The Origin and Legal Nature of the Stokvel (Part 1)*

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1 Introduction

South Africa’s past and present are marked by the wounds of the inequalities of the past. The economic sphere, too, has not escaped the effects of a political system which enriched the rich and impoverished the poor.¹ In an indirect but very definite way, the principle of economic discrimination and exploitation made South African financial markets the exclusive playground of a privileged few.² These financial markets include the insurance and the banking sectors. Although it cannot be denied that a relatively large number of black South Africans did in fact participate in formal insurance and banking schemes in the past, the vast majority of them were, and still are, excluded from the formal insurance and banking sectors. For example, although blacks are not formally excluded from participation in insurance schemes, that is, they are permitted to conclude insurance contracts, most of them simply cannot afford to pay the premiums.

Being deprived of the opportunity to participate in the mainstream insurance sector, has led to the development of self-help organizations by blacks to meet their expectations and needs in this regard.³ History has shown that self-help organizations such as burial societies and friendly societies,⁴ are created mostly amongst those belonging to an economically deprived class in a society where institutions for the alleviation of their

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* This article is an expanded and updated version of ch 9 par 9.1 of Wilhelm Georg Schulze Legal Aspects of the Insurance Premium (unpublished LLD thesis University of South Africa (1996)) (hereafter ‘Schulze (thesis)’).
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² See Julian Y Kramer Self Help in Soweto (unpublished MA dissertation University of Bergen (nd)) 1 et seq.
³ For a discussion of the formal but non-governmental organizations (NGOs) which were formed during the apartheid years to address needs in the black community, see Anon ‘Relying on Borrowed Money’ 22 December 1995 Financial Mail 16–17. The areas of operation of these NGOs included education, health, worker and community mobilization, as well as land claims. Most of these organizations depended entirely on grants from local companies and foreign governments or foundations. The largest of these NGOs was and still is the Kagiso Trust.
⁴ The earliest examples of mutual aid societies date from the Roman period, when people formed societies for religious, military and entertainment purposes. See SWJ van der Merwe Die Juridiese Versekeringsbegrip met Besondere Verwysing na die Risiko (unpublished LLD thesis University of South Africa (1975)) at 130 et seq. For a discussion of the development of mutual insurance from these mutual assistance contracts, see Schulze (thesis) 22 et seq.
condition are either non-existent, or inaccessible to them, or inadequate and ineffectual.\(^5\)

In broad terms, insurance may be defined as the pooling of risks of many individuals who band together to contribute to provide protection against each other's losses. The underlying idea of insurance is therefore the transfer and spreading of the risk from the individual to a community of equally exposed and covered persons.\(^6\) Deficient salaries were (and are) not the least of the factors which led (and leads) to the exclusion of many from the privilege of belonging to a community of equally exposed and covered persons.\(^7\)

Black South Africans have developed and adapted certain informal financial structures to overcome the inaccessibility of formal structures.\(^8\) Some of these indigenous financial structures closely resemble the concepts of insurance and banking as it is known to the First World.\(^9\) Two structures in particular will be highlighted in this article, namely the 'stokvel'\(^10\)

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\(^5\) This statement is illustrated, e.g., by the fact that when the British Government instituted an 'all in' scheme of National Insurance in Great Britain in 1946, membership of friendly societies fell by nearly 2 million members in the period from 1947 to 1952: see Kramer op cit note 2 at 11. As to the role and development of self-help organizations in England, see PHJH Godsen Self-Help — Voluntary Associations in the 19th Century (1973) 3 et seq.

\(^6\) As to the role of insurance in society in general, see Schulze (thesis) at 16 et seq.

\(^7\) Andrew Khehla Lukhele Stokvels in South Africa — Informal Savings Schemes by Blacks for the Black Community (1990) at 55 correctly remarks that very few blacks have money to live on, let alone to save.

\(^8\) However, most of these informal financial structures which resemble savings, insurance and other financial techniques, are not unique to the black community nor to Southern Africa. In South Africa, credit-rotating associations are found among Indian people living in KwaZulu-Natal. They are known as 'chita' or 'chitu'. Membership is restricted to a few relatives or friends. Generally a 'chita' has no officials and no special sociability, and it has a single specific monetary fund. A similar system is also to be found amongst some European factory workers in South Africa. Depending on the rules of the particular system, each worker receives a fixed part of the wages of his fellow workers in turn. See Shirley Ardener 'The Comparative Study of Rotating Credit Associations' (1964) 4 J of the Royal Anthropological Institute 201 at 207. Rotating credit associations are also common in Asia, West-Africa, Central and East Africa, Europe, the West Indies, and in the Americas. See Clifford Geertz 'The Rotating Credit Association: A "Middle Rung" in Development' (1962) 10 Economical Development and Cultural Change 241 at 243 et seq; Ardener idem at 202–208; Lukhele op cit note 7 at 44–45. For a discussion of the co-existence of indigenous law and formal South African law in a heterogeneous society, see Gardiol Jeanne van Niekerk The Interaction of Indigenous Law and Western Law in South Africa: A Historical and Comparative Perspective (unpublished LLD thesis University of South Africa (1995)) 137 et seq.

