

CML4107F WEEK ONE

“Ignorance of the law is no excuse”

What is the law?

Law is a framework of rules with the aim of creating boundaries and to govern how people act. It is aimed at maintaining social order and peace.

Human behaviour is regulated by various rules and norms. There is a potential for conflict as soon as an interaction exists between people. This is due to a difference in opinions, communities, and values. The law is used to govern these differences.

At a basic level, four types of conduct rules:

1. Rules of religion:

- Manages the relationship between the self and the entity your religion describes to. These are principles or guidelines derived from religious teachings or scriptures, governing behaviour and moral conduct based on beliefs in a higher power or divine authority.
- Example: The Ten Commandments in Christianity or the Five Pillars of Islam.

2. Rules of individual morality:

- These are personal ethical standards that guide individual behaviour, often based on principles of right and wrong, fairness, and empathy.
- Example: Honesty, integrity, and kindness towards others in personal interactions.

3. Rules of collective morality:

- Norms of the community as a whole. These are societal or cultural norms and values that influence behaviour within a community or group, reflecting shared beliefs about acceptable conduct and social order.
- Example: Respect for elders or cultural taboos against certain behaviours.

4. Rules of law:

- These are formal regulations established by governing bodies, enforced by institutions, and often backed by legal consequences for non-compliance. They govern behaviour within a society and are designed to maintain order, protect rights, and resolve disputes.
- Example: Speed limits on roads or prohibitions against theft in criminal law.

Rules and norms often overlap within the context of conduct rules, as they both serve to guide behaviour and regulate interactions within society.

Question – A murders B. What basic conduct rules are implicated here?

The structure of the answer:

1. Identify the four conduct rules.
2. Show how each of them apply.
3. Describe how they overlap
4. Describe whether the scenario is acceptable or not.

Answer:

1. Identify the four conduct rules.

- Rules of religion, individual morality, collective morality, law.

2. Show how each of them apply

- Rules of Religion: Depending on the specific religious beliefs of the individuals involved, various religious teachings may prohibit murder as a violation of divine commandments or moral principles. For example, the Sixth Commandment in Christianity states, "Thou shalt not kill."
- Rules of Individual Morality: Murder is generally considered morally reprehensible by most individuals, regardless of religious affiliation. It violates personal ethical standards such as the inherent value of human life, empathy for others, and the recognition of the right to life.
- Rules of Collective Morality: Societal norms and values universally condemn murder as a grave offense against the community. There is a collective understanding that murder disrupts social order, undermines trust, and threatens the safety and well-being of individuals within society.
- Rules of Law: Legal systems categorically prohibit murder and impose severe penalties for those who commit this crime. Laws against murder serve to protect the fundamental rights of individuals and maintain the rule of law within society

3. Describe how they overlap

- The rules of individual morality and collective morality align closely with each other, as both emphasize the inherent wrongfulness of murder and the importance of preserving human life.
- Rules of religion may overlap with individual and collective morality, as religious teachings often reinforce ethical principles that are widely accepted in society.

4. Describe whether the scenario is acceptable or not

- The scenario of A murdering B is categorically unacceptable according to all four conduct rules. It violates religious teachings, personal ethical standards, societal norms, and legal regulations. Murder is universally condemned as a heinous act that inflicts irreparable harm and violates the most fundamental rights of individuals.

