the buyer beware'. Buyers must make sure they know exactly what they are buying.

Caveat subscriptor

‘Let the signer beware’. The person signing a contract must read the ‘small print’ on the contract.

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. police officer, lawyer) confirms with an official stamp and a signature is a true and exact copy of the original.

Chambers

The offices used by judges, advocates or attorneys.

Champerty

The practice of lawyers taking a percentage of the settlement won by a party in court as opposed to 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 this word without explanation.

Charge

The details of an alleged offence.

Child abuse

Any action that breaches the rights of children in terms of S28 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 well-being, education, physical or mental health or spiritual, moral or social development.

Children’s court

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 court, the people and processes that make up a court travel to these places during the year to hear cases.

Circumstantial evidence

Indirect evidence based on circumstances, not direct fact.

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 refers to a relative by descent, e.g. uncle, niece or cousin.

Collective bargaining

Where employers, employees and their representatives sit together as equals and enter into an agreement which is then binding on the 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, e.g. 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 sources of South African law.

Common law (husband/wife/marriage)

Situation where partners are not legally married but live together as husband and wife and are accepted by the community as such.

Community of property

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

Community service

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. He 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. Can be either spelt out (express) or implied.

Condonation

Permission from the 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. The demands of one role could influence how they carry out the other, e.g. a judge who is a relative of an accused person will be in a situation of conflict of interest if he tries that person's case.

Conjugal rights

The right of one marriage partner to have sex with the other. However, current sexual offences laws in SA recognise that conjugal rights are not absolute 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. Do not 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

Planning to commit a crime, inciting, instigating, commanding or procuring 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.

Contumacious

Defiant, especially defying lawful authority.

Conveyance

The registration of fixed property in the deeds office.

Copyright

Is 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 can use it.

Corporeals

Something that 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 has to pay.

Counsel

Another term for an advocate.

Count

Another word for charge.

Counter-claim

When the defendant sets out what claim s/he has 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

First court that hears the case.

Covenant

A binding agreement.

Creditor

A person to whom money is owed.

Crime

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 a state against another state.

Crimen injuria

Hurting the dignity of another and by so doing, breaking the law, e.g. swearing, racial slurs or indecent exposure.

Crimes against humanity

Any large-scale systematic act of persecution instigated or directed by any government or group against another group on political, religious or ethnic 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 made by Parliament regulating some police powers and the conduct of criminal trials.

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 witnesses' credibility, and to offer the court an alternative version.

Culpable homicide

The negligent killing of another human. Killing someone without intending to.

Culprit

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

Cur ad 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 defective 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 ‘in law’; opposite of *de jure* – see below). 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 *de facto* above, e.g. Mr Khumalo may have been 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. Explain.

Debt collectors

People or agencies hired by creditors to recover debts.

Debtor

Someone named in a civil judgment who owes money.

Deceit

Fraud, cheat 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 ownership and description of properties within the province are lodged.

Defamation

Publishing something about someone that could injure his/her reputation, with the intention to injure his/her 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

Discuss or weigh up the evidence towards a decision.

Delict

A civil crime related to neglecting duties or responsibilities in a way that adds up to wrongdoing.

Delivery

The physical transfer of possession to another.

Dependant

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

Deponent

A person who makes an affidavit or statement under oath.

Deposition

A sworn statement.

Desertion

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

Detention

Holding someone in prison or another authorised place such as a deportation camp.

Diligence

- (1) The legally-defined duty to care
- (2) The process of recovering documents needed in evidence in a civil action.

Diligens pater familias

A reasonable man; ‘a careful head of his household’. This is the idealised fictional person whose thinking the courts customarily use as a yardstick when making decisions.

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 the 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 the parties so that they can fully prepare for the 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 a judge which disagrees with the majority decision of the other judges on the bench in a specific matter.

Distribution

In discussion of wills, the division of the personal estate of an intestate person among his next of kin.

District surgeon

A doctor appointed by the State to a particular district to be in charge of specific tasks, e.g. vaccinations, postmortems, and health care.

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 places.

Divorce

Formal act of dissolving a marriage.

Dock

Designated seat in 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. Similar to common-law marriage but can also include same-sex relationships.

Domestic violence

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

Domicile

Your permanent address.

Domicilium citandi et executandi

The address where you will accept documents that are served upon you.

Duress

Undue influence or pressure put upon you.

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.

Ejectment order

A court order instructing a tenant to vacate or get out of the 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 of someone who has died.

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 is true.

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 given in court by witnesses.

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 the job they do.

Ex parte

'On behalf of'. When someone such as a guardian brings an action on behalf of another, such as a minor child, this is shown in court documents by the phrase *ex parte*.

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 which comes 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. He is the personal representative of the deceased (the testator).

Exhibit

An item of evidence (an object or a 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, e.g. forensics, fingerprints, handwriting, etc.

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 to aggravating circumstances.

Extortion

Obtaining money or favours through threats.

Extradition

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

F**Fair comment**

One possible defence to a defamation action. The defendant argues that the comment was an honest one to make and was based substantially 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 a court takes something for granted, which may not have happened, to allow the court to deal with the matter. Courts use 'fictions' as scientists use hypotheses to give them a basis for assuming jurisdiction or modifying rules. Fictions prevent a court's actions being too narrowly limited by the bare facts.

Fideicommissum

The successive right to the same property, e.g. A person leaves a house to her daughter on condition that upon the daughter's death, the house is passed onto 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, e.g. 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, e.g. a sister cannot marry her brother, or a father cannot marry his daughter, etc.

Foreclosure

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

Forfeit

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 he or she believes 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. Reports should not interpret this as a finding of guilt.

Forgery

The faking of documents, signatures etc.

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.

Friendly action

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

G**Garnishee order**

This is a term often used incorrectly for a court order attaching the salary or part of it of a debtor until the monies owed on the debt are paid off. (see Emoluments attachment order).

Grounds

Reasons or basis for a decision.

Guarantee

A promise from the manufacturer that the item actually does what it is supposed to.

Guardian

An adult who is appointed to take care of and usually assumes legal responsibility for someone under the age of 21.

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***

(used in UK Law) 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*).

Harassment

Bullying, threats or intimidation which create ongoing distress to the victim.

Heads of argument

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

Hearsay evidence

Evidence which 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 the court.

Heir

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

High Court

South African senior court which hears cases too serious or complex for a Magistrate's Court, and 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, he or she is 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 or murder.

Hostile witness

A witness called by one side of a case but 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 a wife is allowed to run up debts in her husband's name to buy them. Thus 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 the witness is asked to point out the alleged accused.