\(^9\) These structures are indeed regarded by blacks as a type of insurance: see Lukhele op cit note 7 at 19. Insurance companies are showing a keen interest in the stokvel movement, and during 1990 the National Stokvels Association of South Africa (NASASA), in a joint venture with a group of black insurers and financial brokers, launched a funeral insurance scheme for its members. The cost of the scheme is R8 per month and it is open to all NASASA members up to the age of 65. There is a limit of R5 000 payable on the total benefit. The aim of this scheme is not to replace burial societies, but to supplement them. See Lukhele op cit note 7 at 57–58; and Anon National Stokvels Association of South Africa — Corporate Information Brochure (1995) 17.

\(^10\) As to the meaning of the term 'stokvel', see par 2.1.1 infra. Currently NASASA serves as the umbrella body and mouthpiece for all stokvels affiliated to it. For an exposition of the history and aims of NASASA, see Lukhele op cit note 7 at 46–53; Elmar Thomas 'Rotating Credit Associations in Cape Town' in: Eleanor Preston-Whyte & Christian Rogerson (eds) South Africa's Informal Economy (1991) 303; Anon (NASASA Brochure) op cit note 9 at 5. At this stage, affiliation to NASASA appears to be limited to stokvel groups operating in the province previously known as the Transvaal. See Thomas op cit at 290. It has been said that stokvels are similar to the co-operative organizations (such as Volkskas Bank and Uniewinkels) established by Afrikaners during the earlier part of this century. See HS Koekemoer Vrywillige Hulporganisasies van Swart Mense in Suid-Afrika (unpublished BA (Hons) dissertation, University of South Africa (1995)) par 4.1.2.
and the ‘burial society’, the latter being a special type of stokvel. Attention will specifically be devoted to the possibility of drawing parallels and of distinguishing between the concepts of ‘insurance’ and ‘banking’ on the one hand, and certain concepts of South African indigenous law which resemble insurance and banking on the other hand.

In passing, one or two comments on the concept of ‘South African indigenous law’. Generally it connotes the unwritten, ‘informal’ part of South African law which regulates some of the legal relationships between black South Africans. Indigenous law is sometimes also referred to as autochthonous, customary or African customary law, or people’s law. Indigenous law may be regarded as a body of customary law which is, in certain cases, applied instead of the ‘formal’ South African law. Not that South African indigenous law is in competition with ‘formal’ South African law. It has been explained that there is only one legal system operative in South Africa, namely South African law, and that in certain instances the customary rules may be enforced at the expense of formal rules. It is submitted that instead of applying either ‘formal’ South African law or South African indigenous law, one should rather try and create, if possible, a fusion between the two branches. In short, where possible the best of both should be taken to create an inclusive South African law.

2 The Concepts of Stokvels and Burial Societies

2.1 Stokvels

2.1.1 The Nature of a Stokvel

The term ‘stokvel’ apparently derives from a corruption of the cattle auctions or ‘stock fairs’ of the English settlers in the Eastern Cape during the early nineteenth century. These stock fairs were attended by black farmers and labourers who used these functions as economic and social get-togethers to exchange products and news. Gradually these get-togethers were organized on a regular basis, independently from cattle auctions. Stokvels originally took the form of a tea party attended by women with each member taking a turn to host the party. Other

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11 As to the meaning of the concept of a ‘burial society’, see par 2.2.1 infra.
12 See par 3.1 infra for a comparison between stokvels and the insurance contract, and par 3.2 infra for a comparison between stokvels and banking.
15 For a discussion of a similar approach in respect of the re-writing of the South African legal history, see Willemien du Plessis ‘Afrika en Rome: Regsgeskiedenis by die Kruispad’ (1992) 25 De Jure 289 at 302 et seq. As to the interaction between indigenous law and ‘formal’ South African law in the light of the new constitutional dispensation, see Van Niekerk op cit note 8 at 259 et seq.
16 See Lukhele op cit note 7 at 4–6; Thomas op cit note 10 at 291–294. But see Sandile Dikeni ‘Stokvelle — So word die swaarkry met lekkerkry klaargekry’ Feb/Mar 1993 Die Suid-Afrikaan 14 at 15 who is of the opinion that the origin of the term ‘stokvel’ is uncertain.
17 This origin is still visible in the modern-day composition of stokvels. About 60 per cent of all members of stokvels are women; see Peter Scott-Wilson ‘Stokvel Power’ May 1990 Market Mix 11.
members who attended the party were supposed to bring gifts for the hostess. Later stokvels developed to serve as a vehicle for saving clubs, buy-aids, burial societies and money-lending organizations.\textsuperscript{18} With the migration of whites from the Western and Eastern Cape to the area known today as Gauteng, the blacks who accompanied them brought the idea of stokvels with them. From Gauteng the concept of stokvels spread to the rest of the country.\textsuperscript{19}