The role of the law within the engineering profession

These encompass various aspects that govern the conduct, operations, and interactions of engineers and engineering firms

- **Creates standards by which both parties must act**
Legal regulations establish standards and requirements for engineering practices, ensuring safety, quality, and compliance with relevant codes and standards.
- **Mechanism by which disputes and conflicts can be resolved**
This includes litigation, arbitration, mediation, and other alternative dispute resolution methods to address issues such as contract breaches, negligence claims, or disagreements over project specifications.
- **Ethics**
Legal standards often overlap with ethical considerations in engineering, emphasizing professional integrity, honesty, and accountability.
- **Labour relations**
Employment laws govern the relationship between engineering firms and their employees, covering issues such as hiring practices, working conditions, wages, benefits, and termination procedures.
- **Legal structures to carry on a business and corporate governance**
Engineering firms operate within legal frameworks that define their organizational structure, liability, governance, and financial management.
- **Contracts**
Contracts are fundamental to engineering projects, outlining the rights, responsibilities, and obligations of parties involved, including clients, contractors, subcontractors, and suppliers.
- **Intellectual property**
Intellectual property laws protect engineers' creations, innovations, and designs, including patents, copyrights, trademarks, and trade secrets.
- **Risk management**
Legal frameworks guide engineers in identifying, assessing, and managing risks associated with engineering projects, including safety hazards, environmental impacts, and contractual liabilities.
- **Dispute resolution**
Legal mechanisms for dispute resolution, including litigation, arbitration, and mediation, play a critical role in addressing conflicts and resolving disputes that may arise during engineering projects.

Is the law fair or just, and should it be?

- **Must legal rules be fair (reasonable) and just for it to have legal effect?**
 - Legal rules are often expected to be fair and just to have legitimacy and moral authority. People are more likely to comply with laws they perceive as fair and just.
 - However, not all legal rules may be perceived as fair or just by everyone. There can be disagreement over what constitutes fairness and justice, influenced by cultural, social, and individual perspectives.
- **Positive law vs Natural law**
 - *Natural law*: The set of unwritten rules, values and norms humans must adhere to without human intervention in the form of legislation and other law making.
 - *Positive law*: The law is what it is. These are the rules established by the state and they must be adhered to whether it is just or not. Compliance with positive law is obligatory, and legal consequences may result from non-compliance.
- **How do we determine whether a rule of law is just?**
 - Law tries to be fair, but due to the complexity of humanity, it sometimes can't meet that objective. Collective morality may influence if the law is just.
 - Collective morality, which reflects shared societal values and norms, can influence perceptions of whether a law is just. Laws that align with collective morality are more likely to be perceived as just and legitimate.

Classification of the Law

The term "persons" within legal frameworks extends beyond individual human beings to include juristic personalities, such as corporations and other recognized legal entities.

The rights contained in the Bill of Rights are often derived from principles outlined in international declarations of human rights. This alignment ensures protection against potential abuses of power, whether by governmental authorities or private entities.

Law is typically categorized into international and national law.

International law governs relationships between states and other international actors. As a signatory to numerous international organizations and treaties, South Africa is bound by international legal obligations, which may influence or supersede national laws.

When courts apply national law, they may also consider relevant international legal principles, treaties, and agreements ratified by South Africa. This incorporation is particularly significant when interpreting constitutional rights or resolving legal disputes involving international components.

While international law generally applies in South Africa, the extent to which foreign law (the national law of other countries) is considered varies depending on the context and the principles of private international law. Courts may reference foreign law, particularly in cases involving cross-border disputes or conflicts of laws.

National Law

1. Substantive Law

Comprises legal principles governing various aspects of society.