Illegal

An act that is directly forbidden by law.

Illegitimate child

A child born to parents whose union is not recognised formally by the law.

Immovables

Fixed property such as land or houses.

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 be present 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 s/he was 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.

Inchoate

A process that has begun but is not complete.

Incitement

Stirring up, 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 the guilt.

Indemnify

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

Indemnity

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

In session

Means a court is sitting. Beware of the word 'proceeding', this means that a case is still being argued or deliberated upon, but the court may not 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 has.

Inspection *in loco*

When the court goes to look at a place that is relevant to a particular case.

Instigation

Incitement or encouragement to commit a crime.

Instrument

A document that contains 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 summary 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 the court gives to force someone to do or to stop doing something.

Interim order

A court order which 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.

Ipsa facto

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

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 Constitutional Court.

Judgment

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

Junior counsel

A junior advocate.

Jurisdiction

Powers to judge and decide cases.

Juristic person

A legal person, in other words, a body which 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

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 a 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 vehicles where each insurance company pays only the costs incurred by its own client.

L

Landlord

The owner of a property which is rented to another.

Larceny

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

Latent defect

A fault in a sold item which 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 are seeking.

Lease

A contract determining the period and the 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 be re-instated or paid compensation.

Lessee

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

Lessor

The owner of property which is rented.

Lethal force

Force that kills.

Letters of Executorship

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 its debt.

Litigants

People who are fighting on either side of a civil case.

Litigate

To start and carry on a lawsuit in court.

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 organization 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 illegitimate children, to cover their living costs. Popularly called *paggeld* in local tabloids.

Maintenance court

A Magistrate's Court set up to ensure that the person who is to make the maintenance payment does so in full on a monthly basis.

Majority

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

Majority opinion/decision

When three or more judges hear a case, this is the term used for the ruling agreed on by most of the judges if there is disagreement among them.

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 cause 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. The intentional doing of 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 union of a man and a woman to found a family unit. By the end of 2006 same-sex partners will also be lawfully able to marry. Under customary and Muslim law, the union may include more than one wife.

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 or 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 in order to persuade the other party to act on those facts to their loss.

Mitigation

The reduction of harmful effects. Arguments in mitigation can include extenuating circumstances (see elsewhere in the Glossary).

Modus operandi

‘Method of operating’. Criminals can sometimes be identified because they use the same modus operandi in successive crimes.

Modus vivendi

‘Way of living’. An arrangement where conflicting parties can live together peacefully.

Moot point

A point that is still under discussion or being argued. It could also be a point that never reaches an agreed conclusion.

Mortgage bond

Borrowing money to buy a house against the value of the house.

Motion

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

Motion court

Legal session to settle an unopposed civil case.

Motion roll

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, etc.

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 s/he may not be a juristic person as s/he lacks the ability to take decisions about her/his life.

Necessaries

Those things essential to a specific context. This is a general term, but courts are concerned with the definition of necessaries in various 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 ill or out of your senses.

Notarial deed

A document drafted by a notary.

Notary

A person who is qualified to draft agreements and contracts.

Nuisance

Unlawful interference with another’s use or enjoyment of his 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 God that you will be honest.

Obiter dictum

‘By the way’. A remark made by a judge while reading his judgment that is not part of the judgment but is 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 by criminal law.

On all fours

Legal jargon, meaning that one case is similar to a previous one 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

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 the place of the existing judgment.

Ownership

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 which are determined by a tariff which covers what the fee is for certain things, 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, e.g. selling sports shoes bearing a forged Nike logo. It 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 elsewhere in the Glossary).

Patrimony

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

Peace officer

A person designated by the Minister for Justice 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 personal capacity only.

Persuasive authority

An influential decision, authority or *obiter dictum* which 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 paper 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

The physical control of an article or thing.

Post mortem

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

Postponement

To arrange 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 the time has elapsed, the case may no longer be brought. Therefore the time has prescribed.

Presiding officer

Judge, magistrate, commissioner or headman.

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.

Pro Deo

A term used to refer to a private advocate appointed and paid for by the State to defend someone who faces serious charges, like 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 were not 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

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

Whatever is capable of being owned.

Provocation

Acts or words, such as insults or teasing, that are 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 the 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.

Public protector

The public protector is 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 he may practice. This period is called doing pupillage.

Putative father

The man who is supposed to be the father of an illegitimate child or alleged to be so in maintenance proceedings.

Putative marriage

A marriage that is null and void from the start, but which still has certain legal consequences because one or both 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 reporting on 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 man’ (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*)

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

Rebut

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

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 mental institution.

Records

Documents of completed court proceedings.

Redemption

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

Redress

Compensation.

Refute

To prove 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.

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.

Remedy

Legal help or relief sought by the plaintiff.

Remission

Cutting the length or severity of a sentence.

Replication

The response by the plaintiff to the defendant’s reply to the original claim.

Representative

Someone who is duly authorised to act on behalf of another person.

Repugnancy clause

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

Repugnant

Revolted, unacceptable, undesirable.

Res judicata

‘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.

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.

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 he or she has issued.

Rider

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 using a jury system.

Right

The freedom to act or not to act or to own or possess something 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.

Right of audience

Right of lawyers to appear in particular courts.

Robbery

The crime of stealing another’s property by force.

Roll (Court Roll)

The diary/timetable of court cases.

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 situation in a country where fair laws exist, are respected and are justly implemented; where no person can be punished or jailed without a trial and all people are equal in the eyes of the law.

S

Sabotage

The crime of deliberately damaging State property or disrupting public services or the functioning of government or security forces. Legal strikes are not crimes under the sabotage laws.

Sale in execution

Occurs after a court order is obtained 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 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. Much used under apartheid. No test case has yet been heard to revise the old definition of this crime in line with the constitutional right to free speech.

Senior Counsel

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 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 an insolvent person has his property administered by a court-appointed trustee who liquidates the person's estate so that creditors can be paid.

Service of process

The delivery of court documents to where the 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.

Set down

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

Setting aside

When a matter is referred to a different court and that 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 the 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 even displaying suggestive pictures.

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, e.g. attaching, removing and storing assets which are thereafter Sold in Execution.

Shoplifting

The crime of stealing from shops or stores.

Silks (see Senior Counsel)

Senior advocates who no longer wear ordinary black gowns in court but ones made of silk.

Slander

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

Sodomy

Anal intercourse, which was previously criminalised.