Depending on their aim and on the part of the country in which the particular stokvel operates,\textsuperscript{20} stokvels\textsuperscript{21} are also known as 'gooi-gooi',\textsuperscript{22} 'pooling clubs', 'eStokini', 'stokies',\textsuperscript{23} 'umgalelos',\textsuperscript{24} 'mahodisana',\textsuperscript{25} 'mogodis6',\textsuperscript{26} or 'kuholisana'.\textsuperscript{27}

A stokvel is in essence a type of informal credit-rotating association\textsuperscript{28} in which a group of people enter into an agreement to contribute a fixed amount of money to a common pool on a weekly or monthly basis or as frequently as the members may agree upon.\textsuperscript{29} The contributions or a portion of them are paid out by the association in rotation or in a time of need, depending on the rules of the particular stokvel. The essence of a stokvel is the mutual financial assistance which underpins it. Stokvels are sometimes referred to as an example of a voluntary association.\textsuperscript{30}

From this description of the basic form of stokvel, it is clear that through the creation of a stokvel, an obligation is created between the members who belong to it. This obligation takes the form of an agreement between the members. The rights and duties of the members of the stokvel are usually determined with reference to this agreement.

\textsuperscript{18} See Thomas op cit note 10 at 292--293.
\textsuperscript{19} See Lukhele op cit note 7 at 4--5; Thomas op cit note 10 at 291--294. One exception appears to be the burial society, which developed in the Free State from the basic concept of a stokvel, and from where the notion spread to the rest of the country. See further par 2.2.1 infra.
\textsuperscript{20} See Kramer op cit note 2 at 35 et seq; Lukhele op cit note 7 at 4 and 27; Thomas op cit note 10 at 290. Although in some areas the term 'mahodisana' is reserved for credit-rotating associations and the term 'stokvel' is used when referring to associations which, in addition to running a 'mahodisana', also sell food and drink, these are generally not hard and fast rules. See Kramer op cit note 2 at 36.
\textsuperscript{21} Sometimes spelt 'stokfel' or 'stockfair'. See Thomas op cit note 10 at 291.
\textsuperscript{22} The term 'gooi-gooi' is derived from the Afrikaans word 'oorgooi' ('throw over') which, in the context of stokvels, means to lump (money) together.
\textsuperscript{23} Both 'eStokini' and 'stokies' are corruptions of the word 'stokvel'.
\textsuperscript{24} This term, which is unique to the Western Cape, is apparently no longer in general use. See Thomas op cit note 10 at 292. It refers to a type of stokvel which operated on a religious basis and the meetings of which were usually commenced with prayer. See Ivan Collair \textit{A Review of the Stokvel Movement in Some RSA Townships with Reference to Financial Management Techniques Used In Them} (unpublished BComm (Hons) report, University of Cape Town (1992)) 11.
\textsuperscript{25} Which means to 'pay', in its causative reciprocal form 'make pay back to each other'. See Hilda Kuper & Selma Kaplan \textit{Voluntary Associations in an Urban Township} (1944) \textit{3 African Studies} 178 at 179.
\textsuperscript{26} Which is derived from the Sotho word 'go godiso' which means 'to grow'. This is the most common reference to stokvels in Pretoria. See Koekemoer op cit note 10 in par 4.1.2.
\textsuperscript{27} Which is derived from 'to cause to grow' or 'to draw wages'. See Thomas op cit note 10 at 291.
\textsuperscript{28} See also par 2.1.2 infra.
\textsuperscript{29} See Anon \textit{(NASASA Brochure)} op cit note 9 at 14. For a list of characteristics of a stokvel, see the definition of 'stokvel' which is provided in par 1(b)(i)--(vi) of GN 2173 in \textit{Government Gazette} 16167 of 14 December 1994. See also par 3.2 infra where this Notice is considered in more detail.
\textsuperscript{30} See Kuper & Kaplan op cit note 25 at 178 et seq; Koekemoer op cit note 10 in par 4.
Because a stokvel is first and foremost an agreement (contract) between the individual members, it follows that the nature and rules of a stokvel may resemble a number of possible legal figures from the common law.\(^{31}\)

An important point which must be stressed at this stage is that, as a matter of general principle, a stokvel does not have legal personality.\(^{32}\) Except if a stokvel is registered, for example as a company, closed corporation or a friendly society, it cannot sue or be sued in its own name. Generally, any legal action on behalf of or against a stokvel must therefore be conducted in the name of an individual member of the stokvel.

