

Department of Criminal and Procedural Law

Criminal Procedure

Module 1

**Only study guide for
CMP201-6**

**Prof PM Bekker
Dr T Deane
Prof JP Swanepoel
Adv F Nel**

**University of South Africa
Pretoria**

© 2006 University of South Africa

All rights reserved

Printed and published by the
University of South Africa
Muckleneuk, Pretoria

CMP201-6/1/2007-2009

97978922

3B2



NOTE:

The subject of *Criminal Procedure Law* comprises two modules: CMP201-6 and CMP301-A.

The only compulsory prescribed textbook for both these modules is that by Joubert JJ (ed) *Criminal Procedure Handbook* (consistently referred to in this study guide as the "handbook"), published by Juta and Co, Ltd. Since new editions of the handbook may appear after the publication of this study guide, you must refer to Tutorial Letter 101 of each module in order to find out which edition of the handbook you should buy. Do not buy an outdated handbook!

The portions of the handbook that you have to study for the purposes of CMP201-6 are the following:

Chapters 1-11 (ie from: "A basic introduction to criminal procedure" up to the end of "Pre-trial examinations")

CONTENTS

<i>Study unit</i>	<i>Page</i>
PREVIEW	(iv)
SECTION A	1
Flow chart of criminal procedure field	3
Examples of documents	5
Survey of the first phase of the criminal process	13
SECTION B	17
PART I	18
SELECTED GENERAL PRINCIPLES OF CRIMINAL PROCEDURE LAW	18
1 A basic introduction to criminal procedure	19
2 Criminal courts of the Republic	26
3 Prosecuting crime	30
4 The right to legal assistance	34
5 The presence of the accused as a party	38
PART II	41
THE CRIMINAL PROCESS	41
PHASE ONE: THE CRIMINAL PROCESS BEFORE THE TRIAL	41
6 The exercise of powers and the vindication of individual rights	42
7 Methods of securing the attendance of the accused at his trial	46
8 Interrogation, interception and establishing the bodily features of a person	51
9 Search and seizure	55
10 Bail and other forms of release	58
11 Pretrial investigations	63

PREVIEW

WELCOME

Welcome to the first module (CMP201–6) of the law of criminal procedure. There are two modules, CMP201–6 and CMP301–A. This module deals with selected general principles of the law of criminal procedure as well as the first phase of the criminal process, also referred to as pretrial criminal procedure. In the second module (CMP301–A), you will get to grips with the remainder of the criminal process, namely the second to fourth phases that deal with the trial and posttrial process.

PURPOSE OF THIS MODULE

The purpose of this module is to equip learners with the knowledge, skills, attitudes and competencies necessary to analyse and solve problems relating to the law of criminal procedure in South Africa.

HOW TO USE THIS STUDY GUIDE

Prescribed book

The study guide is based on and supplementary to the prescribed handbook for this module, namely Joubert JJ (ed) *Criminal Procedure Handbook*, hereafter referred to as “the handbook”. Since the handbook is revised every two years, you have to consult Tutorial Letter 101 for the latest edition that you will have to acquire. PLEASE NOTE: The handbook is the primary course of study material on which the examination for this module will be based. Do not use an outdated handbook because it will be detrimental to your studies.

Structure of the study guide

The study guide comprises two sections, A and B. Section A consists of examples of documents used in a criminal trial, a flow chart of the criminal process and an overview of the first phase of the criminal process. Section B consists of eleven study units which correspond to chapters 1 to 11 in the handbook. Chapters 1 to 5 in Part of the handbook deal with the general principles which are also discussed in the study guide. Chapters 6 to 11 describe the first phase of the criminal process which is treated in its entirety in Part II. The study guide must be studied as a background to and an explanation of the handbook. These study units together with their corresponding chapters in the handbook make up your study material on which you will be examined at the end of the semester.

Structure of study units

Each study unit is divided into the following sections:

- (1) a table of contents of the material discussed in the study unit

- (2) learning outcomes, which embody the basic core aspects that you have to know and understand once you have worked through the study unit
- (3) an overview of the study material covered in the study unit
- (4) activities to help you digest the study material and apply it in practice, as well as general feedback on the way these activities should be done
- (5) self-evaluation questions and feedback on them

The use of gender

In order to treat both genders equally, the feminine form is used in study units with even numbers (2, 4, 6 etc) and the masculine form in study units with odd numbers (1, 3 etc).

Icons

An icon is a small picture or other graphic symbol that conveys a certain message. The following icons are used in this study guide:



This icon draws your attention to a special note or rule that you have to be aware of.



This icon denotes learning outcomes.



This icon denotes activities and feedback on them.



This icon denotes self-evaluation questions and feedback on them.

REFERRAL TO CASES

To avoid long-windedness we do not use the complete case references (eg *S v Groesbeek and Another* (1) 1969 (4) SA 383 (O)), but merely the name followed by the place of reference — *Groesbeek* (1) 1969 (4) SA 383 (O). This is the modern, abbreviated form of citation. Where judgement has been pronounced in a case, however, that takes the form of a civil dispute, for example in *Allen v Attorney General*, we do give the full reference. Note that the part at the end of a case reference as given above, the (O), refers to the provincial court of the Free State where the

matter was decided. In this way you can also recognise pronouncements of the court with the highest authority, the Constitutional Court (CC) [given only in English] as well as those of the Supreme Court of Appeal (SCA) or (A) [decisions cited in Afrikaans as (HHA) or (A)].

STUDY HINTS

It is useful to have a copy of the Criminal Procedure Act 51 of 1977 at hand when you study the handbook because it facilitates insight into the subject matter if you study the wording of a particular section referred to in the handbook.

Note that we do not require you to memorise statutory provisions *verbatim* at any time. You need not try to memorise the numbers of sections for examination purposes. It would be a virtually impossible task to learn all the legal provisions discussed in the course of the Handbook off by heart. Here you must use a great deal of discretion. You must try at all times to understand the principles embodied in each particular section under discussion.

You are also not expected to know the authorities or even names of decisions by heart. **It is useful, however, to memorise the names of landmark decisions.**

In view of the scope of this subject you are not **required** to read any of the decisions quoted in the handbook. It is always advisable, however, to read as many of the important decisions as time allows. There is no casebook available in this subject.

Many of you are following occupations where you are actively involved on a daily basis with some aspect or other of criminal procedure law, or where your presence is required in courts. Others seldom have anything to do with criminal justice. It is advisable to attend as many criminal trials as possible. Try to attend at least one defended trial in the High Court or the regional court of your area from beginning to end. A rule that may appear "abstract" and difficult to you often becomes transparent at a stroke if you observe its application in practice. Read the newspaper articles on criminal trials. Often these mention interesting procedural points. But be careful: news reports are often very synoptic and not always accurate about such points.

The most basic requirement for successful examination writing is that you must have **knowledge**. Secondly you must be able to **apply** the knowledge. Thirdly you must be able to **communicate** all of it effectively. If there is no knowledge to start with, the application and communication do not even come into the picture.

In the first place this knowledge is gleaned from the handbook, the study guide and the tutorial letters. Sometimes students feel that they want to read as widely as possible as soon as possible, and they collect all kinds of additional material. The process of collection makes them feel that they are being active; they think they are actively preparing for the examination. Actually they are misleading themselves; they should rather have worked through the handbook. The best additional material is the Criminal Procedure Act itself. Reading the text of the Act often clears up uncertainties that may exist in the handbook. If you experience further difficulties with understanding a principle or the application/meaning thereof it often helps to read a relevant decision which gives you a practical interpretation and application of the principle. (We do not **demand** that you read decisions in order to pass the examination; but the distinction student is usually someone who has taken the trouble to read the Act and some decisions.) Remember, however, that the handbook is the bottom line, the backbone of the course — so begin with the handbook.

If you are not involved with court work already, you could at least spend a day in the lower court (and take the opportunity to chat to the prosecutor if you can); you will be surprised at how much this can help you to study this subject.

Study **actively**. Make summaries, draw diagrams, and so on. Study to gain an overall picture of the subject — first get a bird’s-eye view.

Also study subordinate sections of the subject in context — for example section 49 in the context of arrest by peace officers **and** private persons.

Do not try to “spot” negatively for the examination; in other words, do not leave out parts of the work. If you must engage in this practice, rather spot **positively** by preparing certain subjects well or by doing something “extra” about them. It is useful in this regard to work through the model examination paper sent in a tutorial letter. The general pattern and choices remain the same from year to year. (The choices are set up so that you nevertheless have to know every part of the work — you cannot leave out some parts.) **It also helps to remember that tutorial letters are not drawn up for nothing; they are certainly important for the examination.**

You are not expected to know names and/or references of decided cases. Naturally it is to your advantage if you do remember certain names, because first, you can use these as a “shortcut” when you emphasise a statement, and second, you will get credit for citing a correct case. Concentrate on the judgement of the highest courts. (Please do not make up fictitious decided cases — you will not deceive the examiner!) You also need not know the numbers of sections of statutes but it is handy to know them in any event (eg you merely write “sect 60 provides that ...” instead of the more elaborate “according to the section that regulates the duties of the court after a bail application ...”) — but then you must not mention the wrong section, of course!

We do not consciously deduct marks for language or spelling errors or poor handwriting, but you do want to make a favourable impression on your examiner and make sure that he/she has a positive attitude towards you, not so? A legal expert always remains a language student. Words are important. If your use of language can stand improvement you must concentrate on improving your language skills. (It is typical of a distinction student that his/her language use is beyond reproach.)

An examiner can only take account of what he/she can read. So keep your handwriting legible. Practice before the examination to write fast and very legibly at the same time — two hours at a stretch! (This is a serious remark. Too many students do not manage to finish in time — almost inevitably with disastrous results — because they cannot write fast enough. The pass and distinction statistics in this subject show that the problem is not caused by question papers that are too long. The discipline of a time limit is part of your training as a jurist. One of the advantages of working out the model question paper — see above — is that you can see whether you can complete such a question paper within the set time limit.)

Examples

- (1) “Name the various forms of pre-trial investigations” — only **mentioning** is required,
as opposed to
- (2) “Discuss the various forms of pre-trial investigations — **full discussion** is required.

Divide your time according to marks. You have 120 minutes to earn 100 marks. Look at the format of the model examination paper. Give yourself time to read and think. Calculate the time you need to answer each question according to the time allotment for the paper as a whole. Adhere to your time allocation per question and return to a question later rather than spend more time on it than you calculated. Rather return to questions to which you want to add information at the end of the paper if there is time left. Mark the questions concerned, for example with a green pencil or a pencil of another colour (not red) so that you will recognise the colour at a glance.

Your time allocation and speed are vital. Do not waste time, for example by repeating the question or by indulging in flowery prose for which you will earn no marks (eg "The problem posed here is nettlesome and rather difficult to answer; however I shall try to answer it as follows ...").

The marks allotment to a question determines the time as well as the length and detail of the answer. The question "Discuss the powers of the director of public prosecutions" may count 6 marks or even 15 marks. If it counts 6 marks we expect a discussion in outline only; if it counts 15 marks we expect a discussion in greater depth.

The volume (length) of a question does not of **necessity** correlate with the marks allocation: a brief but complicated insight-type of question may count more than a longer but "easier" question.

Leave no question or part of a question open (unanswered), because then the examiner **must** give you a nought for it. Try to write something. Fall back on general knowledge and/or common sense if your specific knowledge fails you. Then we at least have the discretion to give you a mark for your effort!