Specific performance

When parties enter into a contract there is normally an agreement to do something. Once the contract is concluded they are required to perform exactly as it is described in the contract.

Stamp duty

A form of tax on certain legal documents, paid by purchasing special stamps and sticking them onto 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 who is employed by the State to deal with legal matters in the magistrate's court 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 that is 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 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 he/she can no longer practise.

Sub judice

'Under consideration'. The *sub judice* rule sets out the timeframe within which a case is defined as being under consideration, and bars public or media comment designed to influence the outcome or discredit the proceedings during this period. (See section 4.4.2 of *Reporting the Courts—A handbook for South African journalists*.)

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

Points made by a witness or by a lawyer that to be considered by the presiding official.

Subpoena

A written instruction from the court to a witness saying s/he must come to court to give information. If s/he does not, s/he may be punished. It can be used as a noun as in this instance 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 post.

Subversion

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

Sue

To begin legal proceedings against another party.

Suicide

The act of killing yourself.

Summary trial

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

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
- (2) Another word for bail.

Surrender

To give up.

Suspect

A person who is thought to have committed a crime.

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 he or she breaks these conditions, the suspension ends and the full sentence must be served.

Suspension

This term applies specifically to 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**

The giving of full adult rights to a minor who the court finds is financially independent and capable of running his/her affairs in the same way as someone who has reached the age of majority. This includes the right to contract and to get married.

Tacit hypothec

A tacit hypothec is the implied claim a creditor has to the property of a debtor and does not have to be spelt out in detail.

Taxing

An attorney's bill which 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

The person who leases/rents property.

Term

- (1) Provision of a contract
- (2) A fixed period
- (3) The duration of a prison sentence.

Test case

A case which determines an issue of law.

Testimony

Evidence.

Theft

Stealing from someone.

Time immemorial

Forever.

Timeous

On time, to schedule.

Title

Right to ownership or property.

Torture

To cause someone physical or psychological pain. Torture is defined by international law and is illegal in South Africa for everyone, including the police and security forces.

Trap

A situation or device set up to catch someone unawares. The root of the term ‘entrapment’, which means action by the authorities in which 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 a piece of 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 various issues in conflict such as labour and income tax disputes. It runs in the same way as a court, e.g. 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

Uherrimae 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 to do so.

Ultra vires

‘Outside his/her powers’. Describes a situation where someone acts beyond 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 him before his rights were explained to him, or without the relevant court order.

Undue influence

Inappropriate and improper influence to say or do something that would not have otherwise been done.

Unenforceable

Something which 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 the statement was made or the document issued.

Unjust enrichment

A process where one obtains goods or money in a crooked or immoral way.

Urgent interim relief

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

Usher

A court official who escorts people around the courts.

Usufruct

The right to enjoy a property and the benefits from the property until a pre-determined date in the future.

Uttering

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

V

Valuator

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

Vendor

The 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

This occurs when someone has no case whatsoever but still brings the dispute to court. Usually 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 his work.

Victim

Anyone who has suffered loss or injury as a result of a crime, including the violation of their rights.

Viva voce

The evidence that is given orally.

Voetstoets

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

Void

Something which has no binding effect. It cannot be enforced legally.

Voidable

A contract that can be cancelled.

W

Waiver

Abandon a known right.

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 the document.

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.

Will

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

Winding up

(see Liquidation)

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 required, using guards, safe houses and even relocation and new identity details.

Writ

A written order issued by a court.

2. MOTION ROLL TERMS: TRANSLATION AFRIKAANS-ENGLISH

In some centres in South Africa the Motion Roll that is issued is in only one language; the language of the person compiling the roll. Very often that language is Afrikaans. To assist those who are not familiar with Afrikaans we have translated some of the terms likely to appear on the Motion Roll into English.

Aansoek in terme van Boedelwet
Application in terms of Estate Act

Aansoek ingevolge Reël 21
Application for Rule 21

Aansoek ingevolge Reël 30 (1)
Application in terms of Rule 30 (1)

Aansoek om afwysing
Application to dismiss claim

Aansoek om blootlegging
Application for discovery

Aansoek om interlokuêre bevel
Application for interlocutory

Aansoek om kostes te betaal
Application to pay costs

Aansoek om nadere besonderhede
Application for further particulars

Aansoek om opskorting van
Application for suspension of

Aansoek om te verplig
Application to compel

Aansoek om te verplig – Reël 53 (3)
Application to compel – Rule 53 (3)

Aansoek om te verplig en bewaring
Order to comply and custody

Aansoek om tersydestelling van kennisgewing van verdediging
Application to set aside notice to defend

Aansoek om uitstel
Application for postponement

Aansoek om verspilde koste as gevolg van vertraging en om te antwoord op versoek om nadere besonderhede
Application for wasted costs occasioned by delay and to compel furnishing of further particulars

Aansoek om voeging
Application for joinder

Aanvaarding van testament
Acceptance of will (by Master)

Beslagleggings en leweringsbevel
Attachment and delivery order

Beslagleggingsbevel
Attachment order

Besoldigingsbevel
Garnishee order

Bestrede aansoeke
Opposed applications

Bevele nisi
Rules nisi

Bewaring en onderhoud
Custody and maintenance

Bewaring van kind
Custody of child

Boedeloorgawe
Voluntary surrender of estate

Boedelwet
Administration of Estates Act

Borgakte/Verband
Suretyship/Mortgage bond

Borgstelling
Suretyship

Dienste gelewer
Services rendered

Doodverklaringbevel
Presumption of death order

Ediktale betekening
Edictal citation

Ediktale sitasie
Edictal citation

Eksepsie
Exception

Geld geleen (borgakte)
Monies lent and advanced (suretyship)

Geld geleen en voorgeskiet
Money lent and advanced

Geregtelike bestuur
Judicial management

Geskrap van die rol van prokureurs en transportbesorgers
Struck off roll of attorneys and conveyancers

Gevangenissetting
Imprisonment, committal to prison

Goedere verkoop
Goods sold

Goedere verkoop en gelewer
Goods sold and delivered

Hersieningsaansoek
Application for review

Huweliksgoederebedeling
Matrimonial Property Regime

In kamers
In chambers

In gevolge onderneming
Order in terms of undertaking

Interdik
Interdict

Konsepsbevel
Draft order

Konsolidasie van aksies
Consolidation of actions

Koopbrief
Deed of sale

Koopkontrak
Purchase agreement

Koste-aansoek
Application for costs

Kredietfasiliteite
Credit facilities

Kurator ad litem
Curator ad litem

Kurator bonis
Curator bonis

Lewering van finale likwidasie en distribusierekening
Providing of final liquidation and distribution account