Most if not all stokvels have elected officials to take care of records,\(^{33}\) to bank the funds generated by way of contributions by members, and to perform other administrative functions.\(^{34}\) In general, office bearers are elected by fellow-members\(^{35}\) and tend to hold office for long periods.\(^{36}\) This means that the members of a stokvel usually participate in the management of its affairs.

Stokvels are found in urban as well as rural areas, and people from all walks of life participate in them.\(^{37}\) Given the informal structure of most stokvels, it is difficult to provide accurate figures on the number of

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31 Although a comparison between the agreement of stokvel and other types of contract is, for purposes of this article, restricted to the examples which are discussed in par 3 infra, the resemblance between a contract of stokvel and the contract of partnership nevertheless merits a brief mention here. A partnership is defined as 'a legal relationship between two or more persons, who carry on a lawful business or undertaking, to which each contributes something, with the object of making a profit, and of sharing it between them' (Wille's Principles of South African Law 8 ed (1991) by Dale Hutchison, Belinda van Heerden, DP Visser & CG van der Merwe at 609). It is submitted that in general most stokvels satisfy all the essentials of a contract of partnership. Although there is usually not an intention to make 'a profit' in the ordinary sense of the word, the fund which each member receives constitutes an advantage (namely a lump sum of money) which is a consequence flowing from the members' affiliation and contributions to the stokvel. In some types of stokvel the contributions of the individual members are lumped together to buy a business concern or an asset, e.g. a minibus taxi. The profits which are made from the business concern (the taxi) are then distributed among the members. In this type of stokvel the resemblance to a partnership is evident. As a result, and in the absence of a contradicting contractual term, all the natural consequences of a contract of partnership will in principle apply to the agreement of stokvel. As to the legal requirements of a partnership, see Wille op cit at 611 et seq.

32 This point is illustrated by the fact that for a group (stokvel) to be excluded from the operation of the Banks Act 94 of 1990, the stokvel must consist of natural persons (only). See the definition of 'group' in par 1 of GN 2173 in Government Gazette 16167 of 14 December 1994. Although this Notice does not intend to determine the requirements for stokvels in general, it is nevertheless a strong indication of the Legislature's view of the legal nature of a stokvel.

33 Written records are usually kept by the treasurer of the stokvel of transactions such as the payment of contributions by members, items which are sold to members, loans to members and non-members, items which are bought from suppliers, and the payment of the amount of indemnification or the pool to a member.

34 See Thomas op cit note 10 at 295.

35 See par 1(b)(v) of GN 2173 in Government Gazette 16167 of 14 December 1994 which acknowledges the right of members of a stokvel to nominate the management of the particular stokvel as a distinctive feature of stokvels in general. See also par 3.2 infra.


37 One may suspect a tendency among young urban blacks to regard stokvels as something outdated. This is best illustrated by the answer given by an urban shop assistant when asked if she knew what a stokvel was. 'No' she replied, 'only my grandmother does that, it's for the old ladies' (see Stanford op cit note 36 at 35). But according to other sources, stokvels are becoming increasingly popular among young upper-income blacks, whose clubs are often fashion oriented. Members of these clubs name them after selected shops found in Johannesburg's northern suburbs, and there are, e.g. clubs called Benetton, Palazzo Pitti, Lacoste, Bear and the like. Members of these clubs often wear clothes from these shops, and occasionally invest in a kind of
stokvels active in South Africa and on the extent of their membership. A recent census has estimated the existence of some 24,000 stokvels in major metropolitan areas attracting members' monthly contributions of around R52 million, and on a national scale the total amount of monthly contributions may well be in the region of R200 million.

Stokvels entail more than just the circulation of money. They involve comprehensive support for members in times of hardship. For example, when a member of a stokvel is arrested, other members might help with the caring for the detainee's household and children until he or she is released. Support for members who are in jail is apparently restricted to cases where the offence was of a trivial or politically associated nature. For example, if a member is jailed for running a shebeen, which is not regarded as a crime in the black community, his or her affairs will be managed while he or she is in jail.

Stokvels have secondary social and entertainment functions as well. In passing, one or two comments about the role of the 'shebeen' in the stokvel subculture. In the past stokvels which sold liquor (sometimes collectively referred to as 'shebeens') were harassed by the police, irrespective of whether or not they were in possession of a licence to sell liquor. This type of harassment is apparently something of the past. There have been indications from the Government and other formal structures that 'sjebeeners and taverners are just as much a part of the informal sector and they will not be harassed'.

uniform of T-shirts and caps with the logo (see Lukhele op cit note 7 at 32). This increase in the popularity of stokvels will, without doubt, continue as more and more young black people join the ranks of a broad South African financial middle and upper class.