Do not shy away from "problem questions" (sets of facts to which you have to apply the apposite legal principles). Analyse them dispassionately and then handle them like a "list" of "straight" questions. For example, the paper for a previous year contained the question: "B sustains damage to the extent of R8 000 to his vehicle that collided with that of Z. B is convinced that Z caused the collision deliberately. However, the prosecutor decides to prosecute B instead of Z but realises this mistake during the trial. Discuss the procedural options open to the prosecutor (8)." The two "disguised" straight questions deal with stopping the prosecution in terms of section 6(b) and conversion of the trial into a preparatory examination.

We repeat: Read the wording of the question. If we say "lower court" it does not mean the same as "magistrate's court". (It is more inclusive, ... because it also refers to the regional courts (see s1 of Act 51 of 1977). If we are not specific about a substantial matter you must discuss all possibilities. For example: if we do not mention whether the person carrying out the arrest is a peace officer or a private person you must discuss both. (Even this aspect of a question may be "disguised".)

Where necessary you must dredge up points relating to a question from different parts of the handbook. For example, the concept denoted "reasonable grounds" may be important in different contexts. The position of the youth in the criminal case is brought up in different places in the handbook; so it may be necessary to pull **all** of it together to answer a question.



Do not be led into a blind alley by a single aspect of a question — deal with everything that is relevant.

OTHER WORKS ON CRIMINAL PROCEDURE

As indicated above the only prescribed book for this course is that of Joubert JJ (ed) *Criminal procedure Handbook*. If you would like to read more widely on the subject of Criminal Procedure, we draw your attention to the following South African works:

Kriegler J: *Hiemstra: Suid Afrikaanse Strafproses* 6 edition (2002) Butterworths.
Du Toit, E. *Commentary on the Criminal procedure Act* (loose-leaf edition) Juta.
Barow, OJ. *The Criminal Procedure Act 51 of 1977*.

GLOSSARY OF LATIN TERMS

Experience has shown that students sometimes find it difficult to understand some of the Latin words and expressions that occur in the study guide and the textbook. A glossary of Latin words and expressions is given for quick and easy reference. You are not expected to study this glossary for examination purposes.

<i>ab initio</i>	from the beginning
<i>a fortiori</i> with	stronger reason
<i>aliunde</i>	from another source
<i>animus</i>	intention
<i>a quo</i>	from which, eg court <i>a quo</i> — lower court from which an appeal proceeds
<i>audi alteram partem</i>	hear the other side
<i>bona fide</i>	good faith
<i>cf</i>	compare, see
<i>contra</i>	against/in contrast with
<i>contra bonos mores</i>	immoral/against good morals
<i>dictum</i>	decision/formal saying
<i>de minimis non curat lex</i>	the law does not concern itself with trifles
<i>de novo</i>	anew
<i>dominus litis</i>	master of the suit
<i>et seq</i>	and further
<i>eo nomine</i>	under that name
<i>in facie curiae</i>	in the presence of the court
<i>ex hypothesi</i>	on the supposition
<i>ex officio</i>	by virtue of his office
<i>ex parte</i>	as the sole interested party
<i>ex post facto</i>	in the light of subsequent events
<i>falsitas</i>	falsity (collective term for fraud and forgery)
<i>forum</i>	court or tribunal (tribunal refers to judicial institutions other than criminal courts)
<i>functus officio</i>	no longer in office
<i>gravamen</i>	material point of a submission
<i>ibid</i>	in the same passage
<i>in camera</i>	behind closed doors
<i>in casu</i>	in the present case
<i>incommunicado</i>	without the right to consult with family or legal representatives
<i>in flagrante delicto</i>	caught red-handed
<i>infra</i>	below
<i>in loco</i>	on the spot
<i>in persona</i>	in person
<i>inter alia</i>	among others

<i>in toto</i>	wholly, completely
<i>ipsissima (plural: -ae)</i>	the identical words
<i>verba</i>	
<i>lis</i>	suit
<i>lis pendens</i>	suit pending elsewhere
<i>locus standi</i>	a right of appearance in court as a party
<i>mala fide(s)</i>	in bad faith
<i>mandamus</i>	imperative order
<i>mens rea</i>	guilty mind, guilt (in a wider sense)
<i>mero motu</i>	spontaneously
<i>mutatis mutandis</i>	the same, with the necessary changes (in points of detail)
<i>nemo debet bis vexari pro una et eadem causa</i>	no one ought to be harassed a second time for the same cause (sometimes referred to as the <i>ne bis in idem</i> rule or principle of the double jeopardy doctrine)
<i>nolle prosequi</i>	refusal to prosecute
<i>obiter dictum</i>	remark in passing of a judge (that is not binding)
<i>onus ("onus of proof")</i>	burden of proof
<i>particeps criminis</i>	participant
<i>per se</i>	by itself
<i>prima facie</i>	at first sight
<i>pro bono</i>	for the public weal
<i>pro deo</i>	for God's sake (defence at state expense)
<i>ratio</i>	reason, ground, cause
<i>rei vindicatio</i>	vindication
<i>res iudicata</i>	the case has already been decided
<i>restitutio in integrum</i>	restore to previous condition
<i>suo motu</i>	of his own volition/on his own
<i>sui generis</i>	the only one of its kind
<i>supra</i>	above
<i>ultima ratio legis</i>	last resort or means
<i>viva voce</i>	orally/personally (evidence)

SECTION A

CONTENTS

1. Flow chart of the criminal process
2. Examples of documents
3. Survey of the first phase of the criminal process

EXAMPLE (1) SUMMONS

H UITGEREIK DEUR: DIE VERKEERSHOOF POSBUS 4133 PRETORIA 0001		ISSUED BY: CHIEF TRAFFIC OFFICER P.O. BOX 4133 PRETORIA 0001	
A AAN TO: Van / Surname Voornamen / Forename		No. van Kennisgewing / No. of Notice 07285264	
I.D. Woonadres / Residential address		Barcode	
Land / City Rybewys / Licence Nationaliteit / Nationality		Voorstad Suburb	
Naam en Adres van Werkgegewer of Operateur / Name and Address of Employer or Operator		Poskode / Postcode Stad/Dorp City/Town	
E.V.S.-no. (Vir amptelike gebruik) / A.G. No. (For official use)		Ouderdom / Age Beroop / Occupation Status	
B U word hiermee kragtens die bepalings van artikel 56 van die Strafprosedurewet, 1977 (Wet 51 van 1977), aangese om voor die hof op die verhoordatum, wat in beide gevalle hieronder genoem word, om 08h00 te verskyn en teenwoordig te bly om te antwoord op 'n aanklag(e) van oortreding van artikel 56 van die Strafprosedurewet, 1977 (Wet 51 van 1977), to appear before the court on the date of trial, both of which are mentioned hereinafter, at 08h00 and to remain in attendance there to answer a charge(s) of contravening section 56 of the Criminal Procedure Act, 1977 (Act 51 of 1977).			
Aanklag 1/Charge 1		Aanklag 2/Charge 2	
Aanklag 3/Charge 3 - alternatiewe aanklag/alternative charge		DAG/DAY MAAND/MONTH 19 JYR/YR	
of enige ander aanklag(te) wat die Aanklaer teen u mag inbring op grond daarvan dat u op omtrent die		in plek / openbare pad in a place / public road in the	
die ondergenoemde distrik, wederregtelik district mentioned hereinbelow, you did wrongfully		motorvoertuig* motor vehicle* Reg. No.	
C Datum waarop en plek waar u persoonlik in die hof moet verskyn / Date and place where you are personally to appear in court			
Verhoordatum Date of Trial		Plek van Verhoor/Place of trial: Landdroshof/Magistrate's Court Hof-Court No.	
D Datum waarop en plek waar skulderkenningsboete(s) betaal kan word ten einde verskyning in die hof te vermy / Date and place where admission of guilt fine(s) may be paid to avoid appearance in court.			
Skulderkenningsboete(s) ten bedrae van Admission of guilt fine(s)		Kan betaal word, in welke geval betaling moet geskied voor of op may be paid, in which case payment must be made on or before	
DAG-DAY MAAND/MONTH 19 JYR/YR		Verkeersentrum Vissagiestraat 174 Pretoria	
Slegs by Only at		24-uur Dienskantoor hour Service Office	
Verkeersafdeling Traffic Department		No. van Vredesbeampte No. of Peace Officer	
DAG/DAY MAAND/MONTH 19 JYR/YR		Plek/Place GROEP / GROUP	
Die oorspronklike hiervan is vandag aan die genoemde beskuldigde self oorhandig en die betekenis daarvan aan hom/haar verduidelik. The original hereof was today handed to the abovementioned accused personally and the import thereof explained to him/her.			
Vredesbeampte/Peace Officer		Tyd / Time	
F Amptelike kodes Official codes Hof Court		Oortreding(s) Offence(s) 1 2 3	
O/Lokalliteit O/Locality		Rybewys D.Lic. Tipe/Type Kode/Code Toonkode Presentation Code	
G BELANGRIKE INLIGTING VIR DIE BESKULDIGDE / IMPORTANT INFORMATION TO THE ACCUSED			
1. Waarskuwing: Indien u versuim om aan hierdie kennisgewing te voldoen of om by die betrokke verrigtinge aanwesig te bly kan u in hegtenis geneem en 'n boete of gevangenisstraf van hoogstens 3 maande opgelê word.		1. Warning: If you fail to comply with this summons or fail to remain in attendance at the proceedings you may be arrested and sentenced to a fine or imprisonment for a period not exceeding 3 months.	
2. Voorwaardes vir betaling van skulderkenningsboete. Indien u verkies om 'n skulderkenningsboete te betaal: <ul style="list-style-type: none"> 2.1 Moet hierdie dokument die betaling van die skulderkenningsboete vergesel. 2.2 Sal slegs kontant, 'n posorder, 'n poswissel of 'n bank-gewaarborgde tjek aanvaar word. 2.3 Moet posorders, poswissels of tjeks aan die betrokke owerheid uitgemaak word. (kyk deel D hierbo). 2.4 Sal u nie in die hof hoef te verskyn nie. 		2. Conditions for payment of admission of guilt fine. Should you prefer to pay the admission of guilt fine: <ul style="list-style-type: none"> 2.1 This document is to accompany such payment. 2.2 Only cash, a money order, a postal order or a bank guaranteed cheque will be accepted. 2.3 Postal orders, money orders or cheques must be made payable to the relevant authority. (see part D above). 2.4 You need not appear in court. 	
3. Betaling per pos kan slegs voor die genoemde betaaldatum geskied.		3. Payment can be made by post only before the said date of payment.	
4. Indien u van 'n regspraktisyn wil gebruik maak, kan u, indien u nie self 'n regspraktisyn kan bekostig nie, aansoek om regshulp doen by die Regshulpbeampte van u plaaslike landdroskantoor.		4. Should you wish to make use of a legal practitioner, you may, if you cannot afford a legal practitioner, apply for legal aid at the Legal Aid Officer of your local magistrates court.	