Likwidasie
Liquidation

Magtigingsbevel
Authorising order

Mondelinge ooreenkoms
Oral agreement

Na-huwelikskontrak
Post nuptial agreement

Onbestrede aansoek
Unopposed application

Onbestrede Egskeidings
Unopposed divorces

Oordrag van eiendom
Transfer of property

Ooreenkoms
Agreement

Oorgawe
Surrender

Oorplasing van geding
Transfer of action

Oortrokke bankrekening
Overdrawn bank account

Opheffing
Discharge

Oproep van notariële verband
Call up notarial bond (foreclosure)

Perfektering van verband
Perfecting of bond

Reël 43
Rule 43

Reël 53
Rule 53

Registrasie van verband
Registration of bonds

Rehabilitasie
Rehabilitation

Saak en betaling van koste
Proceedings and order of costs

Sekwestrasie
Sequestration

Skaal van koste argumenteer te word
Argument on costs (party or attorney and client)

Skriftelike ooreenkoms
Written agreement

Skuldbewys
Acknowledgment of debt

Skulderkenning
Acknowledgment of debt

Summiere vonnis
Summary judgment

Tersydestelling van bevel
Rescinding of order

Tersydestelling van vonnis
Rescission of judgment

Tersydestellingsbevel
Setting aside or rescission order

Tersydestelling van bevel nisi
Setting aside of *Rule nisi*

Terugtrek van lisensie
Withdrawal of licence

Toelating as advokaat
Admission as advocate

Toelating as notaris
Admission as notary

Toelating as prokureur
Admission as attorney

Toelating as transportbesorger
Admission as conveyancer

Transportakte
Deed of transport

Tussenpleit
Interpleader

Verklarende bevel
Declaratory order

Voegingsaansoek
Order for joinder

Voegingsbevel
Joinder order

Wysiging van hofbevel
Amendment of court order

Wysiging van huweliksgoederebedeling
Amendment of matrimonial property regime judgment

3. TIPS AND CHECKLISTS FOR SUB-EDITORS

Subbing court stories

All stories need careful sub-editing – but court stories require particular attention to detail. An incorrect description of, e.g. a verdict, can have damaging implications not only for the people involved in the case, but also for your own title, which may get sued.

To sub a court story effectively, you may need to broaden your own knowledge of the law and court procedure. We recommend you refer not only to this short guide of words and terms, but also to *Reporting the Courts—A handbook for South African journalists* that goes with it. This has detailed explanations of processes and titles, and summaries of where the law currently stands on risky areas like defamation, contempt of court and *sub judice*. There is a reading list at the back, with details of useful publications and websites, so you can check up on what is quite a rapidly changing area.

In addition, it is your responsibility to stay up to date on current court cases that are big news. Do not assume the reporter will always have all the facts right; you need your own general knowledge and reference resources too. This is a professional responsibility: as a sub you are far more than a spell-checker. You are a gatekeeper of your publication's reputation for accuracy and fairness.

First steps

Before you do anything else, read the complete story through. Sometimes, the inaccuracies or legally risky spin in a story come from how it is put together, rather than from a single detail, so you need to get a sense of the whole story. Besides, if you spot serious structural problems at this stage, it's better to solve these before you begin dealing with spellings, commas and other typographical corrections.

If possible, always look at the story in place on its allotted page or spread. The way the story and headline are juxtaposed with other stories or pictures on the page can also create problems. E.g. supposing you headlined a murder story 'Killer wife' – and the headline also ran over another, stand-alone picture of a woman. Someone scanning the page quickly might think the pictured woman was the killer. She could argue your paper had defamed her, and sue.

Once you have looked at these big-picture issues, and resolved any problems relating to the whole story and its placement, you can begin to tackle the details.

CHECKLIST FOR ACCURACY

- Are all names consistent and correctly spelled?
- Is status (e.g. 'suspect', 'witness', 'accused', 'magistrate') correctly described?
- If your house style includes ages, addresses and titles, are these correct and consistent?
- Is the title of the court correct?
- Is the charge/offence/cause of lawsuit correctly described?
- Is the verdict accurately expressed?
- Are civil/criminal cases correctly distinguished from one another?
- If legal terms are used, are these correctly applied? (see Section 9.3 of the Court Reporting Handbook)
- Are quotations from court documents clearly attributed?
- Are quotes from role-players clearly attributed?
- If plain language is used, are the 'translations' of legalities accurate?
- If plain language isn't used, should it be?

CHECKLIST FOR FORBIDDEN CONTENT

Ethical or public interest considerations may lead a news organisation to publish some of this 'forbidden' content. But be sure correct decision-making procedures have been followed.

- Is the identity of role-players under 18 protected?
- Is the identity of rape survivors protected?
- Is the identity of suspects who have not yet pleaded protected?
- Does a divorce report limit itself only to the court decision and settlement?
- Does the report stick to only those matters already mentioned in court and report on those matters fairly and accurately?
- Does the report respect *in camera* and not report closed proceedings?
- Does the report refer to the previous crimes of an accused not yet sentenced?
- Does the story interview serving prisoners without the governor's permission?

CHECKLIST FOR CONTEMPT OF COURT AND SUB JUDICE MATTERS

Sub judice governs a case from the moment of arrest or summons until the last possible appeal has been exhausted.

- Does the report imply the accused is guilty before the verdict has been issued?
- Does the report seem to intimidate or threaten participants in the case?
- Does the report imply that the presiding officer is incompetent or biased?
- Does the report stick to words used in court, or does it use loaded paraphrases?
- Does the report include verbal attacks on role-players?
- If so, were these clearly uttered in privileged contexts?
- Was permission obtained for photographs or sketches made inside court?
- Have any presiding officer's reporting restrictions been respected?

CHECKLIST FOR DEFAMATION

- Does the report imply misconduct, guilt or criminality, or contain non-privileged statements that do?
- Does any part of the report link the name of a suspect closely with a description of the crime?
- In a report of a pending case, are there any implications that guilt is already proven?
- In civil cases, is treatment of information about pre-trial pleadings balanced?
- In all cases, is coverage balanced?
- During a pending case, are all allegations described as such, consistently?
- Where a case has been dismissed or struck from the roll, have all implications against former suspects been removed from the story?
- Are the distinctions between 'suspect', 'accused' and 'convicted person/criminal' respected?
- Is the word 'alleged' correctly placed in sentences where it is used?