38 See Lukhele op cit note 7 at 2-3; Stanford op cit note 36 at 37. These figures apparently represent just the tip of the iceberg. Approximately 60 per cent of the total black population still lives in the rural areas (see Lukhele op cit note 7 at 3) where stokvels may be expected to be even more prevalent. It is more likely that there are as many as 800,000 active stokvels thriving in South Africa at any given time (see Anon (NASASA Brochure) op cit note 9 at 14).


40 See Lukhele op cit note 7 at 8.

41 The term 'shebeen' describes an informal (and often unlicensed) pub or bar for the sale of alcoholic drink. Often the premises of a shebeen is situated in the owner's back-yard, or in a room in or garage attached to his or her house. But the term 'shebeen' also connotes a licensed pub or bar, usually situated in the townships. Although stokvels and shebeens are often related, that is not necessarily the case. Not all stokvel parties are accompanied by the sale of liquor and not all shebeens are part of a stokvel.

42 Shebeens and stokvels have always been closely linked. Stokvels are often used to finance shebeens if the owners of such shebeens do not have access to formal financial institutions to borrow money to start a business. See Kramer op cit note 2 at 48; Lukhele op cit note 7 at 9, and see again par 1 supra.

43 For a discussion of the role of socializing and partying within the stokvel subculture, a topic which falls mainly outside the ambit of this article, see Arderen op cit note 8 at 222; Lukhele op cit note 7 at 1 and 27-34; Thomas op cit note 10 at 290. As to the relative disadvantages of stokvels resulting from the socializing and partying which accompany some of them, see Lukhele op cit note 7 at 37-39.

44 See Koekemoer op cit note 10 in par 4.9.4 and the authorities cited there. On the development and role of 'that noble institution, the shebeen' in South African townships, see in general Deborah Hart 'The Informal Sector in South African Literature' in: Eleanor Preston-Whyte & Christian Rogerson (eds) South Africa's Informal Economy (1991) 76 et seq. For a history of the development of shebeens and their statutory prohibition, see Lukhele op cit note 7 at 9 et seq.
Social interaction is an important mechanism in the operation of the stokvel, as the handing over of the contributions by the members to the host, that is, the recipient of the pool, usually coincides with a party. The recipient of the contributions is expected to host a party and the other members (guests) are expected to attend the party at which the contributions are handed over. The host is also expected (and allowed) to have food and drinks for sale, usually at inflated prices. The profits on the food and drinks are for the account of the host of the party.45

2.1.1 The Stokvel as a Credit-rotating Association

A stokvel is by definition a credit-rotating association.46 Such associations have been in existence for hundreds of years in all parts of the world.47 They have survived in modern times and continue to grow in spite of the influence of involved systems. The primary function of a credit-rotating association is to channel and mobilize community savings and to make loans available to members of the association.48

A satisfactory all-inclusive definition of the concept of a credit-rotating association is still lacking. The following description may, however, serve as a point of departure:

'[A credit-rotating association is] formed upon a core of participants who agree to make regular contributions to a fund which is given, in whole or in part, to each contributor in rotation.'49

The important features which emerge from this definition are those of regularity and rotation.50

The members of a credit-rotating association are simultaneously each other's debtor and creditor. The first member to receive the fund becomes a debtor who has to pay his future contributions to all the other members and he or she remains one until the last contribution has been made. The last member to receive the fund becomes a creditor in respect of the future contributions of all the other members and remains one until the last contribution has been paid. The other members move in turn from being creditors to debtors or vice versa. Each member remains a creditor until he has received the fund. Thereafter he becomes a debtor.51
Seen from the point of view of a contract of loan, all the members but
the last to receive the fund obtain interest-free loans of decreasing
magnitude for decreasing periods. In contrast, all but the first member
provide interest-free loans of increasing magnitude for increasing periods.
The order in which the contributions are received and paid is therefore of
great importance. In South Africa the order is often determined by lot,
which adds an element of luck and excitement to the scheme.

Credit-rotating associations have certain rudimentary advantages.
Some of these include the following. They assist in small-scale capital
formation, that is, they create savings. They are physically more
accessible than ordinary saving institutions such as banks and post
offices and their procedures are more user-friendly. They are able to
provide credit on a smallness of scale in which banks are not normally
interested. The interest rate payable to a credit-rotating association is
usually lower than that which is charged by some other money-lenders.

On a socio-economic level, the following advantages offered by credit
rotating associations have been identified: first, they serve as socializing
mechanisms for converting peasants into ‘traders’ as far as their attitudes
towards the use of money are concerned; and secondly, because they
provide institutions for saving, they accelerate and facilitate economic
development.