RAND DATA FORUM (011) 377-3315 (17862)



blad 2

page 2

AMPTELIK - OFFICIAL

AMPTELIK - OFFICIAL



AMPTELIK - OFFICIAL

AMPTELIK - OFFICIAL

I(1)		Van / Surname	
BESKULDIGDE ACCUSED		Voorname / Forenames	
I.D.		Land / Ctry.	Rybewys / Licence
Woonadres / Residential Address		Nasionaliteit / Nationality	
		Voorstad Suburb	
		Poskode / Postcode	Stad/Dorp City/Town
BESTUURDERLISENSIE(S) GETOON / DRIVER'S LICENCE(S) PRODUCED			
1	Lisensieno. Licence No.	Type Type	Kode Code
			Datum van uitroeking Date of issue
			Land Country
			Plak Place
(a)			
(b)			
(c)			
2	Dokument(e) Voorgele: Document(s) Produced:		
	Handtekening van Amptenaar - Signature of Official		
	Datumstempel - Date Stamp		
I(2)			
3	Kwitansieno. Receipt no.	gedateer dated	
	vir die bedrag van for the amount of R	is getoon. was produced.	
4	Skulderkenningskwitansieno. Admission of guilt receipt no.		
	Bedrag Amount R		
	Handtekening van Amptenaar - Signature of Official		
	Datumstempel - Date Stamp		
J	KODELYS VIR DELE "A" EN "I" / LIST OF CODES FOR PARTS "A" AND "I"		
1.	GESLAG/SEX	2.	LAND/COUNTRY
1	= MAN/MALE	01	= R.S.A. ID
2	= VROU/FEMALE	02	= RSA-PASPOORT/PASSPORT
		03	= 1952 R.S.A.-KAART/CARD
		04	= NAMIBIE/NAMIBIA
		05	= LESOTHO
		06	= BOTSWANA
		07	= SWAZILAND
		08	= ZIMBABWE
		09	= MOZAMBIQUE
		10	= ANGOLA
		11	= ANDER PASPOORT/OTHER PASSPORT
		12	= NET GEB. DATUM/BIRTH DATE ONLY
		13	= ONBEKEND/UNKNOWN
K	KODELYS VIR DEEL "F" / LIST OF CODES FOR PART "F"		
4.	RYBEWYS/DRIVER'S LICENCE	5	TIPES/TYPES
01	= M-FIETS/CYCLE < 125cc	1	= OU KAART/TYPE/OLD CARD TYPE
15	= M-FIETS/CYCLE > 125cc	2	= IN ID- of BEWYSBOEK/ IN ID- or REF. BOOK
05	= TREKKER/TRACTOR	3	= K. KAART/C. CARD
06	= ELEK. V/TUIG/ELEC. VEH.	4	= ANDER/OTHER
07	= L/BOU & PAS./AGR. & O.PASS.		
08	= LMV		
09	= MEDIUM M/V		
10	= SMVHMV OF/OR 3500-16000 kg VAS/RIGID		
11	= EKSTRA SMV/EXTRA HMV OF/OR > 16000 kg VAS/RIGID		
12	= SPES. M/V		
13	= 3500-25000 KG KOMBINASIE/COMBINATION		
14	= > 25000 kg KOMBINASIE/COMBINATION		
6	TOON/PRESENTATION		
1	= GETOON/PRESENTED		
2	= BEWYS: AANSOEK OM DUPLIKAAT/ PROOF: APPLICATION FOR DUPLICATE		
3	= NIE GETOON/NOT PRESENTED (= nie byderhand/not available)		
4	= AANSOEK OM DUPLIKAAT MAAR GEEN BEWYS BYDERHAND/ APPLICATION FOR DUPLICATE BUT NO PROOF AVAILABLE		
5	= GEEN RYBEWYS/NO DR. LICENCE		
6	= OPGESKORT OF INGETREK/ SUSPENDED OR WITHDRAWN		

H UITGEREIK DEUR: DIE VERKEERSHOOF POSBUS 4133 PRETORIA 0001

ISSUED BY: CHIEF TRAFFIC OFFICER P.O. BOX 4133 PRETORIA 0001

A AAN TO Van / Surname
 Voornama / Forename

I.D. Land / City Rybewys / Licence Nationaliteit / Nationality

Woonadres / Residential address

Voorstad Suburb Poskode / Postcode Stad/Dorp City/Town

Naam en Adres van Werkgewer of Operateur / Name and Address of Employer or Operator

E.V.S.-no. (Vir amptelike gebruik) / A.G. No. (For official use)

Ouderdom / Age Beroep / Occupation Status

No. van Kennisgewing / No. of Notice
07285264

Sakeno. / Case No.

Klassifikasie / Suggested Classification

B U word hiermee kragtens die bepaling van artikel 56 van die Strafprosedurewet, 1977 (Act 56 of 1977), aangesê om voor die hof op die verhoordatum, wat in beide gevalle hieronder genoem word, om 08h00 te verskyn en teenwoordig te bly om te antwoord op 'n aanklag(e) van oortreding van artikel 56 van die Strafprosedurewet, 1977 (Act 56 of 1977), to appear before the court on the date of trial, both of which are mentioned hereinbelow, at 08h00 and to remain in attendance there to answer a charge(s) of contravention.

Aanklag 1/Charge 1
 Aanklag 2/Charge 2
 Aanklag 3/Charge 3 - alternatiewe aanklag/alternative charge

of enige ander aanklag(te) wat die Aanklaer teen u mag inbring op grond daarvan dat u op of omtrent die district mentioned hereinbelow, you did wrongfully

DAG/DAY MAAND/MONTH 19 JY/YR

in plek / openbare pad in a place / public road in the

motorvoertuig / motor vehicle Reg. No.

Aanklag 1/Charge 1
 Aanklag 2/Charge 2
 1 Aanklag 3/Charge 3 2 alternatiewe aanklag/alternative charge

C Datum waarop en plek waar u persoonlik in die hof moet verskyn / Date and place where you are personally to appear in court

Verhoordatum / Date of Trial DAG/DAY MAAND/MONTH 19 JY/YR Plek van Verhoor/Place of trial; Landdroshof/Magistrate's Court Hof-Court No.

D Datum waarop en plek waar skulderkenningsboete(s) betaal kan word ten einde verskyning in die hof te vermy / Date and place where admission of guilt fine(s) may be paid to avoid appearance in court.

Skulderkenningsboete(s) ten bedrae van / Admission of guilt fine(s) Aanklag/Charge 1 Aanklag/Charge 2 Aanklag/Charge 3 Kan betaal word, in welke geval betaling moet geskied voor of op may be paid, in which case payment must be made on or before

DAG/DAY MAAND/MONTH 19 JY/YR Slegs by Verkeersentrum Traffic Centre
 Only at Vissagiestraat 174 Pretoria 174 Visagie Street Pretoria

24 uur Dienskantoor / hour Service Office 4133 Pretoria 308-7088 308-7089

E Verkeersafdeling / Traffic Department Distrik / District No. van Vredesbeampte / No. of Peace Officer

DAG/DAY MAAND/MONTH 19 JY/YR Plek/Place GROEP / GROUP

Die oorspronklike hiervan is vandag aan die genoemde beskuldigde self oorhandig en die betekenis daarvan aan hom/haar verduidelik / The original hereof was today handed to the abovementioned accused personally and the import thereof explained to him/her Vredesbeampte/Peace Officer Tyd / Time

F

L Voorsittende Beampte / Presiding Officer Staatsaanklaer / Public Prosecutor
 Vir Verdedeging / For Defence Self • Tolk / Interpreter

Pleit op / Plea on 19
 Uitspraak op / Judgement on 19
 Vonnis / Sentence

Datum / Date Landdros / Magistrate

Skriftelike kennisgewing OM IN DIE HOF TE VERSKYN. Uitgereik ingevolge artikel 56 van die Strafprosedurewet, 1977. *Skrip wat nie van toepassing is nie / Delete whichever is not applicable.

Written notice TO APPEAR IN COURT issued in terms of section 56 of the Criminal Procedure Act, 1977.

KOP-1000 (FORM 011) 27-3-15 (17/82)

M ★ KENNISGEWING AAN OUER/VOOG – NOTICE TO PARENT/GUARDIAN

Aan To

Adres Address

U aandag word gevestig op die besonderhede op die keersy hiervan ten opsigte van
Your attention is drawn to the information on the reverse hereof in regard to

(a) Die beskuldigde waarvan u die ouer of voog is. (b) Die aanklag, plek, datum en tyd van verhoor.
The accused, of whom you are the parent or guardian. The charge, place, date and time of trial.

Hierdie is 'n afskrif van die prosesstuk wat aan die betrokke beskuldigde beteken is. U word gewaarsku om die betrokke verhoorverrigtinge op die genoemde datum, tyd en plek
This is a copy of the process served on the accused. You are warned to attend the court proceedings on the said date, time and place and to remain in attendance until excused
by te woon en aanwesig te bly tot die hof u verskoon.
by the court.

U kan by die landdros van die hof waarin die beskuldigde moet verskyn, aansoek doen om vrygestel te word van die verpligting om die betrokke verrigtinge by te woon.
You may apply to the magistrate of the court in which the accused is to appear for exemption from the obligation to attend the proceedings in question.

Indien die skulderkenningsboete betaal word, word u vrygestel van die verpligting om die betrokke verrigtinge by te woon.
If the admission of guilt fine is paid, you are exempted from the obligation to attend the proceedings in question.

Indien u versuim om die betrokke verrigtinge by te woon of by die betrokke verrigtinge aanwesig te bly soos vermeld, kan u in hegtenis geneem en 'n boete of gevangenisstraf
If you fail to attend the proceedings or to remain in attendance as aforesaid, you may be arrested and sentenced to a fine or imprisonment for a period not exceeding
vir 'n tydperk van hoogstens drie maande opgelê word.
three months.

Datum Voorgeskrewe beampte
Date 19..... Prescribed officer

N RELAAS TEN OPSIGTE VAN OUER OF VOOG – RETURN WITH REGARDS TO PARENT OR GUARDIAN

Ek sertifiseer dat 'n afskrif van hierdie dokument (synde die kennisgewing aan die beskuldigde onder die ouderdom van agtien jaar om in die hof te verskyn asook die kennisgewing
I certify that a copy of this document (being the notice to the accused under the age of eighteen years to appear in court as well as the notice contained in part M)

(a) † aan die bogenoemde ouer/voog van die beskuldigde beteken is te
was served on the abovementioned parent/guardian of the accused at..... en dat die aard en ems daarvan aan die ontvanger verduidelik is
..... and that the nature and exigency thereof was explained to the recipient

(b) † Nie aan die ouer of voog van die beskuldigde beteken is nie aangesien:
was not served on the parent or guardian of the accused because:

(i) † die ouer/voog nie in die landdrosdistrik waar die beskuldigde moet verskyn, is nie.
the parent/guardian is not within the magisterial district where the accused is to appear.

(ii) † die ouer/voog is in die landdrosdistrik waar die beskuldigde moet verskyn, maar kan nie sonder onbehoorlike vertraging opgespoor word nie.
the parent/guardian is within the magisterial district where the accused is to appear, but cannot be traced without undue delay.

(iii) † dit nie bekend is of die ouer/voog in die landdrosdistrik waar die beskuldigde moet verskyn, is en sonder onbehoorlike vertraging opgespoor kan word nie.
it is not known whether the parent/guardian is within the magisterial district where the accused is to appear and could not be traced without undue delay.

† Skrap wat nie van toepassing is nie / Delete whichever is not applicable.

Datum Voorgeskrewe beampte
Date 19..... Prescribed officer

O LASBRIEF/WARRANT

Beskuldigde se naam binne en buite die hof uitgeroep. Beskuldigde is afwesig. Lasbrief tot inhegtenisneming uitgereik te word.
Accused's name called in and outside the court. Accused in default. Warrant of arrest to be issued.

Datum Tyd
Date 19..... Time h

Landdros / Magistrate

Lasbrief aangeteken in register onder nommer Lasbrief uitgereik op
Warrant of arrest recorded in register under number Warrant of arrest issued on 19.....

Uitstel(le) / Postponement(s)

.....

.....

.....

.....