CHECKLIST FOR ETHICS AND FAIRNESS

- Has the reporter stayed with the case or only provided an account of one segment?
- If it is only a partial account, is this made clear?
- Is context included to explain information?
- Has the confidentiality of secret sources been protected?
- Is there evidence permissions were obtained to interview under-18s?
- Is there evidence vulnerable people (such as rape survivors) gave informed consent to interviews?
- If lawyers are quoted, are there quotes from lawyers on both sides?
- Has proper newsroom procedure been followed to permit any apparent variation of these standards?
- Has headline ‘shorthand’ created stigma or stereotypes?

4. RECORD OF UNDERSTANDING BETWEEN SANEF AND GOVERNMENT ON THE CRIMINAL PROCEDURES ACT

The South African National Editors’ Forum and the Ministers for Justice and for Safety and Security and the National Director of Public Prosecutions have agreed to an investigation into the possibility and desirability of making changes to the Criminal Procedures Act, 1977 which contains Section 205 (dealt with in Chapter 4 of *Reporting the Courts—A handbook for South African journalists*). This investigation however, has not yet been completed.

Below is the agreement that the two parties have reached on this issue in the meantime and which holds until revoked by either party or until the investigation is over.

RECORD OF UNDERSTANDING

Between

THE MINISTER OF JUSTICE

And

THE MINISTER OF SAFETY AND SECURITY

And

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

And

SOUTH AFRICAN NATIONAL EDITORS’ FORUM

1 INTRODUCTION

1.1 This record of understanding is the outcome of discussions between the Minister of Justice, the Minister of Safety and Security, the National Director of Public Prosecutions (hereinafter referred to as the National Director) and the South African National Editors’ Forum concerning the issues pertaining to the duty of every citizen or everyone else subject to the Constitution to testify regarding his or her knowledge of the commission of crime as well as the protection of journalists’ sources and information.

1.2 The Minister of Justice, the Minister of Safety and Security and the National Director on the one hand and the South African National Editors' Forum on behalf of the press and the media on the other hand have reached an understanding with regard to the implementation of the existing laws relative to the duty to testify and the protection of journalists' sources and information which understanding they hereby record.

2 PRINCIPLES

All parties hereto accept –

2.1 the supremacy of the Constitution of the Republic of South Africa 1996, (Act 108 of 1996), and the rule of law;

2.2 that the maintenance of law and order and the administration of justice in the Republic of South Africa are the responsibility of the State, all the citizens of this land including the members of the press and media and everyone else subject to the Constitution;

2.3 that unless there exist special grounds, in the interest of the maintenance of law and order and the administration of justice, it is the duty of every citizen and every one else subject to the Constitution, to testify and give evidence of his or her knowledge of a crime, when called upon to do so by the State;

2.4 that the press and the media in a democratic society and a right have a duty, in the public interest, to collect and disseminate newsworthy information and in order to exercise this right and duty it is necessary, under appropriate circumstances, that their sources and information should be protected; and

2.5 that there is a need to balance the interests of the maintenance of law and order and the administration of justice on the one hand with the right of freedom of expression and specifically freedom of the press and media.

3 CONTINUING NEGOTIATIONS

3.1 The parties, including the press and the media, recognise that it is necessary to retain the provisions in our law in terms of which persons may

be called to court to disclose information which may be required for the effective administration of justice, which would include, but not limited to, section 179 and section 205 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

3.2 However, the parties also recognise that it is in the interest of the State, the press, the media and the community if the principles referred to in paragraph 2 above are clearly defined in our laws.

3.3 The parties accordingly agree to urgently investigate the possibility and desirability to amend the Criminal Procedure Act, 1977, so as to incorporate the abovementioned principles and they agree to continue with the present negotiations.

4 INTERIM ARRANGEMENT

Pending finalisation of the investigation referred to in paragraph 3.3, the Minister of Justice, the Minister of Safety and Security and the National Director are prepared to accommodate the concerns of the press and the media by implementing the following procedures to be applicable when a subpoena is caused to be issued by the State in respect of the press and the media:

4.1 When the prosecuting authority or an official under the authority of the Minister of Safety and Security wishes to compel a member of the press or the media to testify or deliver documents in relation to information obtained by that person for the purpose of publication in the press or the media, the matter shall at the request of the member of the press or the media be referred to the National Director of Public Prosecutions for consideration.

4.2 The National Director shall afford the person referred to in paragraph 4.1 or his or her representative and any other interested party the opportunity to make representations to the National Director and the National Director may initiate a process of mediation and negotiation between all the relevant stakeholders in an attempt to resolve a particular dispute or disputes in an attempt to avoid legal proceedings in respect of the issue of testifying or delivering documents.

4.3 After the process referred to in paragraph 4.2 above, the National Director undertakes to make a determination with regard to the issuing of the subpoena by weighing the need to uphold the maintenance of law and order and the administration of justice against the right of freedom of expression and freedom of the press and the media.

4.4 The South African National Editors' Forum will utilise its best endeavours to ensure that its members comply with this interim arrangement and further agrees to use its best endeavours to ensure that matters are settled in accordance with the principles set out in paragraph 2 above.

4.5 The procedures described in this paragraph shall not deprive any party to revert to the normal legal process if a subpoena is issued after the conclusion of procedures.

Nothing contained in this document shall be interpreted so as to interfere with the judiciary or with any lawful power or competency that may be exercised by the judiciary.

DATED at CAPE TOWN this the 19th day of February 1999.

(Signed by Dullah Omar)
MINISTER OF JUSTICE

(Signed on behalf of the Minister by Azalia Cachalia)
MINISTER OF SAFETY AND SECURITY

(Signed by Bulelani Ngcuka)
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

(Signed by Moegsien Williams)
SANEF VICE-CHAIRMAN

5. MEDIA CODES OF CONDUCT

5.1 Press Code of Professional Practice

The print media industry has set up the office of the Press Ombudsman and an Appeal Panel to mediate, settle and, if necessary, adjudicate complaints about what has been published in newspapers and magazines, in accordance with a Code and Rules of Procedure. The office is funded by the newspaper and magazine industries and its authority rests on the commitment of publishers and editors to respect its rulings and to adhere to the Press Code of Professional Practice. The principle of press self-regulation was introduced in South Africa in 1962 and has been accepted for more than 40 years.

For any update to the Press Code of Professional Practice and information on recent decisions and judgments please go to <http://www.ombudsman.org.za>

PRESS CODE OF PROFESSIONAL PRACTICE

Preamble

The basic principle to be upheld is that the freedom of the press is indivisible from and subject to the same rights and duties as that of the individual and rests on the public's fundamental right to be informed and freely to receive and to disseminate opinions.