1.1. Commercial Law:

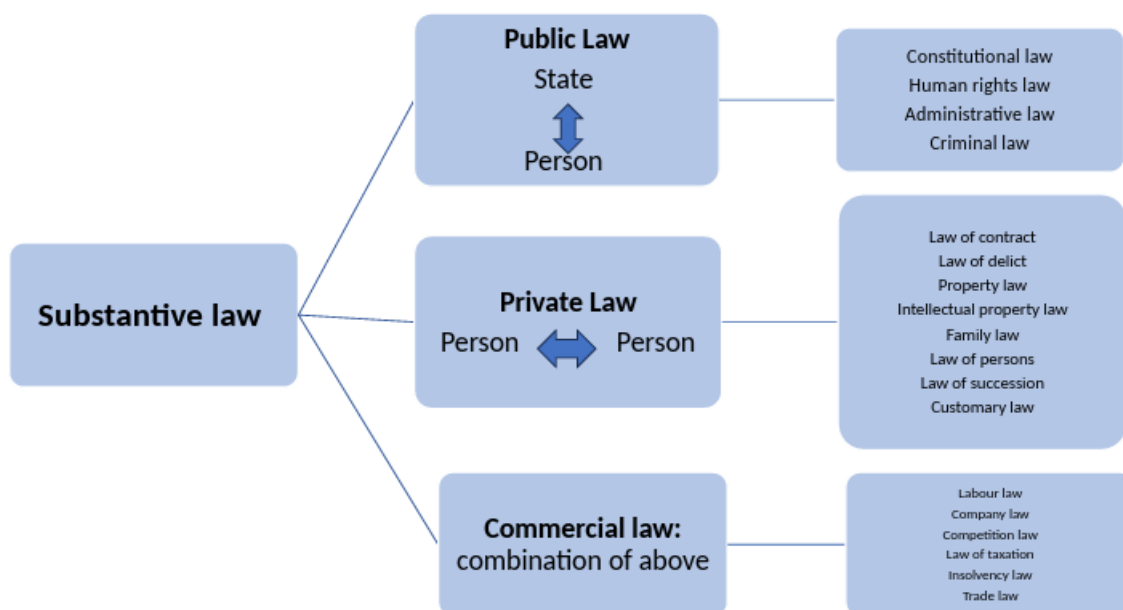
Governs transactions and interactions within the realm of commerce, trade, and industry. It plays a crucial role in regulating business activities, contracts, and commercial disputes, ensuring fairness and efficiency in commercial transactions. Basically, a combination of the two below.

1.2. Public Law:

Regulates the relationship between the state or governmental authority and individuals or entities. It encompasses constitutional law, administrative law, and criminal law, among others. The Constitution serves as the supreme law of the land, providing the framework for the exercise of state power and the protection of individual rights. Its enforcement is facilitated through judicial mechanisms, including the Constitutional Court and other courts within the legal system.

1.3. Private Law:

Governs relationships between private individuals or entities, including contracts, property rights, and personal matters. Private law ensures the enforcement of rights and obligations between parties in civil disputes.



2. Procedural Law

Governs the procedures and processes followed to enforce substantive laws and resolve legal disputes.

2.1. Procedures for Enforcing Legislation:

Establishes the rules and mechanisms for initiating legal actions, presenting evidence, conducting trials, and rendering judgments. Procedural law ensures the fair and orderly administration of justice within the legal system.

Procedural law:

Criminal procedure
Civil procedure
Law of evidence
Legal interpretation

The role of different types of law and what it aims to regulate:

Public law	
Constitutional law	The nature & organs of the state (including the Bill of Rights)
Human rights law	Mainly from Bill of Rights (but also international law)
Administrative law	State exercise of executive power, including the implementation of legislation
Criminal law	Criminal offences & penalties/sentences

Private law	
Law of contract	Regulates agreements between parties
Law of delict	Unlawful acts which cause harm (loss)
Law of property	Rights to moveable and immovable property (ownership and lease)
Law of intellectual property	Inventions, patents, copyright, trademarks
Family law	Marriage, civil union, divorce, children, maintenance
Law of persons	Rights & status of humans
Law of succession	Regulation of a person's estate after death
Law of customs, indigenous law	Regulation of indigenous communities

Commercial law	
Law of taxation	Rules regulating the taxation of persons and businesses by the state
Company law	Regulates the rights and conduct related to businesses
Competition law	Regulates anti-competitive conduct by companies
Insolvency law	Regulates where debtors can no longer meet their financial obligations
Banking law	Governs the legal relationships between banks, customers and interested persons
International trade and maritime law	Business of carriage of goods by sea
Labour law	Regulation of labour relations and employment relationships

"Justice delayed is justice denied"

What is parliamentary sovereignty?

