CIVIL AND DELICTUAL CLAIMS

Introduction To SA Law

The law is a system of rules that determines how people must behave in a community. Read this QuickLaw guide for an introduction to South African Law.

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For an Introduction to South African Law, simply follow our guide below:

1. What is the “law”?
2. Where can a person find the law?
3. How can LegalWise assist you?

1. What is the “law”?

- The law is a system of rules that determines how people must behave in a community.
- These rules are made, applied, and enforced by the Government. If these rules are not followed, it will result in a sanction (punishment or penalty). One could say that the purpose of the law is to bring about peace and order.
- There are different types of law, for example:
    - Laws that tell you what to do, as well as how certain things should be done.
    - Laws that regulate the relationship between the Government and the community and there are laws that regulate the relationship between people in the community. For example, criminal law and criminal procedure law; constitutional law and family law.

2. Where can a person find the law?

- Common law.
- Legislation, also referred to as statutes or acts.
- Court cases, also referred to as court decisions, court judgments and judicial precedents.

- Customary law.
- Work of modern authors, for example, legal books or articles. These are not binding law, but the opinions of these authors can lead to certain judgments and amended legislation.
- International law – if the law in South Africa does not deal with a specific matter, foreign law may be used for guidance.

Common Law	Legislation	Court Cases	Customary cases

- Common law finds its origin in Roman-Dutch law, and is also influenced by English law.
- It is the basis of our law and contains general legal principles.
- Most of our common law has been changed by legislation. However, common law still applies, if legislation does not.
- For example, the common law requirements of a contract are:
- 1. every contract must have an offer and acceptance;
- 2. there must be an intention to enter into a contract;
- 3. the persons to the contract

- The Constitution of South Africa directly influences the other sources of law. It sets out the structure of the Government.
- Legislation is subject to the Constitution.
- Legislation is passed by Government (Parliament in particular) and signed by the President in order to be binding.
- Legislation binds the whole community.
- Examples of legislation are, the Consumer Protection Act 68 of 2008 and the National Credit Act 34 of 2005 (legislation incorporates the word “Act”).

- Court cases are decisions made and recorded by courts. Courts find the law, apply it and give judgments or orders on it.
- Courts hear disputes on or breaches of the law, for example civil or criminal matters.
- Lower courts are always bound by the decisions of higher courts.
- For example, a Magistrate’s Court is bound to the decisions of a High Court, a High Court is bound to a decision of the Supreme Court of Appeal, and the Supreme Court of Appeal is bound to the decisions of the Constitutional Court.
- There are also special courts specific to an area of law. For example, the

- Custom is the unwritten part of South African law.
- It refers to the habits of communities, carried down through time, that eventually become law.
- Custom is seen as law only if the custom is reasonable; has existed for a long time; is generally recognised and followed by the community; and it does not contradict an existing rule of law. For example, not casting for the same fish, if you are a fisherman.
- Indigenous law can be seen as a form of customary law. It is the manner in which many black communities live in, for example, paying lobolo or polygamy.
- It can be applied in courts by

3. How can LegalWise assist you?

Should you require an explanation or further clarification on this topic, please contact your nearest LegalWise Branch, call, e-mail or WhatsApp us. For more information about our membership options visit our legal services page or visit our join now page.

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