The primary purpose of gathering and distributing news and opinion is to serve society by informing citizens and enabling them to make informed judgments on the issues of the time.

The freedom of the press to bring an independent scrutiny to bear on the forces that shape society is a freedom exercised on behalf of the public.

The public interest is the only test that justifies departure from the highest standards of journalism and includes:

- a. detecting or exposing crime or serious misdemeanor;
- b. detecting or exposing serious anti-social conduct;
- c. protecting public health and safety;
- d. preventing the public from being misled by some statement or action of an individual or organisation;
- e. detecting or exposing hypocrisy, falsehoods or double standards of behaviour on the part of public figures or institutions and in public institutions.

The code is not intended to be comprehensive or all embracing. No code can cover every contingency. The press will be judged by the code's spirit – accuracy, balance, fairness and decency – rather than its narrow letter, in the belief that vigilant self-regulation is the hallmark of a free and independent press. In considering complaints the Press Ombudsman and Appeal Panel will be guided by the following:

1 Reporting of News

1.1 The press shall be obliged to report news truthfully, accurately and fairly.

1.2 News shall be presented in context and in a balanced manner, without an intentional or negligent departure from the facts whether by:

- 1.2.1 distortion, exaggeration or misrepresentation;
- 1.2.2 material omissions; or
- 1.2.3 summarisation.

1.3 Only what may reasonably be true having regard to the sources of the news, may be presented as facts, and such facts shall be published fairly with due regard to context and importance. Where a report is not based on facts or is founded on opinions, allegation, rumour or supposition, it shall be presented in such manner as to indicate this clearly.

1.4 Where there is reason to doubt the accuracy of a report and it is practicable to verify the accuracy thereof, it shall be verified. Where it has not been practicable to verify the accuracy of a report, this shall be mentioned in such report.

1.5 A newspaper should usually seek the views of the subject of serious critical reportage in advance of publication; provided that this need not be done where the newspaper has reasonable grounds for believing that by doing so it would be prevented from publishing the report or where evidence might be destroyed or witnesses intimidated.

1.6 A publication should make amends for publishing information or comment that is found to be harmfully inaccurate by printing, promptly and with appropriate prominence, a retraction, correction of explanation.

1.7 Reports, photographs or sketches relative to matters involving indecency or obscenity shall be presented with due sensitivity towards the prevailing moral climate.

1.8 The identity of rape victims and victims of sexual violence shall not be published without the consent of the victim.

1.9 News obtained by dishonest or unfair means, or the publication of which would involve a breach of confidence, should not be published unless there is a public interest.

1.10 In both news and comment, the press shall exercise exceptional care and consideration in matters involving the private lives and concerns of individuals, bearing in mind that any right to privacy may be overridden by a legitimate public interest.

1.11 A newspaper has wide discretion in matters of taste but this does not justify lapses of taste so repugnant as to bring the freedom of the press into disrepute or be extremely offensive to the public.

2 Discrimination

2.1 The press should avoid discriminatory or denigratory references to people's race, colour, ethnicity, religion, sexual orientation or preference, physical or mental disability or illness, or age.

2.2 The press should not refer to a person's race, colour, ethnicity, religion, sexual orientation or preference, physical or mental illness in a prejudicial or pejorative context except where it is strictly relevant to the matter reported or adds significantly to readers' understanding of that matter.

2.3 The press has the right and indeed the duty to report and comment on all matters of public interest. This right and duty must, however, be balanced against the obligation not to promote racial hatred or discord in such a way as to create the likelihood of imminent violence.

3 Advocacy

A newspaper is justified in strongly advocating its own views on controversial topics provided that it treats its readers fairly by:

- 3.1 making fact and opinion clearly distinguishable;
- 3.2 not misrepresenting or suppressing relevant facts;
- 3.3 not distorting the facts in text or headlines.

4 Comment

4.1 The press shall be entitled to comment upon or criticise any actions or events of public importance provided such comments or criticisms are fairly and honestly made.

4.2 Comment by the press shall be presented in such manner that it appears clearly that it is comment, and shall be made on facts truly stated or fairly indicated and referred to.

4.3 Comment by the press shall be an honest expression of opinion, without malice or dishonest motives, and shall take fair account of all available facts which are material to the matter commented upon.

5 Headlines, posters, pictures and captions

5.1 Headlines and captions to pictures shall give a reasonable reflection of the contents of the report or picture in question.

5.2 Posters shall not mislead the public and shall give a reasonable reflection of the contents of the reports in question.

5.3 Pictures shall not misrepresent or mislead nor be manipulated to do so.

6 Confidential sources

A newspaper has an obligation to protect confidential sources of information.

7 Payment for articles

No payment shall be made for feature articles to persons engaged in crime or other notorious misbehaviour, or to convicted persons or their associates, including family, friends, neighbours and colleagues, except where the material concerned ought to be published in the public interest and the payment is necessary for this to be done.

8 Violence

Due care and responsibility shall be exercised by the press with regard to the presentation of brutality, violence and atrocities.

5.2 Code of the BCCSA

The Broadcasting Complaints Commission of South Africa (BCCSA), was established by the National Association of Broadcasters (NAB) in 1993 to adjudicate and mediate complaints against a broadcaster who has signed its Code of Conduct.

The BCCSA is entirely independent of the NAB and the broadcasters. Commissioners are appointed by an independent panel, and it is chaired by a retired judge of the Appellate Division of the Supreme Court. For any updates to the Code of Conduct and reports of the BCCSA go to <http://www.bccsa.co.za>

CODE OF THE BCCSA Applicable from 7 March 2003

Foreword

1 Section 2 of the Independent Broadcasting Authority Act No. 153 of 1993 (“the Act”) enjoins the Independent Broadcasting Authority (“the Authority”) to ensure that broadcasting licensees adhere to a Code of Conduct acceptable to the Authority.

2 In terms of section 56(1) of the Act, “all broadcasting licensees shall adhere to the Code of Conduct for Broadcasting Services as set out in Schedule 1”. The provisions of that sub-section do not, however, apply to any broadcasting licensee “if he or she is a member of a body which has proved to the satisfaction of the Authority that its members subscribe and

adhere to a Code of Conduct enforced by that body by means of its own disciplinary mechanism, and provided that such Code of Conduct and disciplinary mechanisms are acceptable to the Authority”.

3 Definitions

“audience” as referred to in this Code means a visual and an aural audience i.e. both television and radio audiences.