It denotes that the legislative body has the ultimate legal authority to enact, amend, or repeal laws without being subject to external limitations imposed by other branches of government or by previous legislative acts.

Although the courts are responsible for interpreting the constitution and develop common law, the judges don't make the law. They have a responsibility to develop the common law, and based on the law, they will make a contextually sensitive decision. In cases where common law conflicts with legislation, judges have the authority to align it with statutory law.

Sources Of South African Law

1. The Constitution and legislation
2. Common Law
3. Custom
4. Indigenous Law
5. Court Decisions/Case Law

SA has an uncoded (undocumented in history) legal system, hence the multiple sources of law. Each source of the law responds to the basic conduct rules.

The Constitution and Legislation

- The Constitution serves as the supreme law of South Africa and provides the framework for the legal system. It also serves as a point of departure, and everything needs to be aligned with it.
- Legislation refers to laws enacted by legislative bodies, such as parliaments or congresses, under the authority granted to them by the Constitution.
- The Constitution is not typically considered a type of legislation because it holds a higher legal status and serves as the ultimate authority within the legal system.
- If the legislation is not aligned with the common law, it should be aligned for legal coherence and consistency.
- Importantly, the Constitution includes the Bill of Rights, and also regulates the role and status of International law in South Africa.

The role of the Constitution

- Supreme law and all other laws/actions/policies must comply with it
- Regulates the structure of the state, including:
 - Parliament
 - National Council of Provinces
 - President & Executive
 - Provincial legislatures
 - Local government
 - The courts
 - Chapter 9 institutions (Public Protector, SAHRC, Auditor General, Electoral Commission)
 - Public administration
 - Security services
 - Traditional leaders
 - Finance
- It also regulates the role and status of International law in South Africa
- Importantly, it includes the Bill of Rights

Legislation

- Refers to statutes, acts, regulations etc.
- **Types of legislation**
- The Constitution
- Parliamentary legislation (national legislation)
- Provincial legislation (e.g, provincial regulations)
- Subordinate legislation (Local level and other)

What is legislation?

- These are written laws passed by national / provincial / municipal government
- They bind everyone / specific groups within the population (eg creditors & debtors)
- Legislation can change existing law (eg common law principles)
- Designed to:
 - fill gaps & loopholes
 - update existing law
 - engage in social engineering
 - ensure legal protection
 - promote legal certainty & provide clarity

How is legislation applied/enforced?

- Criminal law – enforced by police, public prosecutors & the courts
- Administrative law – courts & tribunals & criminal prosecution
- Civil law – litigation/arbitration by individuals (courts and other bodies)
- Chapter 9 Institutions – eg Public Protector

Common Law

- It encompasses principles derived from English common law, Roman-Dutch law, and local judicial precedents.
- Common law refers to legal principles and rules developed through judicial decisions over time.
- Common law fills gaps in legislation and evolves through court decisions.
- Common law is adaptable to changing societal norms, technological advancements, and evolving legal contexts. Courts can interpret and apply common law principles to address novel issues or situations not explicitly covered by legislation.
- Not a codified system
- The principle of "abrogation by disuse" refers to the idea that a legal rule or principle within the common law system may be considered obsolete or invalidated if it has not been applied or enforced over an extended period of time.
- Many principles of common law are long standing and remain applicable despite legislation.
- Example: *locatio conductio operarum*
 - This is the Roman employment relationship as they knew it.
 - It governed contractual relationships involving the performance of work or services.
 - It covered the hiring or leasing of things.
 - Employer was able to dismiss employee without reason provided the employer gives notice (Today, employees are protected against unfair dismissal).
 - The employer typically has authority over the employee.
 - Employees are generally expected to follow the lawful instructions and directives of their employers within the framework of their job responsibilities.
 - Employees should respect their employers, act honestly and in good faith, and maintain the trust given to them by their employers.