2.1.3 Different Types of Stokvel

In the context of the informal economic sector, stokvels have two
characteristics. First, they are generally small in size, and secondly, they
avoid official regulation and taxes to a greater or lesser extent. These two
features, rather than sound financial management, are responsible for the
success of stokvels.

There are a large number of different types of stokvel. A stokvel is
usually formed with a specific aim in mind. Burial societies, investment
syndicates or clubs, ‘umgalelo’ clubs, and youth stokvels are just some
of the more common schemes of this nature.

52 See Ardener op cit note 8 at 211. As to the different methods of determining the order in
different credit-rotating schemes, see Ardener op cit note 8 at 211 et seq.
53 See Ardener op cit note 8 at 212; Anon (NASASA Brochure) op cit note 9 at 16.
54 See Jerome op cit note 47 at 118 who notes that the large number of illiterates residing in
rural areas find it difficult to make use of the services provided by formal financial institutions as
the details of these services are usually explained to them in writing.
55 See Ardener op cit note 8 at 217 et seq. But this is not always the case. It has been reported
that due to the inaccessibility of formal lending structures, blacks are sometimes exploited by
informal black lending institutions. Interest rates of up to 80 per cent are not unknown in the
informal black money market. See Catherine Cross ‘Informal Lending — Do-it-Yourself Credit
for Black Rural Areas’ (1987) 4 Indicator 87; Jerome op cit note 47 at 119–120.
56 See Kramer op cit note 2 at 158–159. But these two socio-economic advantages may also be
criticized (idem at 159 et seq).
57 See Collair op cit note 24 at 2.
58 See further par 2.2.1 infra.
59 An ‘umgalelo’ club is typical of the Western Cape and financially speaking operates on a
bigger scale than other types of stokvel. A typical ‘umgalelo’ meeting lasts two days. The first day
is set aside for slaughtering and a free braai. On the second day the host (ie, the member who is
Four main types of stokvel may be identified. First, the 'gooi-gooi', which is a small-scale savings club and which exists for only a relatively short period of time. Contributions are made in cash and vary from R15 per month to R70 per week. The order of rotation is usually determined either by agreement (vote) or by chance. These clubs usually do not provide loans to their members. Membership is usually limited to ensure that each member receives the 'oorgooi', that is, the pool, at least twice a year.

Secondly, there is the investment club, which is more in the nature of a co-operative society than a savings club in that the entire pool is banked after each rotational sitting. The aim of these clubs is to buy a specific asset such as a plot of land or a taxi for investment purposes. Contributions of members are often invested in formal financial institutions such as banks, building societies and life insurance companies. If the contributions of the members are reinvested with an insurance company in the form of, say, an endowment policy, the stokvel may be regarded as the (mutual) insurer and the insurance company as the reinsurer. In these cases the stokvel acts simply as a conduit for and reinvestor of the members' contributions.

Thirdly, there is the high-budget association which consist of 100 members or more whose background and status are important factors in gaining entrance to the association. Contributions to such a stokvel vary from R200 to R2 000 per month and pay-outs vary from R7 000 to R150 000. The most distinctive feature of this type is the fact that the officials involved are no longer simply members but that they are referred to as the 'board' and that they enjoy special privileges.

The fourth type of stokvel which is generally encountered is the burial society. It requires separate consideration.

awarded the opportunity to host the meeting), receives the contributions of the other members, whose number may be in excess of 100. The contribution received by a particular member depends to a large extent on his own contribution to other members. Thus, if he contributed R200 to the party of a fellow member, he is usually entitled to expect R200 plus 20 per cent interest from that fellow member. In this way large amounts of money are generated at a single party and it has been recorded that a member (host) once received R149 000 from a single party. See Lukhele op cit note 7 at 21–22; Collair op cit note 24 at 16–17.

Although this classification is based on research done in respect of stokvels active in the Western Cape, it would appear that this classification holds good for the rest of South Africa as well. From the composition of stokvels in general, it appears that 41 per cent are small savings clubs, 29 per cent are burial societies while the remainder (30 per cent) consist of 'umgalelos', investment syndicates and high-budget associations (also known as high-budget credit-rotating associations) (HBCRA); see Collair op cit note 24 at 28.

See Thomas op cit note 10 at 296–297; Collair op cit note 24 at 11.

See Stanford op cit note 36 at 36.

See Thomas op cit note 10 at 298; Collair op cit note 24 at 11.

See Collair op cit note 24 at 15.

See further par 3.1 infra.

