**Wednesday, 14 February 2024**

*“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.

1. **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.

1. **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.

1. **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.

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

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.

*Ans.*

1. **Identify the four conduct rules.**

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

1. **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

1. **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.

1. **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.

**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.

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)

**Law of contract**

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 brough to a specific place so it trumps the geographical location thing.

**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. 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. 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. 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.

1. **Procedural Law**

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

* 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.

A screenshot of a computer

Description automatically generated**A screenshot of a computer

Description automatically generated**A screenshot of a phone

Description automatically generatedThe role of different types of law and what it aims to regulate:

**Thursday, 15 February 2024**

*“Justice delayed is justice denied”*

*What is parliamentary sovereignty?*

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 uncodified (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.

**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.

**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.
* If a customary rule or practice violates the fundamental rights enshrined in the Constitution, it cannot stand unchallenged.

**Indigenous Law**

* Not written down.
* Today, it is applied in the ordinary courts in accordance with the principles of conflict of laws.
* Once proven, it enjoys the status of common law.

**Court Decisions**

* It plays a significant role in shaping South African 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.

**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.

1. Executive Branch

* The executive branch is tasked with enforcing and administering laws.

1. 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. The 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.

**Friday, 16 February 2024**

* The Common Law is our legal tradition in legal system in SA.
* It is the legal background that served as a basis for further development.
* Many of the legislations we have today are based on the common law principles.
* Common Law is not written down anywhere (uncodified).
* Common law rules also have to evolve and adapt to our changing society and circumstances
* Some laws have fallen into disuse.
* Whenever there is a dispute between common law and legislation, then the court has to develop the common law to bring it in line with the legislation.

Slide 25

* 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.

Slide 26

* A court is bound by previous court decisions or a higher court within its jurisdiction.
* (if a high court makes a decision, then the magistrate courts in the western cape also are affected by that decision)
* 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.

Slide 30

* Its important to know the hierarchy of courts because of jurisdiction.

**Tuesday, 20 February 2024**

**IRAC Method**

* **Identify the legal problem**
* **Legal requirements applicable to this legal case**
* **Apply requirements to the case**
* **Reach a conclusion**

**Labour Law (25:41)**

Links to week 6 and 7 (Dealing with labour law and this is the introduction to that)

Slide 2:

* All of us would be on a probationary period when we start working

**Sources of labour law**

Slide 3:

(I think this is for slide 4… nah)

* When she refers to the individual employment relationship/contract, it refers to the employment relationship between the individual employee and the employer. (individual employment law)
* Each individual employee may bargain using the stipulations in their respective contracts
* Collective labour law: Relationship between trade unions who represent employees and employers and employers organisations (emplpyers version of a trade union).
* CLL deals with the negotiations and the collective barginaing that takes place between the partiers.
* Chamber of mines is an employer organization
* Strike actions is the ace up your sleave to move your employer to bargain

(Sources of Labour Law)

1. Legislation

* Labour legislation is concerned with fairness
* It incorporated fairness mechanisms in this relationship (by limiting the employers powers)
* Under common law there was no obligation to pay an employee a particular amount but this has been regulated by the state and now has been codified in legislation and now it trumps the common law and employers in SA are not allowed to pay employees less than the minimum wage (Minimum Wage Act)
* Fairness mechanisms: How the state can have power over individual relationship
* Common law was then tempered where it was not based on fairness

1. International and Foreign Law

* International labour organisation is the international body establishing a certain standard for labour relations in the world, so SA also has to respond to those standards

1. Common Law

* What establishes employment relationship between an employee and an employer is always the contract of employment
* The contract of employment is a form of common law
* Contract law is not contained in legislation
* Employment contracts fall in the field of common law and that is not contained in legislation
* Many aspects of the employment relationship have been codified.
* Contract law is concerned with legality, and if its legal and lawful, then common law is not concerned with what impact the contract has on the particular person that the contract was concluded with

1. Case law
2. Collective agreements

* It is allowed in terms of the Labour Relations Act
* Akin to subordinate legislation
* Parties involved in a particular dispute or where there is a negotiation about an interest, can conclude a collective agreement which is similar to a contract that binds all the parties to the collective agreement

1. Individual Employment Contracts

* Refers to that specific document that you conclude with your employer.
* There may be different TnCs applicable to different employees in one workplace

Why do you think the state has a particular interest in protecting employees?