Customary Law

- It consists of practices, traditions, and norms observed by specific communities or cultural groups.
- It is recognized and applied by courts in matters pertaining to family law, inheritance, and traditional governance, among others.
- Usually, unwritten and derived from the customs which are carried through from one generation to another.
- If a customary rule or practice violates the fundamental rights enshrined in the Constitution, it cannot stand unchallenged.
- **Van Breda vs Jacobs 1921 Case**
 - This case was about a group of fishers along Cape Point.
 - Once a specific group of fishers target an area and start catching fish, another group of the fishers was not allowed to target the same school of fish or area.
 - This is called First Come First Pull.
 - This custom was used amongst them to regulate who was able to fish in a particular area.
 - There was a dispute because Jacobs' group of fishers targeted the same area as Van Breda.
 - When in court, the parties acknowledged the custom, and that Jacobs violated the custom.
 - As a remedy, the court could order Jacobs to pay damages because the fish has already been caught and sold. The damage amount should be the amount for the catch on that day.
- The court rules that a custom could be a source of law if it meets the following 4 requirements:
 - In use for a long time
 - It must be fair/reasonable
 - Certain and clear content
 - Generally recognised and faithfully observed by society

Indigenous Law

- Not written down.
- Today, it is applied in the ordinary courts in accordance with the principles of conflict of laws.
- Once proven by expert evidence, it enjoys the status of common law. (Someone from that community needs to testify in court about the existence of the rule)
- Initially, there was no legislation containing indigenous rules observed by indigenous communities in South Africa (it was a form of living law).
- It was involved with a specific indigenous community, and that's how they enforced their laws.
- Many indigenous rules have fallen under disuse.
- Some laws were codified in legislation because they were being used continuously.
- If custom/customary law is inconsistent with the Bill of Rights/Constitution, it should be developed to ensure that it is consistent.

Main difference between custom law and indigenous law:

- Customs have to be proven using the four requirements. (Indigenous law does not need to be proven using the four requirements)
- Customs can exist in a community that doesn't form part of an indigenous community.
- Indigenous law is a form of unwritten customary law

Court Decisions

- It plays a significant role in shaping South African law. It sets precedent for other courts to abide by the law.
- Not strictly a source of law but rather a statement of the law.
- Judges do not create law, they interpret it. Allows us to plan & react in an informed way.
- Judges don't create the law, but they are tasked with implementing or interpreting the law.
- When a judge/court decides to interpret legislation/common law, judges can end up creating law when they give a specific new interpretation of a particular piece of legislation... or they can expand or develop a principle of the common law.
- In that way, they do make laws.
- Why court decisions is a source of law: It sets precedent for other courts to follow.
- The extent to which court decisions are binding on lower courts, is determined by this precedent system.

Branches of the Law

1. Legislative Branch
 - The legislative branch is responsible for creating laws. It consists of legislative bodies such as parliaments, congresses, or assemblies, depending on the country's political system.
2. Executive Branch
 - The executive branch is tasked with enforcing and administering laws.
3. Judicial Branch
 - The judicial branch is responsible for interpreting and applying laws.

How Do We Keep Power In Check?

This is done by the separation of powers. This allows the separation of the branches of law for there to be checks and balances so one body doesn't have complete control of all legal processes in SA.

