

SU3: INHERENT JURISDICTION

3.1 Superior and Lower Courts

Distinction between superior/lower courts

Inferior (lower) courts do nothing not so permitted by enabling statute

Superior Courts do anything the law does not forbid

Courts

Superior Courts

Constitutional Court

Supreme Court of Appeal

Provincial/Local Divisions of the High Courts

Lower Courts

Magistrates' Court (Magistrates' Court Act 32 of 1944)

Small Claims' Court (Small Claims' Court Act 61 of 1984)

Customary Courts (Chiefs and Headmen)

Other bodies vested with judicial/quasi-judicial powers (whether by virtue/statute)

3.2 Meaning of Inherent Jurisdiction

Civil procedure

Applied in Superior Courts

Not only dependent on statute and Rules of Court

Jurisdiction derived from common law

Discretion i.t.o. ...

Condone procedure mistakes

Determine of any point in procedure

S173 (Constitution of S.A. 108 of 1996)

Confirms continued existence of common law power

Inherent power to protect and regulate own process

Develop common law in the interest of justice

3.3 Creatures of Statute

Do not have inherent jurisdiction

Derive powers from statutes that created it

Depends on enabling statutes (jurisdiction)

Enabling statute to be carefully interpreted

Restricted competence

To determine scope of jurisdiction conferred