* Tax. Better economy.
* State has an interest in economic group because it potentially means more tax and employees are an integral part of that.
* State want employees to be happy
* State also has an interest in unemployment because this has a direct impact of the state
* Because at the end of the day the state has to provide for these people
* Where a country has healthy labour relations, it also triggers investment into the country

Five Fairness Mechanisms Contained in Labour Legislation

1. Establishment of minimum employment conditions

* This is what the basic conditions of employment act is
* Applicable to all employees (e. g Working hours, overtime, breaktime)
* You can agree in your employment contract for better conditions

1. Encouragement of collective bargaining

* Trade unions representing employees and the way that they establish rights and represent the interests of the employees is through collective bargaining and giving them power to negotiate with the employer

1. Concept of fair dismissal

* Under the common law the employer was allowed to do so unfairly and now there are specific reasons that they can dismiss
* Can fire someone for a protected strike (lawful strike)

1. Protection Against Unfair Labour Practices

* The employer has to treat the employee fairly during/after the employment relationship

1. The labour legislation provides a special dispute resolution procedure and forum

* Special courts… CCMA

1. Introduction of the minimum wage act

Wednesday Lecture:

* 0min: Slide 3
* 13min: Slide 19
* Some employment contracts may contain restraint of trade clauses
* It only takes effect after the employment contract has been terminated
* The purpose of this is to prevent the employee from competing with the legitimate interests of the previous employer
* If there isn’t such clause, it means the employee would be allowed to do outside work but it can never compete with the emplyers interests
* It has never been codified in labour legislations. so where would we find this? Common Law
* Sanctity of contract: Where two parties freely enter into a contract, then the parties should be bound to what they agreed to
* Freedom of trade: Everyone can exercise the trade or occupational profession provided that they want to and its legal
* Sale of a business:
* The legitimate interest that is being protected is the goodwill of the business (intangible asset)
* The business reputation, client base
* Employment contracts:
* To protect other legitimate interests of the employer (trade secrets, customers, clients, intellectual property)
* 21min: Slide 20
* Where you have this clause, but the one person doesn’t want the other person to enforce this clause
* If the clause is unreasonable, the court would be able to sever the unreasonable parts
* 23min: Slide 21
* What are legitimate interests that are protected by these restrainted of trade clasues that are also recorgnised by the courts?
* Confidential information: You know stuff that is not public knowledge only because your were an employee at the company and you use it to your advantage
* 26min: Slide 20
* A contract cannot just be escaped just because it is unfair to the one party.
* Difference between unreasonabela dn unfair
* 36min: Slide 6
* First question in any labour dispute is whether the person is an employee or an independent contractor.
* This is because of jurisdiction
* If the person is not an emplohyee then the CCMA doesn’t have jurissdictiin to hear the disput.
* If the person is an independent contractor, the person has to approach the civil court (breach of contract)
* If you are an independent contractor you cannot rely on the protection from unfair labour practices/dismissal in labour relations act
* Employee can approach for unfair dismissal
* 43min: Slide 7
* Control test: Someone is an employee if the employer has control over them. (Working hour determined by the employer)
* Organisation test: Asks whether this person is part of the employers organisation… does this person have an office, is his person provided with tools to work… due to the changing world of work ,this test was not sufficient
* Dominant impression test: Weighs the factors that are in favour of the person being an employee against the factors that the person may be an indeoendant contractor. So the court will look at how the employee is integrated within the workplace.

Thursday Lecture (Longa recording)

Slide 7

* there is no definition for independent contractors, in the labor relations act, or the basic conditions of employment act.
* further assist the court and also, to further assist in particular vulnerable workers. There was a an amatement to the labor relations act and section 200A was inserted into the act.
* What thing happens, practically is the onus shifts to the employer. To prove that the person is not an employee via the 200A
* So, in this case, the employer would then have to provide evidence, Showing why the person is not an employee. And if that employers unable to do that, then this legislative presumption is applicable, and the person has been presumed to be an employee. In other words, then the CCMA for example, would be able to hear the case.
* CCMA would have jurisdiction since the person is an employee and falls within the ambit of the labor relations act and it's protected by the provisions of the act.
* We particularly apply the dominant impression test to weigh up all the factors and then the court will use this to determine if the person is an employee
* This is still applicable to employees earning above the threshold
* It's just a little bit easier for the for the employees earning below the threshold to have this, legislative presumption, apply to them, and for them to then fall within the ambit of the LRA

Slide 8

* Essentialia refers to what is necessary to make the contract a specific type of contact
* E.g. A lease agreement would have different essentialia to an employment contract
* So in terms of legislation there are sometimes certain formalities that contractor adhere to and employment contracts do not have to be in writing except if it is an a fixed term employment contract or in the case of for example and training contracts (So auditing clerks or candidate attorney.)