Die oorspronklike hiervan bevat die volgende uiteensetting in rooi ink as deel "G" op die voorkant daarvan
The original contains the following wording in red ink as part "G" on the front page thereof

G

BELANGRIKE INLIGTING VIR DIE BESKULDIGDE **IMPORTANT INFORMATION TO THE ACCUSED**

1. **Waarskuwing:** Indien u versuim om aan hierdie kennisgewing te voldoen of om by die betrokke verrigtinge aanwesig te bly kan u in hegtenis geneem en 'n boete of gevangenisstraf van hoogstens 3 maande opgelê word.
1. **Warning:** If you fail to comply with this summons or fail to remain in attendance at the proceedings you may be arrested and sentenced to a fine or imprisonment for a period not exceeding 3 months.

2. **Voorwaardes vir betaling van skulderkenningsboete.**
Should you prefer to pay the admission of guilt fine:
Indien u verkies om 'n skulderkenningsboete te betaal:
2.1 Moet hierdie dokument die betaling van die skulderkenningsboete vergesel.
2.1 This document is to accompany such payment.
2.2 Sal slegs kontant, 'n posorder, 'n poswissel of 'n bank-gewaarborgde tjek aanvaar word.
2.2 Only cash, a money order, a postal order or a bank guaranteed cheque will be accepted.
2.3 Moet posorders, poswissels of tjeks aan die betrokke owerheid uitgemaak word. (kyk deel D hierbo).
2.3 Postal orders, money orders or cheques must be made payable to the relevant authority. (see part D above).
2.4. You need not appear in court.
3. Betaling per pos kan slegs voor die genoemde betaaldatum geskied.
3. Payment can be made by post only before the said date of payment.

1. Vesel twee velle deurtreppies in tussen die toepaslike bladsye tot by die agterkant van die Beheerstuk.
2. Beteken dat die kennisgewing (bladsy 8) en die Afskrif (bladsy 7) aan die ouer of voog na die invul van die dele M en N.
3. Indien die ouer of voog nie dieselfde dag gevind kan word nie, moet die Beheerstuk nie linnin die volgende dag by die klerk van hof ingehandig word en kan deel M en N op bladsy 8 en 10
4. Dele M en N alreeds die Beheerstuk word voor die verhoordatum afsondelik deur die betrokke beampte in geval 3 ingesluit.

* To complete parts M and N:
1. Insert two pieces of carbon paper between the relevant pages up to the reverse of the Control Document.
2. If the parent or guardian cannot be traced the same day the parent or guardian is found and the Copy is served on the parent or guardian.
3. If the parent or guardian cannot be traced the same day the parent or guardian is found and the Copy is served on the parent or guardian.
4. Parts M and N on the Control Document in case 3 is to be completed separately by the relevant officer prior to the date of trial.

H UITGEREIK DEUR: DIE VERKEERSHOOF POSBUS 4133
PRETORIA 0001

ISSUED BY: CHIEF TRAFFIC OFFICER
P.O. BOX 4133 PRETORIA 0001

A AAN TO: Van / Surname
Voorname / Forename

I.D. Land / City Rybewys / Licence Nationaliteit / Nationality

Woonadres / Residential address

Voorstad Suburb Poskode / Postcode Stad/Dorp City/Town

Naam en Adres van Werkgewer of Operateur / Name and Address of Employer or Operator

Voorstad Suburb Poskode / Postcode Stad/Dorp City/Town

No. van Kennisgewing / No. of Notice
07285264

Sakeno. / Case No.

Klassifikaseringlyne / Suggested Classification

E.V.S.-no. (Vir amptelike gebruik) / A.G. No. (For official use)

Ouderdom / Age Jr Yrs Beroep / Occupation Status

B U word hiermee kragtens die bepalings van artikel 56 van die Strafproeswet, 1977 (Wet 51 van 1977), aangesê om voor die hof op die verhoordatum, wat in beide gevalle hieronder genoem word, om 08h00 te verskyn en teenwoordig te bly om te antwoord op 'n aanklag(te) van oortreding van at 08h00 and to remain in attendance there to answer a charge(s) of contravention

Aanklag 1/Charge 1

Aanklag 2/Charge 2

Aanklag 3/Charge 3 - alternatiewe aanklag/alternative charge*

of enige ander aanklag(te) wat die Aanklaer teen u mag bring op grond daarvan dat u op of omtrent die DAG/DAY MAAND/MONTH 19 JR/YR

te/naby/ op at/near/ on 'n plek / openbare pad in a place / public road in the

die ondergenoemde distrik, wederregtelik district mentioned hereinbelow, you did wrongfully motorvoertuig * motor vehicle * Reg. No.

Aanklag 1/Charge 1

Aanklag 2/Charge 2

1 Aanklag 3/Charge 3 2 alternatiewe aanklag/alternative charge*

C Datum waarop en plek waar u persoonlik in die hof moet verskyn / Date and place where you are personally to appear in court

Verhoordatum Date of Trial DAG/DAY MAAND/MONTH 19 JR/YR Plek van Verhoor/Place of trial; Landdroshof/Magistrate's Court Hof-Court No.

D Datum waarop en plek waar skulderkenningsboete(s) betaal kan word ten einde verskyning in die hof te vermy / Date and place where admission of guilt fine(s) may be paid to avoid appearance in court.

Skulderkenningsboete(s) ten bedrae van Admission of guilt fines(s) Aanklag/Charge 1 Aanklag/Charge 2 Aanklag/Charge 3

DAG/DAY MAAND/MONTH 19 JR/YR Slegs by Only at Verkeersentrum Vissagiestraat 174 Pretoria 24-uur Dienskantoor hour Service Office Traffic Centre 174 Visagie Street Pretoria 4133 308-7088 308-7089

E Polisstasie Police Station Distrik District No. van Vredesbeampte No. of Peace Officer

DAG/DAY MAAND/MONTH 19 JR/YR Plek/Place GROEP / GROUP

Die oorspronklike hiervan is vandag aan die genoemde beskuldigde self oorhandig en die betekenis daarvan aan hom/haar verduidelik. The original hereof was today handed to the abovementioned accused personally and the import thereof explained to him/her Vredesbeampte/Peace Officer Tyd / Time

F Amptelike kodes Official codes Hof Court Oortreding(s) Offence(s) 1 2 3

O/Lokalisiteit O/Locality Rybewys D.Lic. Tipe/Type Kode/Code Toonkode Presentation Code

R AANTEKENINGE / NOTES

Fabrikaat / Make Tipe Voertuig / Type of Vehicle

Kleur Colour Rigting Direction Lesing Reading Aantal Pass. No. of Pass.

3de Party no. / 3rd Party No. Versekeraar Insurer Klaringbewysno./Clearance Certificate No. Mnd/Mth Jr/Yr

STD Kode STD Code Tyd van Oortreding Time of Offence Tyd van uitreiking Time of issue

Weerstoestand Weather conditions Padtoestand Road conditions

Spoedlesings Speed Readings Meter en/of and/or Meter

Bestuurder: Brill. Glasses: Ja Yes Nee No Hare Hair Bou Build

Opmerkings Remarks Spesifiseer / Specify

Getuie: Naam Witness: Name Ja/Yes 1 Tel.no. Nee/No 2 Tel.No.

Adres Address

UITSPRAAK / JUDGEMENT

P1 Datum Date Kl. No./Ch. No./Alt.No. Uitslag/Result Kode/Code

VONNIS / SENTENCE

P2 Datum Date G/S Imp (Days) Aard Nature

RYBEWYS / DRIVER'S LICENCE

P3 Best Order Tydperk Period Tydperk Period

KANTOORAFSKRIEF / OFFICE COPY

KANTOORAFSKRIEF / OFFICE COPY

RAND DATA FORMS (011) 377-2015 (17/04/20)

EXAMPLE (2) WARNING

UB 1631/09/2000

SAPD
SAPS 496

A No 229271

Suid Afrikaanse Polisie diens



South African Police Service

OORSPRONKLIKE: Moet aan beskuldigde oorhandig word.
ORIGINAL: To be handed to accused.

WAARSKUWING / WARNING

(Ingevolge artikel 72 van Wet 51 van 1977 — In terms of section 72 of Act 51 of 1977)

Naam / Name		
Woonadres / Residential Address		
Geslag / Sex	Ouderdom / Age	Polisiekantoor / Police Station
	39	PTA-WES
MR / MAS CR / CAS	553/09/2000	Saak Nr Case No

Agtergens die bepaling van artikel 72 van die Strafproseduurewet (Wet 51 van 1977), word u hierby gewaarsku om:
In terms of section 72 of the Criminal Procedure Act (Act 51 of 1977), you are hereby warned to:

* (a)	voor die appear before the	Lunddeas	hof te court at	Pretoria "J"
	op on the	06/12/2000 te Lunddeas	(Datum) om 08:30 op 'n aanklag van (Date) at 08:30 on a charge of	Drankbesluit
of 'n ander aanklag wat die Staatsaanklaer teen u mag inbring, te verskyn en by die verrigtinge betreffende die betrokke misdryf aanwesig te bly. or such other charge as the Public Prosecutor may bring against you and to remain in attendance at the proceedings relating to the offence in question.				
OF / OR				
* (b)	'n beskuldigde onder die ouderdom van 18 jaar wat in u sorg geplaas is, te wete bring an accused under the age of 18 years who has been placed in your care or to cause *him / her to wit			
	voor die appear before the		hof te court at	
	op on the		(Datum) om 08:30 uur op 'n aanklag van (Date) at 08:30 o'clock on a charge of	
	of 'n ander aanklag wat die Staatsaanklaer teen *hom / haar mag inbring, te bring of laat bring en *hom / haar by die verrigtinge betreffende die betrokke misdryf aanwesig te laat bly. or such other charge as the Public Prosecutor may bring against *him / her and to have *him / her remain in attendance at the proceedings relating to the offence in question.			

<p>WAARSKUWING:</p> <p>(i) U is verplig om bogenoemde verrigtinge by te woon en moet aanwesig bly by sodanige verrigtinge.</p> <p>(ii) U is verplig om die beampte wat hierdie kennisgewing op u bestel het van enige adresverandering in kennis te stel indien sodanige verandering geskied voordat die strafregtelike verrigtinge finaal afgehandel is of u amptelik meegedeel is dat u nie langer as 'n getuie nodig word nie.</p> <p>(iii) Versuim om aan hierdie kennisgewing te voldoen stel u skuldig aan 'n misdryf waarvoor u tot 'n boete of drie maande gevangenisstraf gevonnissen kan word.</p>	<p>WARNING:</p> <p>(i) You are compelled to attend the above-mentioned proceedings and must remain in attendance at such proceedings.</p> <p>(ii) You are compelled to inform the official who served this notice upon you of any change in the above-mentioned address before the proceedings are finally disposed of or before you are officially advised that you are no longer required as a witness.</p> <p>(iii) Failure to comply with the above-mentioned warning renders you guilty of an offence in respect of which you may be sentenced to a fine or three months imprisonment.</p>
---	--

Die oorspronklike hiervan is vandag aan voormelde *persoon / beskuldigde persoonlik oorhandig en die betekenis daarvan aan *hom / haar verduidelik.
The original hereof was today handed to the aforementioned *person / accused personally and the meaning thereof explained to *him / her.

Handtekening van voormelde *persoon / beskuldigde
SIGNATURE OF AFOREMENTIONED *PERSON / ACCUSED

PTA-WES

Handtekening van Polisiebeampte
POLISIEBEAMPTE
POLICE OFFICIAL

2000-09-22

PLEK / PLACE
Let wel (i) U het die reg om te konsulteer met 'n regsverteenvoerder van u keuse, of indien u verkies, aansoek te doen by die Regshulpraad, om deur die Staat van die dienste van 'n regsverteenvoerder, op staatskoste voorsien te word.
Note (i) You have the right to consult with a legal practitioner of your choice or, should you prefer, to apply to the Legal Aid Board to be provided by the State with the services of the a legal practitioner at state expense.