The Court System

Hierarchy (Precedent System)

1. Constitutional Court (CC)
 - The purpose of this court is to uphold the constitution and has the power to declare decisions that are contrary to the constitution and the power to declare those decisions invalid and unconstitutional.
 - Apex (it has the final say in cases when dealing with a constitutional issue).
 - It is significant in SA that we have a justiciable bill of rights. (the court may invalidate any actions that are against the bill of rights.)
 - The court needs to be able to balance depending on the situation (legislation and the bill of rights in the constitution)
 - May sit as a court of first instance and of appeal
 - Covers the whole of South Africa
 - Seat in Johannesburg
2. Supreme Court of Appeal (SCA)
 - If a case doesn't deal with a constitutional issue (not related to the interpretation of the bill of rights) then this is the apex court.
 - E.g. Civil matter about contract & Criminal & Constitutional matters
 - Covers the whole of South Africa
 - May only hear matters brought on appeal from another court
 - Caveat: CC
 - Seat in Bloem
 - Any decisions related to a constitutional issue needs to be confirmed by the constitutional court
3. High Courts
 - There are 9 provincial divisions of the High Court as well as 6 local seats.
 - Hear Civil & Criminal & Constitutional matters
 - The Courts cover the Provinces in which they are situated
 - May sit as courts of first instance & of appeal
4. Lower Courts and Special Courts
 - Regional courts
 - Magistrate courts
 - There are 100s of MCs
 - These sit both at the Regional + District levels
 - MCs hear both Civil & Criminal matters
 - They cover local areas
 - They may only hear matters sitting as a court of first instance
 - Special Courts: To allow for a court that has expertise in particular issues to hear these matters. Takes the pressure away from the rest of the high courts.

Court doesn't have to adhere to precedent when the fact of the two matters differ to such an extent that a different conclusion is justified in these circumstances.

The court system

- But the system is bigger...
- In addition to the courts are tribunals
 - Eg the Commission for Conciliation, Mediation and Arbitration (CCMA)
 - This is the key body responsible for resolving labour disputes
 - BUT it does not have the status of a court
 - Instead, it is an administrative tribunal
 - So while its decisions may be made binding, it does not produce legal precedent

The court system

Precedent

- **Constitutional Court** – apex court but limited to constitutional & public interest matters
 - A minimum of 8 and a maximum of 11 judges sit on this court
- **SCA** – highest court, bound by its own judgments (unless wrong)
 - Judgments bind all subordinate courts in SA
 - Five judges sit in a matter (sometimes 3 in criminal appeals)
- **High Courts (includes Labour Court)** – if no SCA/LAC decision, bound by its own judgments (unless wrong)
 - Single judge bound by judgment of full bench (ie 3 judges)
- **Lower Courts (eg Magistrates Courts)** – bound by SCA's and High Courts' decisions
 - Their judgments – not precedent
- **Other bodies? Eg Commission for Conciliation, Mediation & Arbitration (CCMA)**
 - Generally not binding but may be influential

The court system

Practical Implication of precedent:

CASE 1

★An employee was dismissed for stealing a can of Fanta and the court said the following:

"It is not the value of the item stolen that should determine whether dismissal for theft is fair; it is whether the employee's actions had the effect of rendering the continuation of the relationship of employer and employee intolerable."

★*Anglo American Farms t/a Boschendal Restaurant v Komjwayo* (1992) 13 ILJ 573 (LAC)

CASE 2

★An employee was dismissed for consuming a 250ml container of orange juice. His defence was that it was expired stock. The court said the following:

"Theft is theft and does not become less so because of the size of the article stolen or misappropriated. Trust is the core of the employment relationship. Dishonest conduct by an employee breaches the trust the employer places on the employee."

★*Metcash Trading Ltd t/a Metro Cash & Carry v Fobb & another* (1998) 19 ILJ 1516 (LC)

The court system

Jurisdiction

(a) Monetary jurisdiction

- Small Claims Court – can hear matters involving amounts up to R20 000
- Magistrates Courts (MCs) – can hear matters up to R200 000 (District MCs) & up to R400 000 (Regional MCs)
- High Court – can hear matters from R400 000 & up (ie to an unlimited amount)
- Specialist courts/tribunals?
 - Eg consumer courts/ labour court
 - Generally, there are no monetary restrictions in these types of matters **BUT** the nature of the dispute is determinant
 - Eg a dispute about an unfair dismissal will go first to the CCMA and either back to the CCMA or to the Labour Court