“broadcasts intended for adult audiences” as referred to in this Code means broadcasts depicting excessive violence and explicit sexual conduct and shall exclude broadcasts intended for children.

“children” as referred to in this Code means those persons below 16 years.

“watershed period” as referred to in this Code means the period between 21h00 and 05h00. Such restriction applies only to television services.

Preamble

4 Freedom of expression lies at the foundation of a democratic South Africa and is one of the basic pre-requisites for this country’s progress and the development in liberty of every person. Freedom of expression is a condition indispensable to the attainment of all other freedoms. The premium our Constitution attaches to freedom of expression is not novel, it is an article of faith, in the democracies of the kind we are venturing to create.

5 Constitutional protection is afforded to freedom of expression in section 16 of the Constitution which provides:

- (1) Everyone has the right to freedom of expression which includes -
 - (a) Freedom of the press and other media
 - (b) Freedom to receive or impart information or ideas.
 - (c) Freedom of artistic creativity; and
 - (d) Academic freedom and freedom of scientific research.
- (2) The right in sub-section (1) does not extend to -
 - (a) Propaganda for war;
 - (b) Incitement of imminent violence; or
 - (c) Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm”.

6 Whilst in most democratic societies freedom of expression is recognised as being absolutely central to democracy, in no country is freedom of expression absolute. Like all rights freedom of expression is subject to limitation under section 36 of the Constitution.

7 The outcome of disputes turning on the guarantee of freedom of expression will depend upon the value the courts are prepared to place on that freedom and the extent to which they will be inclined to subordinate other rights and interests to free expression. Rights of free expression will have to be weighed up against many other rights, including the rights to equality, dignity, privacy, political campaigning, fair trial, economic activity, workplace democracy, property and most significantly the rights of children and women.

8 In the period prior to the transition to democracy, governmental processes neither required nor welcomed the adjuncts of free expression and critical discussion and our country did not treasure at its core a democratic ideal. The right to freedom of expression was regularly violated with impunity by the legislature and the executive. Therefore the protection of this right is of paramount importance now that South Africa is grappling with the process of purging itself of those laws and practices from our past which do not accord with the values which underpin the Constitution.

Application of the Code

9 All licensees are required to ensure that all broadcasts comply with this Code and are further required to satisfy the Authority that they have adequate procedures to fulfil this requirement. All licensees should ensure that relevant employees and programme-makers, including those from whom they commission programmes, understand the Code’s contents and significance. All licensees should also have in place procedures for ensuring that programme-makers can seek guidance on the Code within the licensee’s organisation at a senior level.

10 While the Authority is responsible for drafting this Code of Conduct and for monitoring compliance therewith, independent producers or others supplying programme material should seek guidance on specific proposals from the relevant licensee.

11 Under the Act, the Authority has the power to impose sanctions, including fines, on licensees who do not comply with this Code of Conduct.

12 This Code does not attempt to cover the full range of programme matters with which the Authority and licensees are concerned. This is not because such matters are insignificant, but because they have not given rise to the need for Authority guidance. The Code is therefore not a complete guide to good practice in every situation. Nor is it necessarily the last word on the matters to which it refers. Views and attitudes change, and any prescription for what is required of those who make and provide programmes may be incomplete and may sooner or later become outdated. The Code is subject to interpretation in the light of changing circumstances, and in some matters it may be necessary, from time to time, to introduce fresh requirements.

13 In drawing up this Code the Authority has taken into account the objectives of the Act and the urgent need in South Africa for the fundamental values which underlie our legal system to accommodate to the norms and principles which are embraced by our Constitution.

Violence

14 Licensees shall not broadcast any material which judged within context:-

- (i) contains gratuitous violence in any form i.e. violence which does not play an integral role in developing the plot, character or theme of the material as a whole.
- (ii) sanctions, promotes or glamorizes violence.

15 Violence against women

Broadcasters shall:-

- (i) not broadcast material which, judged within context, sanctions, promotes or glamorizes any aspect of violence against women;
- (ii) ensure that women are not depicted as victims of violence unless the violence is integral to the story being told;
- (iii) be particularly sensitive not to perpetuate the link between women in a sexual context and women as victims of violence.

16 Violence and Hate Speech against specific groups

16.1 Licensees shall not broadcast material which, judged within context sanctions, promotes or glamorizes violence based on race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or mental or physical disability.

16.2 Licensees are reminded generally of the possible dangers of some people imitating violence details of which they see, hear or read about.

16.3 Licensees shall not broadcast

- (a) Propaganda for war;
- (b) Incitement of imminent violence; or
- (c) Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

17 The abovementioned prohibitions shall not apply to -

- (i) a bona fide scientific, documentary, dramatic, artistic, or religious broadcast, which judged within context, is of such nature;
- (ii) broadcasts which amount to discussion, argument or opinion on a matter pertaining to religion, belief or conscience; or
- (iii) broadcasts which amounts to a bona fide discussion, argument or opinion on a matter of public interest.

Children

Broadcasters are reminded that children as defined in paragraph 3 above embraces a wide range of maturity and sophistication, and in interpreting this Code it is legitimate for licensees to distinguish, if appropriate, those approaching adulthood from a much younger, pre-teenage audience.

18.1 Broadcasters shall not broadcast material unsuitable for children at times when large numbers of children may be expected to be part of the audience.

18.2 Broadcasters shall exercise particular caution. As provided below, in the depiction of violence in children's programming.

18.3 In children's programming portrayed by real-life characters, violence shall, whether physical, verbal or emotional, only be portrayed when it is essential to the development of a character and plot.

18.4 Animated programming for children, while accepted as a stylised form of story-telling which can contain non-realistic violence, shall not have violence as its central theme, and shall not invite dangerous imitation.

18.5 Programming for children shall with due care deal with themes which could threaten their sense of security, when portraying, for example, domestic conflict, death, crime or the use of drugs.

18.6 Programming for children shall with due care deal with themes which could invite children to imitate acts which they see on screen or hear about, such as the use of plastic bags as toys, use of matches, the use of dangerous household products as playthings, or other dangerous physical acts.

18.7 Programming for children shall not contain realistic scenes of violence which create the impression that violence is the preferred or only method to resolve conflict between individuals.

18.8 Programming for children shall not contain realistic scenes of violence which minimise or gloss over the effect of violent acts. Any realistic depictions of violence shall portray, in human terms, the consequences of that violence to its victims and its perpetrators.

18.9 Programming for children shall not contain frightening or otherwise excessive special effects not required by the story line.