*Skrap wat nie van toepassing is nie.
Delete whichever is not applicable.

Voeg twee velle deurslagpapier in tussen die toepaslike bladsye tot by die agterkant van die Beheerstuk.
 1. Beteiken dan die Kennisgewing (bladsy 8) en die Afskrif (bladsy 7) aan die ouer of voog na dñ invul van die dele M en N.
 2. Indien die ouer of voog nie die Afskrif of Kennisgewing in die Beheerstuk nieltemin die volgende dag by die Afskrif van hof ingehandig word en kan deel M en N op bladsy 8 en 10
 3. Dele M en N agterop die Beheerstuk word voor die verhoordatum afsonderlik deur die betrokke beampie in geval 3 ingevul.
 4. Dele M en N agterop die Beheerstuk word voor die verhoordatum afsonderlik deur die betrokke beampie in geval 3 ingevul.

* Vir die invul van dele M en N:

J KODELS VIR DELE "A" EN "I" / LIST OF CODES FOR PARTS "A" AND "I"			
1. GESLAG/SEX	2. LAND/COUNTRY		
1 = MAN/MALE	01 = R.S.A. ID	06 = BOTSWANA	10 = ANGOLA
2 = VROU/FEMALE	02 = RSA-PASPOORT/PASSPORT	07 = SWAZILAND	11 = ANDER PASPOORT/OTHER PASSPORT
	03 = 1952 R.S.A.-KAART/CARD	08 = ZIMBABWE	12 = NET GEB. DATUM/BIRTH DATE ONLY
	04 = NAMIBIË/NAMIBIA	09 = MOZAMBIQUE	13 = ONBEKEND/UNKNOWN
	05 = LESOTHO		

K KODELS VIR DEEL "F" / LIST OF CODES FOR PART "F"			
4. RYBEWYS/DRIVER'S LICENCE	09 = MEDIUM M/V	5. Tipes/Types	6. TOON/PRESENTATION
01 = M-FIETS/CYCLE < 125cc	10 = SMVHMV OF/OR	1 = OU KAART/TYPE/OLD CARD TYPE	1 = GETOON/PRESENTED
15 = M-FIETS/CYCLE > 125cc	3500-16000 kg VAS/RIGID	2 = IN ID- OF BEWYSBOEK/ IN ID- or REF. BOOK	2 = BEWYS: AANSOEK OM DUPLIKAAT/ PROOF: APPLICATION FOR DUPLICATE
05 = TREKKER/TRACTOR	11 = EKSTRA SMV/EXTRA HMV OF/OR	3 = K. KAART/C. CARD	3 = NIE GETOON/NOT PRESENTED (= nie byderhand/not available)
06 = ELEK. V/TUIG/ELEC. VEH.	> 16000 kg VAS/RIGID	4 = ANDER/OTHER	4 = AANSOEK OM DUPLIKAAT MAAR GEEN BEWYS BYDERHAND/ APPLICATION FOR DUPLICATE BUT NO PROOF AVAILABLE
07 = L/BOU & PAS./AGR. & O.PASS.	12 = SPES. M/V		5 = GEEN RYBEWYS/NO DR. LICENCE
08 = LMV	13 = 3500-25000 KG KOMBINASIE/COMBINATION		6 = OPGESKORT OF INGETREK/ SUSPENDED OR WITHDRAWN
	14 = > 25000 kg KOMBINASIE/COMBINATION		

Q KODELS VIR DEEL "P" / LIST OF CODES FOR PART "P"			
7. SAAKUITSLAG/CASE RESULTS		17 = VAN ROL VERWYDER: HERDAGVAAR/REMOVED FROM ROLL: RE-SUMMONS	
(a) Finale Saakuitslae: Betalings/Final Case Results: Payments		18 = NIE OP ROL GEPLAAS: HERDAGVAAR/NOT ENROLLED: RE-SUMMONS	
01 = AFKOOPBOETE BETAAL/SPOT FINE PAID		19 = SAAK UITGESTEL OF VERDAAG/CASE POSTPONED OR ADJOURNED	
02 = AFKOOPBOETE SOOS DEUR SA VERMINDER, BETAAL/SPOT FINE AS REDUCED BY PP PAID		20 = LASBRIEF TOT ARRES/WARRANT OF ARREST	
03 = AFKOOPBOETE SOOS DEUR ANDER BEAMPT E VERMINDER, BETAAL/ SPOT FINE AS REDUCED BY OTHER OFFICIAL PAID		21 = HOEBEVEL: WYSIG SEKERE BESONDERHEDE VAN SAAK/ COURT ORDER: CHANGE CERTAIN PARTICULARS OF CASE	
04 = AFKOOPBOETE BETAAL MAAR LANDDROSBEVEL DAT SEKERE BEDRAG D/V TERUGBETAAL WORD/ SPOT FINE PAID BUT ORDER BY MAGISTRATE THAT CERTAIN AMOUNT BE REFUNDED		22 = EVS TERSYDEGESTEL. BEVEL VIR TERUGBETALING: DAGVAAR/ AG SET ASIDE. ORDER TO REFUND: SUMMONS	
05 = EVS BETAAL / AG PAID			
06 = EVS SOOS DEUR SA VERANDER. BETAAL/AG AS ALTERED BY PP PAID		8. BEVEL: RYBEWYS / ORDER: D/LIC	
07 = EVS BEKRAFTIG MAAR BEVEL DAT SEKERE DEEL V/D EVS-BEDRAG TERUGBETAAL WORD/ AG CONFIRMED BUT ORDER THAT CERTAIN AMOUNT OF AG AMOUNT BE REFUNDED		0 = NV.T./NA	
(b) Finale Saakuitslae: Ander / Final Case Results: Other		1 = RYBEWYS OPGESKORT/D. LIC. SUSPENDED	
08 = SKULDIG BEVIND/FOUND GUILTY		2 = RYBEWYS INGETREK/D. LIC. WITHDRAWN	
09 = ONSKULDIG BEVIND/FOUND NOT GUILTY		3 = ENDOSEER RYBEWYS/ENDORSE D. LIC.	
10 = NOLLE PROSECUE		9. ONBEVOEG VERKLAAR / DECLARED UNFIT	
11 = SAAK VERVOLGING: BESK. ONBEPALBAAR/CEASE PROSECUTION: ACC UNDETERMINABLE		0 = NEE /NO	
12 = SAAK/VERVOLGING: VERVOLG NIJWE BESK./CEASE PROSECUTION: PROSECUTE NEW ACC		1 = JA /YES	
13 = ONOPSPOORBAAR: SAAK VERVOLGING/INTRACIBLE: ABANDON PROSECUTION		10. AARD: TRONKSTRAF / NATURE: JAIL SENTENCE	
14 = ONOPSPOORBAAR: VOEG KLAGTE BY TOEKOMSTIGE DAGVAARDINGS TEEN BESK. INTRACIBLE: ADD CHARGE TO FUTURE SUMMONS AGAINST ACC		0 = NV.T./NA	
15 = TERUGGETREK: GEEN HERDAGVAARDING/WITHDRAWN: NO RE-SUMMONS		1 = G/S MET KEUSE VAN 'N BOETE/IMP. WITH OPTION OF A FINE	
(c) Nie-Finale Saakuitslae/Non-Final Case Results		2 = G/S SONDER KEUSE VAN 'N BOETE/IMP. WITHOUT OPTION OF A FINE	
16 = SAAK TERUGGETREK: HERDAGVAAR/CASE WITHDRAWN: RE-SUMMONS		3 = OPGESKORTE TRONKSTRAF/SUSPENDED JAIL SENTENCE	
		4 = PERIODIEKE G/S (URE)/PERIODICAL IMP. (HOURS)	
		5 = PERIODIEKE GEMEENSKAPSDIENS (URE)/PERIODICAL COMMUNITY SERVICE (HOURS)	

* To complete parts M and N:
 1. Insert two pieces of carbon paper between the relevant pages up to the reverse of the Control Document.
 2. Complete parts M and N and send same the Notice (part M) and the Copy (page 7) on the parent or guardian.
 3. If the parent or guardian cannot be traced the same day the Control Document must the next day nevertheless be lodged with the clerk of the court and parts M and N could be completed on pages 8 and 10 when the parent or guardian is found and the Copy is filed on the parent or guardian.
 4. Parts M and N on the Control Document in cases 3 or 4 to be completed separately by the relevant officer prior to the date of trial.

EXAMPLE (3) SPOT FINE

<p>SPW 2 STADSRAAD VAN PRETORIA KENNISGEWING INGEVOLGE ART 341 VAN DIE STRAFPROSES WET, NR 51 VAN 1977</p>	<p>CITY COUNCIL OF PRETORIA NOTICE IN TERMS OF SEC 341 OF THE CRIMINAL PROCEDURE ACT NO 51 OF 1977</p>	<p>CPA 2</p>	
<p>LEES DIE BELANGRIKE INLIGTING OP DIE BINNEKANT VAN DIE KOEVERT READ THE IMPORTANT INFORMATION ON THE INSIDE OF THE ENVELOPE</p>			
<p>A</p> <p>VERWYSINGSNOMMER / REFERENCE NUMBER</p> <p>VOERTUJREGISTRASIONOMMER VEHICLE REGISTRATION NUMBER</p> <p>AAN TO</p>	<p>B</p> <p>BESONDERHEDE VAN COORTREDING PARTICULARS OF OFFENCE</p> <p>PLEK VAN COORTREDING PLACE OF OFFENCE</p> <p>LANDDROSHOF MAGISTRATES COURT</p> <p>OORTREDINGSDATUM OFFENCE DATE</p> <p>TYD TIME</p> <p>SPOED SPEED</p>		
<p>C</p> <p>N'AFKROOPBOETE VAN A SPOT FINE OF</p> <p>R -00</p> <p>WAT WAARSKYNLIK DELUR DIE HOF OPGELE SAL WORD WHICH WOULD PROBABLY BE IMPOSED BY THE COURT</p>			
<p>KAN BETAAL WORD TE: MAY BE PAID AT:</p> <p>Verkeersentrum Visagiestraat 174 Pretoria</p> <p>Posadres: Dio Verkeershoof Postbus 41133 Pretoria 0001</p>		<p>Traffic Centre 174 Visagie Street Pretoria</p> <p>Postal Address: Chief Traffic Officer P.O. Box 41133 Pretoria 0001</p>	
<p>DATUM VAN UITREIKING DATE OF ISSUE</p>		<p>VIR KANTOORGEBRUIK FOR OFFICE USE</p> <p>FILM NR FILM NO</p>	

0.341

HAND DATA SYSTEMFORMS (16914)

SURVEY OF THE FIRST PHASE OF THE CRIMINAL PROCESS



Note that the "Constitution" referred to in the study guide is the Constitution of the Republic of South Africa Act 108 of 1996.

1 INTRODUCTION

The name of this course, namely "the law of criminal procedure", should already indicate to you that the matter at issue here is a **process** that starts and ends at specific points between which certain steps **may**, and sometimes **must**, follow each other chronologically up to where the process "ends". Every case that passes through the process does not necessarily reach the same "end". If a person is charged with an offence but is found not guilty, the "end" of the process will be reached in that case at the moment when the accused is found not guilty. However, if the person is found guilty the process is taken further, in which case the sentencing phase, and possibly even the post-sentencing phase, are reached through appeal and review procedures.