Slide 9

* An employer will provide as part of the packet or email or whatever you receive you will also receive the disciplinary code. So it might be that your employment contract, for example, states, that the disciplinary code that you will be provide with is included in this contract, which they means that the employer may except that you've read the disciplinary code, and that you are aware of the disciplinary code and the procedures in it.
* So where you are, for example, guilty of misconduct, it's also breach of contract.
* they might be too causes of action, arising out of one incident. So, the case this is an example of that. So, it might be misconduct, which is a contravention of the disciplinary code. And which then would lead to a claim in terms of the labor relations act, but it might also be, um, a bridge of contract. So then technically the employer could then approach the civil courts with a breach of contract claim.

Slide 10

* So opening a business that directly competes with the employer is obviously then a breach of this implied duty of good faith. And for that reason, that it is possible to include a restraint of trade clause within the contract.

Slide 12

* Completion of the contract:
* Fixed term employment is only concluded for the completion of a particular project or until a specific date (no notice period in such a case)
* You might also have an indefinite contract (permanent contract) – It isn’t really permanent, it would be completed on the date of retirement – retirement fund might be a retirement age.
* Cancellation
* Where there is a breach of contract it can be cancelled by any of the parties
* Repudiation is also a form of breach (when the person has shown intent that they are not intending to be bound to the contract)
* Procedural fairness is an integral part of dismissing an employee (What assists the employer in this particular instance)
* It would be impracticle for the employer to hold a disciplinary hearing for absenteeism, for example, for the person being absent, constantly for two weeks because the person cannot be located
* So it would be easier to go the cancellation route and easier to replace the employee
* Agreement
* Getting a different job or moving to a different city an you communicate that you wanna terminate the contract (you would be required to work a notice period)
* If you don’t serve your notice period, it’s a form of breach of contract. The employer can claim specific performance. (where the court just tell the employee to perform in terms of the contract)
* The employer can claim damages while accepting the exit of the employee
* So in terms of the basic conditions of employment act, there is a legislative notice periods
* If you worked for more than a year, then your notice period within any event would then be 30 days
* Constructive dismissal:
* Sometimes the employer want the employee to resign but they don’t want to dismiss them because they know that the reason for dismissal doesn’t fall within the three allowed reasons for dismissal
* Three allowed reasons: Operational requirements, Misconduct, Incapacity (ill health or incompetence)
* The employer then makes continued employment intolerable
* Where an employee resigns but is able to prove that they didn’t resign out of free will, but actually because of the employer made continued employment intolerable, then it is seen as a dismissal (constructive dismissal).
* The employee can now rely on the protection in the labour relations act and claim unfair dismissal against the employer
* Need to distinguish between poor work performance in terms of misconduct vs as incompetence where the person through, no fault of their own is simply unable to perform the job
* Death
* What if the person that kicked the bucket is a corporate?
* That person is just replaced.
* Insolvency
* Do you think that's an employee's insolvency would affect the contract.
* That has no impact on the employment relationship
* If the employer or company becomes insolvent, that may terminate employment (if the business is unable to continue)
* If there is outstanding remuneration and the company became insolvent, you would be entitled to that amount
* Impossibility of performance
* This also links to disability

Slide 13

* Note the remedies
* Re-employment in another suitable position:
* Because these cases can take time, the remedy cannot be reinstatement (cannot replace the person that has replaced the dismissed employee)
* it says to the to the employer, we understand that you don't have that that position available any longer.
* Compensation:
* CCMA agrees on constructive dismissal, so the CCMA would order compensation
* It is capped at the CCMA (only entitled to a maximum of 12 months remuneration compensation)

Slide 14

* We need to uproot misrepresentation or fraudulent CVs
* It is a breach of your common law duty of good faith and a form of misconduct (dismissed of dishonesty)

Slide 15

* Employers saw that they could abuse the system by appointing fixed term employees.
* Its easier to get rid of the employee (automatic termination)
* You don’t need to give fixed term employees benefits
* Another reason for fixed term contract is to test the employee and see if they fit the business and is competent (like a probation)