Watershed Period

19 Programming on television which contains scenes of violence, sexually explicit conduct and/or offensive language intended for adult audiences shall not be broadcast before the watershed period.

20 On the basis that there is a likelihood of older children forming part of the audience during the watershed period, licensees shall adhere to the provisions of Article 32 below (audience advisories) enabling parents to make an informed decision as to the suitability of the programming for their family members.

21 Promotional material and music videos which contain scenes of violence, sexually explicit conduct and/or offensive language intended for adult audiences shall not be broadcast before the watershed period.

22 Some programmes broadcast outside the watershed period will not be suitable for very young children. Licensees should provide sufficient information, in terms of regular scheduling patterns or on-air advice, to assist parents to make appropriate viewing choices.

23 Licensees shall be aware that with the advance of the watershed period progressively less suitable (i.e. more adult) material may be shown and it may be that a programme will be acceptable for example at 23h00 that would not be suitable at 21h00.

24 Broadcasters must be particularly sensitive to the likelihood that programmes which start during the watershed period and which run beyond it may then be viewed by children.

25 Subscription services

25.1 Where a programme service is only available to viewers on subscription and offers a parental control mechanism, its availability to children may be more restricted and the watershed period may begin at 20h00.

Language

26 Offensive language, including profanity, blasphemy and other religiously insensitive material shall not be used in programmes specially designed for children.

27 No excessively and grossly offensive language should be used before the watershed period on television or at times when large numbers of children are likely to be part of the audience on television or radio. Its use during the periods referred to above should, where practicable, be approved in advance by the licensee's most senior programme executive or the designated alternate.

Sexual Conduct

28 Licensees shall not broadcast material, which judged within context, contains a scene or scenes, simulated or real of any of the following:

- (i) A person who, or is depicted as being under the age of 18 years, participating in, engaging in or assisting another person to engage in sexual conduct or a lewd display of nudity;

- (ii) Explicit violent sexual conduct;
- (iii) Bestiality;
- (iv) Explicit sexual conduct which degrades a person in the sense that it advocates a particular form of hatred based on gender and which constitutes incitement to cause harm.

29 Save for 28(i) above, the prohibition in 28(ii) to 28(iv) shall not be applicable to bona fide scientific, documentary, dramatic material, which judged within context, is of such nature. The prohibition in 28(i) shall however be applicable to artistic material which judged within context, is of such a nature.

30 Scenes depicting sexual conduct, as defined in the Films and Publication Act 65 of 1996, should be broadcast only during the watershed period. Exceptions to this may be allowed in programmes with a serious educational purpose or where the representation is non-explicit and should be approved in advance by the most senior programme executive or a delegated alternate.

31 Explicit portrayal of violent sexual behaviour is justifiable only exceptionally and the same approval process as referred to in 30 above must be followed.

Audience Advisories

32 To assist audiences in choosing programmes, licensees shall provide advisory assistance, which when applicable shall include guidelines as to age, at the beginning of broadcasts and wherever necessary, where such broadcasts contains violence, sexual conduct and/or offensive language.

33 Classification

33.1 Where a Film and Publications Board classification exists in terms of the Films and Publication Act No. 65 of 1996 ("Films and Publications Act") for the version of a film or programme intended to be broadcast, such classification certification may be used as a guide for broadcasting.

33.2 No version which has been refused a Film and Publication Board classification certification should be broadcast at any time.

33.3 In all other instances, the provisions of this Code will apply.

34 News

34.1 Licensees shall be obliged to report news truthfully, accurately and fairly.

34.2 News shall be presented in the correct context and in a fair manner, without intentional or negligent departure from the facts, whether by:-

- (a) Distortion, exaggeration or misrepresentation.
- (b) Material omissions; or
- (c) Summarisation.

34.3 Only that which may reasonably be true, having due regard to the source of the news, may be presented as fact, an such fact shall be broadcast fairly with due regard to context and importance. Where a report is not based on fact or is founded on opinion, supposition, rumours or allegations, it shall be presented in such manner as to indicate clearly that such is the case.

34.4 Where there is reason to doubt the correctness of the report and it is practicable to verify the correctness thereof, it shall be verified. Where such verification is not practicable, that fact shall be mentioned in the report.

34.5 Where it subsequently appears that a broadcast report was incorrect in a material respect, it shall be rectified forthwith, without reservation or delay. The rectification shall be presented with such a degree of prominence and timing as in the circumstances may be adequate and fair so as to readily attract attention.

34.6 The identity of rape victims and other victims of sexual violence shall not be divulged in any broadcast without the prior consent of the victim concerned.

34.7 Licensees shall advise viewers in advance of scenes or reporting of extraordinary violence, or graphic reporting on delicate subject-matter such as sexual assault or court action related to sexual crimes, particularly during afternoon or early evening newscasts and updates when children would probably be in the audience.

34.8 Licensees shall employ discretion in the use of explicit or graphic language related to stories of destruction, accidents or sexual violence which could disturb children and sensitive audiences.

35 Comment

35.1 Licensees shall be entitled to broadcast comment on and criticism of any actions or events of public importance.

35.2 Comment shall be an honest expression of opinion and shall be presented in such manner that it appears clearly to be comment, and shall be made on facts truly stated or fairly indicated and referred to.

36 Controversial issues of public importance

36.1 in presenting a programme in which controversial issues of public importance are discussed, a licensee shall make reasonable efforts to fairly present opposing points of view either in the same programme or in a subsequent programme forming part of the same series of programmes presented within a reasonable period of time of the original broadcast and within substantially the same time slot.

36.2 A person whose views are to be criticised in a broadcasting programme on a controversial issue of public importance shall be given a right to reply to such criticism on the same programme. If this is impracticable however, opportunity for response to the programme should be provided where appropriate, for example in a right to reply programme or in a pre-arranged discussion programme with the prior consent of the person concerned.

37 Elections

During any election period, the provisions of sections 58, 59, 60 and 61 of the Act shall apply, and all broadcasting services shall in terms of those sections be subject to the jurisdiction of the Authority.

38 Privacy

Insofar as both news and comment are concerned, broadcasting licensees shall exercise exceptional care and consideration in matters involving the dignity or private lives and private concerns of individuals, bearing in mind that the rights to dignity and privacy may be overridden by a legitimate public interest.

39 Paying a criminal for information

39.1 No payment shall be made to persons involved in crime or other notorious behaviour, or to persons who have been engaged in crime or other notorious behaviour, in order to obtain information concerning any such behaviour, unless compelling societal interests indicate the contrary.