In the following paragraphs the process up to, but not including, the trial phase is described very briefly without mentioning all the exceptions thereto, or going into the finer detail of any part of the process. The object in doing this is to give you an overview of the relevant learning area of the subject. It is suggested that you first read through this overview attentively before you proceed to study the handbook, and that you return to this survey after studying every chapter of your handbook and ascertain exactly where the part of the process that you studied in a particular chapter fits into the greater whole. This will enable you to make sure that you see each of the sections that you study in the context of the larger whole.

The beginning of the criminal process is the alleged commission of a crime.

Certain provisions in the Criminal Procedure Act confer powers on persons to take steps to **prevent** crimes. Although these powers are not strictly part of the criminal process, they are so closely bound up with powers that do form part of the criminal process that the difference is indistinguishable. Examples of this can be found in section 20(c) and the provisions (eg ss 21–23) that grant powers of search with a view to the seizure of objects as contemplated in section 20; section 25 which authorises entry of premises, and section 40(1)(f) which authorises the arrest of persons suspected of being at the point of committing a crime.

The moment a person is suspected of starting to commit a crime, the law of criminal procedure enters the scene and prescribes exactly what steps can or should be taken to ensure that the person will eventually be convicted for committing a crime and be punished or discharged.

The question whether that which the perpetrator has done is in fact a crime falls under criminal law and not under the law of criminal procedure. Criminal law deals with the various requirements that have to be met before a person can be convicted for a crime. Accordingly, if a crime is mentioned in an assignment or in the examination, for example murder, then you must not discuss the elements of the crime because this matter falls under criminal law.

Sometimes people decide not to notify the authorities that a crime has allegedly been

committed, or alternatively no-one except the perpetrator is aware that the deed has been perpetrated. In such cases the criminal process will not be set in motion and the perpetrator will not be prosecuted for committing the deed. In this course we are only interested in cases where the commission of crime does come to the attention of the authorities, and we shall investigate the course taken by the criminal process in such a case.

In dealing with the different phases of the process below the specific section of the Criminal Procedure Act involved by the text can be found in each case in the column on the left of the page. (You must naturally always bear in mind the points of contact with the Constitution as stipulated in the handbook.)

2. THE DIFFERENT PHASES OF THE PROCESS

(All sections below refer to the Criminal Procedure Act 51 of 1977 unless otherwise indicated.)

2.1 THE FOUR PHASES

Section

1–74	The criminal process can be divided into different phases according to the objectives of the process in each phase. The first phase is that part of the process during which the suspected crime is investigated, and it extends from the suspected commission of the crime to the commencement of the trial.
75–270	The second phase is that part of the process during which the trial takes place. This phase extends from the commencement of the trial up to and including the verdict of the court on whether it has been proven beyond reasonable doubt that the accused is, or is not, guilty of the alleged crime.
271–301	If the court finds that the accused is in fact guilty of the crime, the third phase follows during which the court must consider what penalty it should impose. This phase extends from the conviction up to and including the pronouncement of sentence by the court.
302–327	The fourth and last phase consists in the legal remedies at the disposal of the parties concerned to dispute decisions handed down in the course of the trial-and-sentencing phase, and the procedure that has to be followed to make use of the said remedies. This phase extends from sentencing by the court until the moment when the last possible legal remedy has been exhausted by the parties concerned.

2.2 THE LAW OF CRIMINAL PROCEDURE BEFORE THE TRIAL

The object during this phase is to finalise the investigation into the suspected crime and to decide whether there is sufficient admissible evidence to indicate the guilt of the person suspected of committing the crime in question, and to justify the institution of prosecution.

According to section 205 of the Constitution it is included in the duties of the police to investigate the commission or suspected commission of crimes. Certain powers are conferred on the police to enable them to carry out this task. These powers include the authority to enter premises, interrogate persons, search persons and premises, confiscate objects that can be submitted to the court as evidence or exhibits, and to arrest persons — sections 20–23; 25–27; 39–42; and 48–49.

When a suspected crime is reported to the police, the police open a file, known as a dossier. All witness statements taken by the police and all documents relating to the investigation, are filed in the dossier. In addition all steps taken by the police in the course of the investigation are recorded in the dossier. After completion of the investigation, and provided that the police have succeeded in tracing the suspect, the dossier is submitted to the director of public prosecutions (DPP) or her representative.

The DPP or her representative (hereafter called the prosecutor) checks the dossier and decides whether all aspects of the case have been investigated satisfactorily, and if she decides that any aspects need further attention she refers the dossier back to the police with the request that attention be paid to the aspects concerned. Once the prosecutor is satisfied, he/she decides whether proceedings will be instituted against the accused or not.

7–17 If the prosecutor decides not to institute the prosecution the dossier is handed back to the police and the case is thereby concluded, unless the police find further evidence, in which case the dossier can be submitted to the prosecutor afresh. Where the prosecuting authority refuses to institute proceedings a **private prosecution** becomes an option in favour of the disadvantaged person who can show the necessary interest.

80–104 If the prosecutor decides that there is sufficient evidence to justify the institution of a prosecution, the charge is formulated finally and the necessary steps are taken to ensure that the suspect will be present at the court on a specific day to hear the charge against her.

38–57, 144 At this stage the prosecutor will decide in which court (district or regional court, or high court) the trial should take place.

s 20 of Act 32 of 1998, as well as ss 89–90 of Act 32 of 1944 On taking this decision the prosecutor will enjoin the jurisdiction of the courts concerning crimes, territory and punishment.

179–207 Thereafter steps required to ensure that all the witnesses will be present in court on the day of the trial are taken so that the accused can stand trial.

Any person who feels dissatisfied with the prosecutor's decision to institute proceedings or not may direct representations to the DPP or NDPP (National Director of Public Prosecutions) who has the discretionary power to overrule the prosecutor's decision.

7–17 If the DPP has decided not to prosecute, a person who has a specific defined interest in the matter may ask the DPP to issue a certificate that declines prosecution (known as a *nolle prosequi*), and the person can then institute a private prosecution against the accused. A private prosecution follows exactly the same procedure as a prosecution by the state. All the steps described in the following paragraphs are therefore also relevant to a private prosecution. The only difference in the case of a private prosecution is that the DPP can issue an instruction at any time that the prosecution by the private prosecutor be stopped and that the state take over and continue the prosecution.

50 It may happen that an accused appears in court more than once before the trial actually starts. In the case of suspects held in custody the reason for this is that the police may only hold suspects for a very limited period and have to bring them to court within that time so that the court can decide whether they should be kept in custody.

60 On these occasions (or even earlier, if there has been a bail application) the court will determine a date on which the trial will commence and defer the case until that date.

- The court will decide at each juncture whether it is really necessary for the accused to continue in custody,
- 58–72 and whether she cannot be released on her own recognisances, or on bail pending trial.
- 169–170 In the case of an accused who is not in custody it is equally possible for the trial not to commence at the first court appearance of the suspect. In the normal course of events this will take place when the state is not ready to proceed with the trial yet (eg the charge sheet has not been finalised), or if the suspect requests that the case be postponed, for example to enable her to retain legal counsel. If both the state and the defence agree to this, the court will determine the commencement date of the trial, which will be postponed until that date.
- The legal counsel of a suspect in detention may approach the court with a request that the police or prison authorities be instructed to bring the suspect to court so that an application can be made for release on bail, or so that the suspect can be warned and released on her own recognisances. Such cases will occur especially where the suspect remains in custody because he/she has allegedly committed a crime for which the police are not authorised to grant bail, in which case the court considers the application and makes its decision known.
- 119–143 Finally a note is required on the pre-trial process, known as a “mini- or abridged preparatory investigation” and a “preparatory examination”. The latter investigation is seldom resorted to, but the mini- or abridged preliminary examination where the plea of the accused is heard in the district court while the trial takes place in a regional or High Court is commonly used. Both these preliminary investigations are not the beginning or part of the trial — they are separate investigation processes.
- The mini-preparatory investigation*
- 119–122 A DPP may issue an instruction that a person suspected of committing a crime that can be adjudicated in the High Court appear before a magistrate so that the statement and plea of the accused can be taken. No evidence is heard and no verdict of guilty or not guilty is passed by the magistrate. After hearing the plea of the accused the proceedings are adjourned pending the decision of the DPP, who may decide to charge the suspect in the High Court or lower court, or may refuse to institute a prosecution.
- 122A–122D When the seriousness or extent of a charge or the possible sentence falls outside the jurisdiction of the district court but within the jurisdiction of the regional court, the prosecutor may ask the magistrate to hear the plea of the accused in the district court and then refer the case for either sentencing or trial to the regional court. The magistrate is not authorised to make a determination as regards guilt, and no evidence is led.
- The preparatory examination*
- 123–143 The institution of a preparatory examination depends purely on the discretion of the DPP. If she deems it necessary in the interest of due legal process that the evidence against the suspect should be investigated to determine whether that evidence justifies a trial in the High Court, then she can institute such a preliminary investigation. During such an investigation where all the evidence is submitted by the state and the suspect is asked at the end of the state’s case to plead to it, the magistrate makes no determination concerning the guilt of the suspect, but merely refers the record of the proceedings to the DPP who decides accordingly whether the suspect should be tried and the forum where the suspect will be tried as the accused.

SECTION B

GUIDE TO THE HANDBOOK

THIS SECTION COVERS CH 1-11 OF THE HANDBOOK

PART I

SELECTED GENERAL PRINCIPLES OF THE LAW OF CRIMINAL PROCEDURE

Selected general principles of the law of criminal procedure are dealt with in Part 1, which explains the structure of the criminal courts in the Republic, how to determine the court before which a person accused of committing a crime should or can be tried, and who is responsible to charge the person before the court concerned. Finally it is noted that it is a basic principle of the law of criminal procedure that a person who is accused of committing a crime must be present when the relevant charges are presented before a court during a trial to ensure that she can hear what they are, answer them and defend herself against the charges. In addition it is explained that the right to be assisted and represented by a legal adviser is a fundamental right of every accused, and that it is even extended to witnesses in certain cases.

STUDY UNIT 1

CHAPTER 1 OF THE HANDBOOK

A BASIC INTRODUCTION TO CRIMINAL PROCEDURE

CONTENTS

Learning outcomes

1. The place of the law of criminal procedure in the legal system
2. Crime control and due process
3. Constitutional criminal procedure
4. Accusatorial and inquisitorial procedures, and a brief history of South African criminal procedure
5. Sources of the South African criminal procedure
6. Remedies

Activities

Feedback on activities

Self-evaluation

Feedback on self-evaluation



LEARNING OUTCOMES

'After working through this study unit you will be able to

- identify and describe the place and role of the law of criminal procedure in our legal system
- distinguish between substantive and adjectival (formal) law
- distinguish between the two basic models of criminal procedure systems and describe their essential principles
- know the content of section 35 of the Constitution of the Republic of South Africa 108 of 1996
- understand the role and impact of the Constitution on the law of criminal procedure in general
- distinguish between an accusatorial and an inquisitorial system of criminal procedure
- discuss and describe the presumption of innocence applied in the law of criminal procedure
- discuss the accused's right to silence during all the stages of the criminal process
- know in what legal systems the South African law of criminal procedure is rooted
- name the sources of our law of criminal procedure
- name and describe the different remedies and sanctions for infractions of fundamental rights in the law of criminal procedure

1 THE PLACE OF THE LAW OF CRIMINAL PROCEDURE IN THE LEGAL SYSTEM

People are social beings who live together in a society that cannot exist without some degree of discipline and order. The law is one of many factors that ensure order in society. It delimits the powers, rights and obligations of people by instituting codes of conduct (norms) that regulate their lives and prescribe how they should behave and live in order to ensure an orderly society. These norms are sometimes referred to as **substantive law**, which is contained in common law and statutory law.