See Thomas op cit note 10 at 299–301; Collair op cit note 24 at 11 17–18.
2.2 Burial Societies

2.2.1 The Nature of a Burial Society

Stokvels are formed with various aims in mind.68 A burial society is a type of stokvel in terms of which financial assistance is provided for the funerals of members and their families.69

A burial society is sometimes referred to as a ‘lekgotla’. The Tswana word ‘lekgotla’ is used to describe any social meeting with a good moral purpose, for example, a birthday or burial society gathering.70 As a type of stokvel, burial societies had their origin in the financial problems experienced by blacks when they were expected to provide a decent funeral where a deceased has died destitute. The surviving family of the deceased was usually financially crippled by the high costs accompanying the traditional indigenous funeral.71 The concept of a burial society for blacks had its origin in the Free State during the early 1930s. It rapidly spread to the rest of the country as it provided a solution to the financial burden faced by blacks in honouring traditional funereal requirements.72

Burial societies are, strictly speaking, not a different form of financial investment but simply a special type of stokvel.73 Due to the important

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68 See again par 2.1 supra.
69 See Kramer op cit note 2 at 10 and at 59 et seq for examples of the burial societies active in Soweto. Like credit-rotating associations (stokvels) in general, burial societies are neither unique to South Africa (see Gosden op cit note 5 at 115 et seq; Robert B Boeder ‘Malawi Burial Societies and Social Change in Zimbabwe’ 1982 J of Contemporary African Studies 339 at 340) nor is the concept a modern one (see Ian Morris Burial and Ancient Society — The Rise of the Greek City-State (1987) at 46 et seq for a discussion of burial rights in ancient Greece). For a description of the activities of a burial society as seen by the Legislature, see par 2(c)(ii)-(iv) of GN 2173 in Government Gazette 16167 of 14 December 1994, which is discussed in par 3.2 infra.
70 Lukhele op cit note 7 at 16 et seq. More specifically the term ‘lekgotla’ refers to the proceedings of a traditional court. In a general sense the term ‘lekgotla’ refers to any public meeting which has two important features, namely that it is of a structured nature, and that it is open to the general public.
71 Thus, during the 1980s a funeral in the traditional black urban areas cost at least R1 500 if one included the cost of the coffin, refreshments and food for the wake, and the hire of buses (see Stanford op cit note 36 at 35).
72 The arrangements and festivities which accompany traditional funerals in the black culture could easily be mistaken for those of a wedding or other feast. It is customary to slaughter an ox and to prepare and provide food and beer. All the family and friends who attend the funeral are expected to go to the bereaved’s house after the funeral and to participate in the rituals as well as in the feast. All the expenses are borne by the bereaved family, something which could easily leave a poor family destitute. See Kramer op cit note 2 at 135 et seq; Monica Ferreira Burial Aid Societies and Elderly Coloureds in Rural Areas: Some Sociological Comments on the Dynamics of Consumer Exploitation within a Culture of Poverty (Research Finding of the Human Sciences Research Council (1983)) at 1; Lukhele op cit note 7 at 17; Collair op cit note 24 at 11.
73 Amongst the coloured community of the Western Cape, burial societies are also known as 'doodsgeenootskappe' (see Ferreira op cit note 72 at 3). The term 'doodsgeenootskap' is sometimes also used when referring to funeral insurance, which is regulated by the Insurance Act 27 of 1943. A 'doodsgeenootskap' in terms of the Insurance Act should not be confused with a 'doodsgeenootskap' in the sense of a type of stokvel. In terms of s 3 of the Insurance Act, every insurer, including an insurer who assumes 'funeral business', must be registered in terms of the Act. Section 1 of the Act describes 'funeral business' as 'the business of assuming the obligations of an insurer under funeral policies'. A 'funeral policy' is then described as 'a policy whereby the insurer assumes an obligation, in return for a premium or the promise of a premium, to provide, on the death of any person, benefits which involve amounts not exceeding in the aggregate five hundred rand and which consist principally of — (a) provision for the funeral of that person; or (b) the grant of some other non-monetary benefit to any person ...'. A stokvel does not have to be registered lawfully to receive contributions (premiums) in return for the promise to pay an amount on the death of a person.
role which burial societies play in the black stokvel culture, they will, however, be treated as a separate financial mechanism in their own right. Of the approximate 24 000 stokvels operating in the major metropolitan areas, 29 percent are burial societies. On average 80 people belong to an individual burial society. Coverage in the case of death depends on the provisions of the constitution of the particular burial society or, in the absence of any constitution, on the agreement between the members of the burial society. Usually an entire family is covered. Members who belong to a burial society sometimes also have an ordinary funeral insurance policy which provides for additional financial assistance in the case of a funeral.