The court system

Jurisdiction

(b) Geographical location

- The general principle in civil matters is that the plaintiff must **follow the defendant** to their court
 - So a plaintiff (**IE** the person bringing the claim to court **EG** Lee) has to bring the matter to the court in which the defendant (**IE** the person who is being sued) resides or has its principal place of business
- BUT Contracts often include an agreement as to the geographical location where claims must be brought which usually overrides the general principle
 - **NOTE** that sometimes, specifying the court / tribunal (or geographical location) may be unlawful
 - EG in some cases under the CPA
 - **What did Lee's contract say?**
- NOTE ALSO some legislation provides for **Alternative Dispute Resolution (ADR)**
 - Consumer Protection Act
 - Labour Relations Act

The law of obligations

- The concept “right” and “obligation”
- (Objective) law consists of legal rules
- A legal rule may confer a right upon a person = e.g. right to receive basic education
 - Afforded protection by law.
- A right is defined as the relationship between a person (legal subject) & a legal object

The law of obligations

Bearer of right

- **Legal subject** is person who holds right.
 - This could be a natural person (human being) or a juristic person (a company, a University or the State) who has legal capacity
 - Different types of persons:
 - **Natural person:** all human beings are natural persons, legal personality is acquired at birth & ends when a person dies, only natural persons have personality rights
 - **Juristic person:** all companies & close corporations are juristic persons (JPs) but also certain other institutions/registered organisations (*EG NGOs), JPs enjoy ‘perpetual succession’, the personality of a JP is separate from its shareholders/directors/employees etc
 - Legal personality: holder of rights and duties, can sue or be sued in their own name
- **Legal object** = object to which the legal subject has a right

Typically, four types of rights are identified with reference to the legal object:

1. Personal Rights
 - Legal object is performance
 - Has to do with the delivery of something (doing, giving, or not doing something)
 - For example, if you sell a textbook to a friend, you have a personal right to receive payment for it.
2. Real Rights
 - Legal object is a thing
 - The thing can be tangible or intangible.
 - This could include property rights, servitude, or security rights.
3. Personality Rights
 - Legal object is aspects of your personality
 - E.g. your reputation, human dignity, or your body integrity
4. Immaterial Property Rights/Intellectual Property Rights
 - Legal object is an intellectual product
 - These rights involve intellectual products, such as copyrights or patents.
 - For example, owning a copyright gives you the exclusive right to reproduce and distribute a creative work.

Scenario

Cause of Action

Commercial Law: Breach of contract (Contract law)

1. Cause of action. Arose from contract law. Why is it contract law. Breach of contract.
2. Common law applies. Lee would look to the common law. Have to identify which legal principles apply from the common law. How would she go about identifying these legal principles. She could look to judicial precedent to see if there are precedents binding her. Look to similar cases where there was breach of contract and apply what happened to her specific scenario. Check if principles are in conflict with the constitution. If in conflict, the Common Law has to be aligned with the constitution.
3. Monetary Jurisdiction
Magistrates court would need to handle this due to fact that there amount in dispute is R50000(magistrates court hears matters over R20000 but less than R200000(district)/R400000(Regional)). Gauteng is likely the geographical location because typically the plaintiff follows the defendant to their court. Monetary jurisdiction. How do we determine the defendant's geographical location? Where this person is ordinarily resident... Domicile. Civil procedure determines jurisdiction. What was contained in this specific contract? The general rules is to identify that the Ts and Cs must be brought to a specific place, so it trumps the geographical location thing.

The terms and conditions of the supplier may be considered to be unreasonable as the supplier could ship damaged goods and claim they were damaged in transit clearing them of any responsibility towards their customers (Consumer protection act applies).

Another cause of action lies in the fact that the supplier sent less than the agreed upon amount as such the customer can rightfully take them to court to receive the remainder of the order (Breach of contract)