In the overwhelming majority of cases, people comply willingly with these norms of behaviour. In fact, a legal norm usually exists in essence because most people in society share the conviction that they have to behave themselves according to the prescribed norm. Even people who are not convinced of the desirability of the norm will behave in accordance with it.

However, in every community, the phenomenon occurs that some people disregard the legal norms and act against them. The legal authority therefore not only sets up norms, but also has to ensure that everybody obeys them by attaching some threat (sanction) to transgression of the norm. In some instances, this sanction consists in inflicting suffering (imprisonment or a fine) on the offender against the norm, which infliction we call punishment. The norms with respect to which noncompliance is punishable by the state are called criminal law.

Besides the norms of substantive law, a set of legal rules prescribes how to implement the sanction that has to follow transgression of a norm. These rules are called **procedural law** or **adjectival law**.

A branch of procedural law contains rules concerning punishment for people who are contravening the norms of criminal law. This is known as the law of criminal procedure.



The law of criminal procedure is the entire body of rules that prescribe the procedure to follow in punishing criminals by virtue of state authority.

Besides the distinction of legal rules in substantive and adjectival law, other distinctions such as the rules of private and public law apply. **Private law** includes rules about the relations between individuals, while **public law** includes rules about the relationship between the state and the individual, the individual being subordinate to the state. Public law includes criminal law and the law of criminal procedure because both concern punishment of individuals by the state.

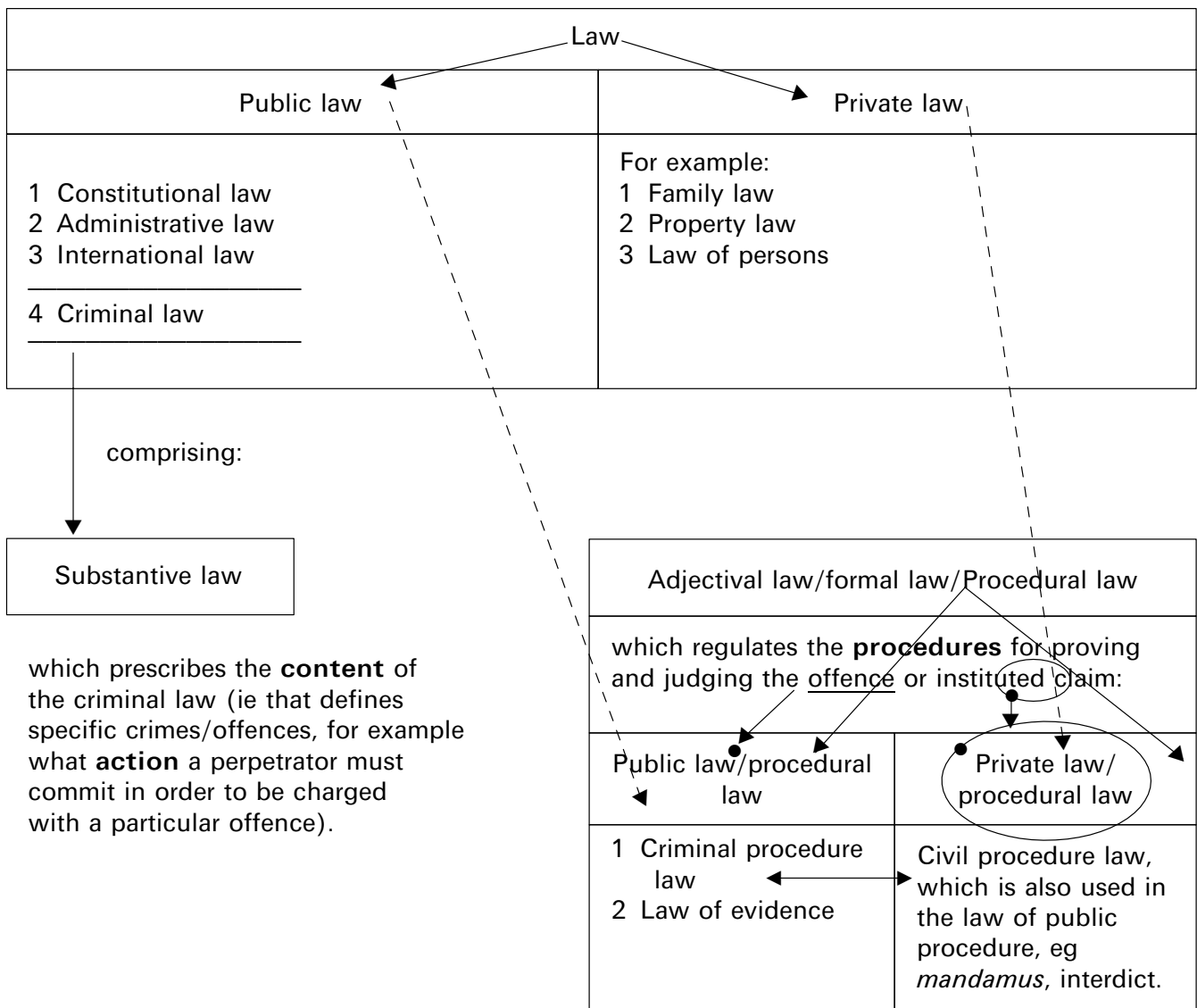
The law of criminal procedure is subject to the supremacy of the Constitution in the same way as the state, as the authority in power, is subjected thereto. Fundamental rights such as the right to life, human dignity, equality, privacy, and the rights of arrested, detained and accused persons have many points of contact with criminal procedure that we will refer to in this course.

An important branch of procedural/adjectival law is the law of evidence, which we treat separately from the remaining rules of procedural law, for the sake of convenience. The law of evidence covers one very important aspect of procedural law, namely the rules to be followed in submitting evidence, which regulate such

matters as the burden of proof, credibility, admissibility and so on. The law of evidence is applied in both the law of criminal and the law of civil procedure, although the rules of civil law of evidence are different from those concerning the law of evidence for public or criminal law. Section 222 of the Criminal Procedure Act provides that certain sections of the Law of Evidence in Civil Cases Act 25 of 1965 apply *mutatis mutandis* to matters of criminal law.

DIAGRAM (1)

The place or classification of criminal procedure in the legal system



2 CRIME CONTROL AND DUE PROCESS

One of the big dilemmas of the law of criminal procedure that we are faced with, is the necessity to balance two conflicting social interests, namely that of individual freedom and that of effective crime control. We can best illustrate this by explaining the two basic models of criminal procedure that exist in the world today, namely the crime control model and the due process model. The *crime control model* regards the

repression of criminal conduct as the most important function of the law of criminal procedure. The *due process model* proceeds from the premise that a conviction and sentence can only be secured through adherence to rules which duly and properly acknowledge individual rights at every stage of the criminal process. This model is supported by the Bill of Rights. Note that the two models do not necessarily exclude each other, and that no existing system of criminal procedure consists of only one model. Numerous internal conflicts are created during the development of a fair criminal procedure (see par 2.2 of the handbook). Section 35(5) contains a very important provision on the exclusion of evidence obtained in an unconstitutional manner. Study the decision of *Naidoo* 1988 (1) SACR 479(N) as discussed in the handbook paragraph 2.2.

Criticism against the due process model involves that this type of system tends to neglect the rights of victims of crime and law-abiding citizens in favour of the rights of the accused, and that, as a result, truth seeking suffers. One has to accept that certain measures to combat crime cannot be employed in the best interests of society. There has to be practical limitations on the state's authority used against suspects and accused persons to prevent abuse of that power (par 2.3 of the handbook). Here the Constitution, to which all legislation is subjected, plays a big role.

3 CONSTITUTIONAL CRIMINAL PROCEDURE

You must thoroughly study the contents of this paragraph in the handbook. In the same way as in other areas of law, the law of criminal procedure is subject to the Constitution as the supreme law of the country. Any provision or conduct in terms of the Criminal Procedure Act has to be consistent with the Bill of Rights, otherwise it can be declared nul and void. It is important to take note of reported judgements on constitutional criminal procedure. You need not read these judgments in the law reports; it is sufficient to study and know only the particulars given in the handbook. Ensure that you are familiar with the contents of section 35 of the Constitution. Study paragraphs 3.4 and 3.5 on the presumption of innocence and the right to silence.

4 ACCUSATORIAL AND INQUISITORIAL PROCEDURES, AND A BRIEF HISTORY OF SOUTH AFRICAN CRIMINAL PROCEDURE

Because Roman Dutch law was brought to South Africa by the settlement in the Cape in 1652, the early Cape courts applied Roman Dutch criminal procedure law. English law did not supplant Roman Dutch law after the annexation of the Cape by England in 1806, but English law influenced Roman Dutch customary law considerably as a result of the subsequent colonisation of southern Africa by England. Some sections of the law were influenced more than others, and the law of criminal procedure may have been influenced most profoundly of all — so much so that today our law of criminal procedure undoubtedly resembles English law much more closely than Roman Dutch or modern Continental law.

When the Union of South Africa came into being in 1910, the law of criminal procedure in the various provinces was scattered throughout a plethora of laws, ordinances, proclamations and the like, most of which were modelled on English law. In 1917, the Union legislator intervened and consolidated the law of criminal procedure for the Union in terms of Act 31 of 1917, which wholly or partially repealed no less than 126 different laws (statutes, ordinances, etc). This Act, known as “the

Code”, constituted one of the single greatest consolidation exercises undertaken in the Union. Over the years, various amendments were effected to Act 31 of 1917. Eventually, in 1955, the legislator intervened again and promulgated a new consolidating Criminal Procedure Act 56 of 1955. Many of the provisions in the 1917 Act were incorporated verbatim, or with slight variations, in the new Act, with the result that court decisions handed down on sections in the 1917 Act have the same force now that they had before 1955. And the legislative activities in the area of criminal procedure law are still not at an end. The Abolition of Juries Act of 1969 brought about a basic change in our criminal procedure law.

The new Criminal Procedure Act 51 of 1977 came into effect on 22 July 1977 and underwent major changes over the years. The Constitutional Court declared the death penalty unconstitutional and struck it from the body of criminal procedure law. The Abolition of Corporal Punishment Act 33 of 1997 abolished corporal punishment. Now, for the first time, South Africa has a national prosecution authority with new powers that is regulated outside the terms of the Criminal Procedure Act by the National Prosecution Authority Act 32 of 1998. Directors of public prosecution appointed for specific areas of jurisdiction under the general control and authority of one National Director of Public Prosecutions have replaced the former attorneys general.

Apart from the distinction in two basic models of crime control and due process, a criminal procedure system can also be classified as accusatorial or inquisitorial. Most European systems are inquisitorial systems, where the judge is master of the proceedings (*dominus litis*) and actively controls the questioning of parties in a trial. Anglo-American systems are accusatorial systems, where the judge has an impartial role in the prosecution and the defence. In these systems, the prosecution in the form of the state is *dominus litis* until the trial. South African criminal procedure is an accusatorial due process model.

5 SOURCES OF THE SOUTH AFRICAN CRIMINAL PROCEDURE

In the RSA, criminal procedure law is mainly contained in the Criminal Procedure Act 51 of 1977 as amended. However, other statutes also contain rules for criminal procedure law. In the study guide and the handbook you will sometimes be referred to other acts of importance. Naturally, the Constitution of the Republic of South Africa 108 of 1996 also contains important relevant provisions. Our criminal procedure law is not only regulated by statute, however. Where the statutes are silent, it is admissible to resort to common law. Moreover, the decisions handed down by our courts to expound statutory provisions are just as important as the statutes themselves.