In its common form, the agreement between the members of a burial society provides that the members will assist one another in the case of the death of a fellow-member or one of his relatives. Members of a burial society usually regard the promised assistance by the other members of the society as a type of insurance. However, it is interesting to note that members of a burial society often prefer it to an ordinary funeral policy. Ordinary funeral policies have certain disadvantages. First, most blacks consider them too expensive. Secondly, most ordinary funeral policies require that a separate insurance policy be taken out for each individual member of the family. In the case of a burial society, by contrast, the whole family is covered by the payment of a single, relatively low

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74 And in the black community as a whole (see Kramer op cit note 2 at 55 et seq). Afro-American societies in the United States of America place a similar importance on 'a proper burial'. 'Who buried him or her?' is an important question which is often asked to elicit information about who provided for the funeral of a family member. Public-aid burial is seen as a disgrace and family members will pool funds to bury a kinsman who dies without burial insurance. See Regina E Holloman & Fannie E Lewis 'The "Clan": Case Study of a Black Extended Family in Chicago' in Dimitri B Shimkin, Edith M Shimkin & Dennis A Frate (eds) *The Extended Family in Black Societies* (1978) 217–218. The main aim of the local burial societies which operated in English counties during the nineteenth century was also to prevent the disgrace of a pauper funeral (see Gosden op cit note 5 at 115).

75 In the case of other types of stokvel, the average number of members is sixteen (see Lukhele op cit note 7 at 2).

76 In terms of the burial scheme administered by NASASA for its members, there is no limit on the number of spouses of a member who will be covered in terms of the scheme. Thus, this scheme acknowledges marriages by common law and by tribal custom. All children of the member, irrespective of the number and from which type of marriage, including a still-born child, a stepchild, a child born outside marriage and an adopted child, are included in the scheme: Anon (NASASA Brochure) op cit note 9 at 11. This arrangement apparently applies to burial societies in general.

77 See again s 1 of the Insurance Act for the definitions of ‘funeral business’ and ‘funeral policy’ (see note 73 supra).

78 See Kuper & Kaplan op cit note 25 at 185.

79 See Kramer op cit note 2 at 54; Ferreira op cit note 72 at 1.

80 This is a problem which is also faced by extended Afro-American families in America as the insurance laws of certain States do not allow for the extended family. Thus, family members who are not immediate family are often excluded from cover by these laws. See Dennis A Frate & Eddie W Logan 'Community Reactions and Appraisals' in: Shimkin, Shimkin & Frate op cit note 74 at 168. The concept of 'a family' is generally understood to mean parents and children and both sets of parents-in-law. If parents are absent, or already deceased at the time when the member joins the burial society, other relatives may be substituted (see Stanford op cit note 36 at 35). This phenomenon is referred to as the concept of 'an extended family'.

81 See again note 80 supra as to the concept of the 'extended family'. As to the role and function of the 'clan funeral' in the extended family in Afro-American Societies in America, see Holloman & Lewis op cit note 74 at 217–218.
contribution. The smallness of the premium or contribution may be ascribed to the fact that burial societies, being in the nature of a mutual insurance society, are not usually formed with the intention of making a profit from the contributions paid by the members. A further advantage of membership of a burial society, compared with a funeral insurance policy, is that the member is often not required to pay regular premiums or contributions in order to be covered. The member promises to contribute towards the funeral expenses of other members should they pass away before him. In effect the members receive burial-insurance cover on credit.

Burial societies not only fulfill an important financial support function but provide the bereaved family with important moral and social support as well.

2.2.2 Different Types of Burial Society

Two main types of burial scheme exist. In terms of the first type a group of people enter into an unwritten agreement. This scheme is very informal and usually operates without a constitution. The members commit themselves to pay a specified amount of money should a member or anyone in his immediately family pass away. The contributions are brought to the family of the deceased. This type of scheme is usually small and no bank accounts are opened in the name of the society.

In terms of the second type of scheme, which is more formal and structured, members contribute a fixed amount of money either on a weekly, monthly or annual basis. They enter into a written agreement and the society is governed by a detailed constitution which provides for the operation of the scheme. Bank accounts are opened in the name of the society. To overcome the possibility of fraud, many stokvels and burial societies have joint instead of individual control, and the accounts of the burial society are read to all members at meetings. Members in general have a say in the running of the society.

(To be continued.)

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82 See Stanford op cit note 36 at 35–36.
83 See par 3.1 infra.
84 See Kramer op cit note 2 at 149.
85 See Lukhele op cit note 7 at 19.
86 See Kramer op cit note 2 at 70–71; Lukhele op cit note 7 at 17; Collair op cit note 24 at 14.
87 See Lukhele op cit note 7 at 18; Collair op cit note 24 at 14. It would appear that most of these more formal type of burial schemes operate as voluntary associations.
88 See Kramer op cit note 2 at 72 for an exposition of the different official capacities encountered in the executive committee of a burial society.
89 See Lukhele op cit note 7 at 19.