It is already clear from the foregoing that criminal procedure law is a very extensive field. It is impossible to study criminal procedure law in its entirety in this course. Instead, we will confine ourselves to its main principles, and therefore endeavour to give you a **general** overview of South African criminal procedure law. However, there are numerous **other provisions of particular importance** that we cannot elaborate on in this course. It would be wise to note whether a statute contains provisions of particular relevance to procedure.

6 REMEDIES

We have already seen that suspects and accused persons have certain rights and that the law of criminal procedure limits the powers of authorities. Various remedies or sanctions have been developed over time to maintain and protect these rights and powers. Study these remedies as discussed in the handbook, paragraph 6.



ACTIVITY

Study chapter 1 of the handbook.

- (i) Do you agree with the following statement and, if so, why? The presumed-innocence principle is the cornerstone of constitutionalism. If this principle is not upheld at all costs in criminal-procedure law and the law of evidence in South Africa, then the law in these categories could be classified as a "crime control model".
- (ii) What are the rights of the arrested suspect and accused?
- (iii) What is meant by the statement that criminal procedure is a system?



FEEDBACK ON ACTIVITY

- (i) In your answer to this question you must attend to such matters as a "crime control" model, a "due legal process" model, the presumption of innocence and the right to remain silent, and constitutionalism. You can explain constitutionalism in the light of what the "rule of law" and the legality principle require in a constitutional state, for example that *juridical guilt* is important in a constitutional state. This means that it is not important to secure a verdict of guilty at any cost and by any means whatsoever, but that it is imperative that the rules of evidence and criminal procedure law be complied with according to the entrenched rights in the Constitution. It also means that the burden of proof generally falls on the state to prove the guilt of the accused beyond reasonable doubt; that if a legal provision shifts the burden of proof to the accused, then the restriction of the constitutional right of the accused to be deemed innocent until proven guilty must comply with the limiting provisions of section 36 of the Constitution, namely that the restriction must be reasonable and justifiable as in an open and democratic society based on the principles of human dignity, equality and freedom, taking due account of factors such as the nature of the law, the importance and purpose of the restriction, the nature and extent of the restriction, and whether there is a less restrictive way of achieving the set purpose. A practical example of such a curtailment of the presumption can be found in the inverse or reversed burden of proof in the case of applications for bail for Schedule 6 offences as contemplated in section 60 (11) of the Criminal Procedure Act, where the accused has to convince the court that unusual circumstances exist under which it is justifiable in the interest of justice that the accused may be released although facing a serious charge. It can be said, therefore, that where bail applications relating to certain serious offences are concerned, South Africa espouses the "crime control" model in the interest of justice. Remember that, as indicated above, the different criteria of proof required for each stage/phase/component may also have an impact on assessment of the type of model.
- (ii) See section 35(1) up to (3) in the back of your handbook.
- (iii) Look at the flow chart of the criminal process.



SELF-EVALUATION

Discuss the place and function of criminal procedure law in the legal system; show why criminal procedure law is sometimes regarded as the field in which the most serious clashes between community and private interests occur, and explain how criminal procedure law tries to preserve a state of equilibrium between these interests.



FEEDBACK ON SELF-EVALUATION

Begin with paragraph 1 of the handbook (Law; criminal procedure law); briefly implicate the central theme of paragraph 2 (the need to balance interests) and write in depth on paragraph 3 (constitutional aspects).

STUDY UNIT 2

CHAPTER 2 OF THE HANDBOOK

CRIMINAL COURTS OF THE REPUBLIC

CONTENTS

Learning outcomes

Activity (1)

1 Introduction

2 Jurisdiction

Activity (2)

Feedback on activity (2)

Self-evaluation

Feedback on self-evaluation



LEARNING OUTCOMES

When you have worked through this study unit you should be

- able to give a systematic account of the various criminal courts of the Republic in hierarchic order
- familiar with the jurisdiction of the various courts



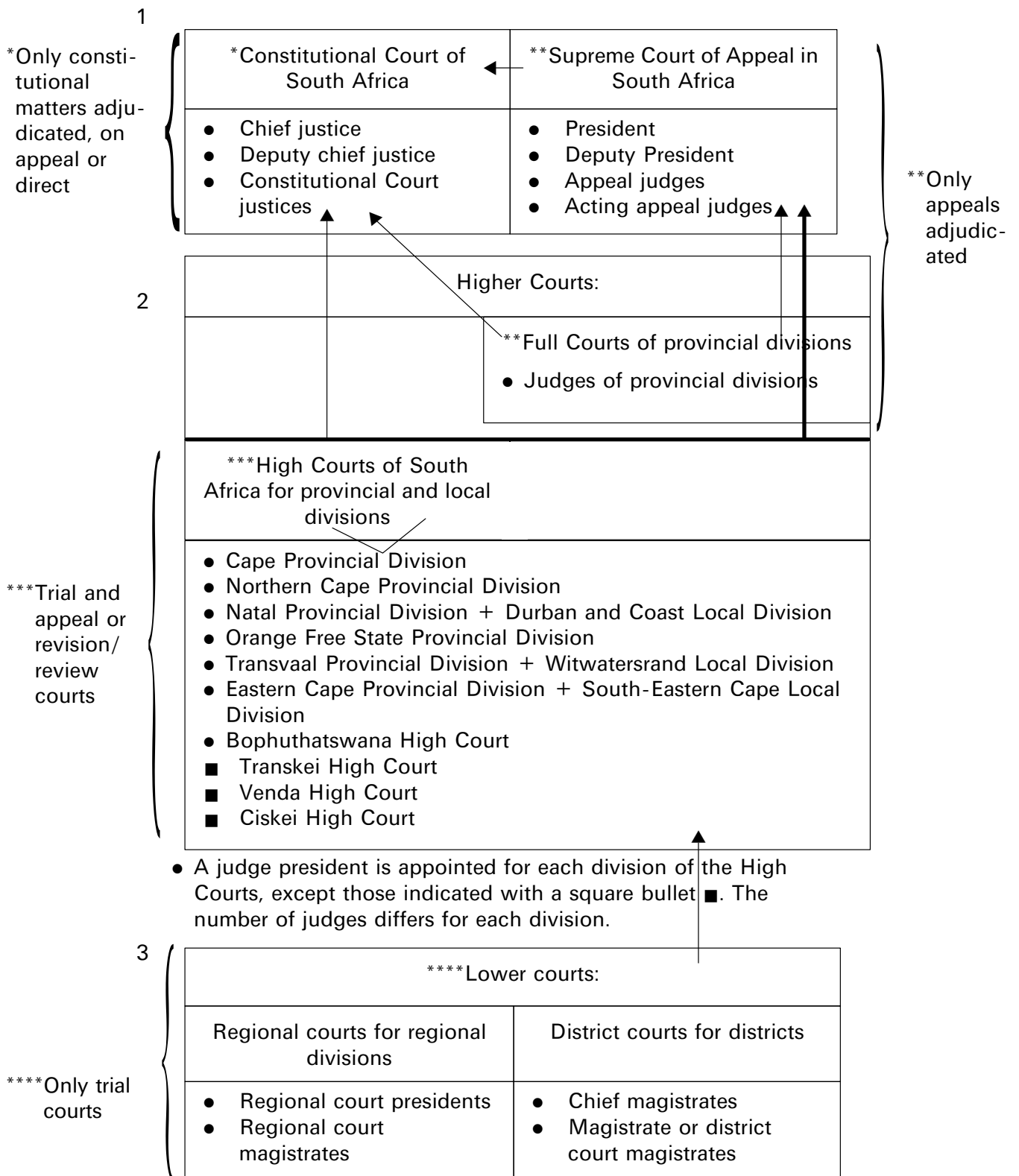
ACTIVITY (1)

- Study chapter 2 of the handbook
- **Look at diagram (2).** Material marked with bullets indicates the composition of the courts, while the arrows and stars indicate posttrial matters. Although these matters are only studied in CMP102-4, they are included here to acquaint you with the setup as a whole.

Note that this diagram is limited to the courts dealing with criminal or constitutional matters. There are also other courts with the status of a High Court, but they are invested with specific and particular powers, for example the Land Claims Court of South Africa.

DIAGRAM (2)

THREE-TIERED OF THE CRIMINAL COURTS OF SOUTH AFRICA



1 INTRODUCTION

In this chapter the main emphasis is on the hierarchic structure of our criminal courts and their areas of jurisdiction. The ranking of criminal courts can be represented as a pyramid with three levels. The bottom level is that of the lower courts. As the name indicates, they are lower in stature, jurisdiction and powers than the High Courts on the middle level, while the Supreme Court of Appeal and the Constitutional Court at the top of the pyramid are invested with the highest authority.

After the various criminal courts of the Republic (with their various seats) have been discussed in order of status, the jurisdiction of the courts is dealt with in regard to appellate jurisdiction, crimes, area (territory), penalties and the validity of legal provisions.

2 JURISDICTION

Where jurisdiction concerning (the extent of) crimes and the validity of legal provisions are concerned, you should have no problems: the relevant study material speaks for itself and must be studied with due care, first because you will be applying it in everyday practice, and secondly because your knowledge of jurisdiction is applied in CMP102–4. In studying the section on jurisdiction with respect to area, however, you must distinguish clearly between crimes committed on South African soil and those committed elsewhere. For example, the extensions of the rule that the provincial and local divisions of the High Court exercise jurisdiction exclusively with respect to crimes committed in their respective areas (5.3.2 of the chapter), and the eight groups of offences forming the subject of the extraterritorial jurisdiction of our courts (5.4 of the chapter) must be strictly separated. In the case of the former, the matter at issue is when a court may exercise jurisdiction with respect to a crime committed outside its area but **within** the Republic, while in the latter case it is a matter of **crimes committed outside our territorial borders**.



Note further that the 4-kilometre rule that regulates the extension of the area of jurisdiction of the lower courts does not apply to the High Courts. When you study the extension of the jurisdiction of lower courts, make sure that you know paragraph 5.3.4.1 of the handbook in its entirety. It includes the above rule.

Jurisdiction as regards penalties must be studied thoroughly. Jurisdiction with respect to penalties naturally has points of contact with chapters 19 and 20 where you will once again find the background details.



ACTIVITY (2)

Answer the following question.

X and Y steal a car in Tshwane and travel north. In Bela Bela they stop at a filling station, assault the petrol attendant so that she runs away, and fill the car's tank with fuel. On the way to Modimole they see a parked police car under a tree on the border between the district of Bela Bela and Modimole, and they turn around. They are apprehended in Bronkhorstspuit. Which of the lower courts of Tshwane, Bela Bela, Modimole and Bronkhorstspuit can try them for which of the following charges: theft of the car, theft of the fuel, assaulting the petrol attendant? Discuss. (8 marks)



FEEDBACK ON ACTIVITY (2)

The following matters must be addressed in your answer: According to the general rule, a lower court (both a district and a regional court) has jurisdiction with regard to crimes committed within its area. The following extensions of this rule apply to the facts of the case:

- (1) A crime committed within four kilometres outside the boundary of the district or regional court may be tried in that specific court.
- (2) Where the theft of goods is concerned, the court of the area within which X and Y had the goods or part thereof in their possession may exercise jurisdiction — since theft is a continuing offence.
- (3) Where several crimes have been committed in different areas, the DPP may order that the trial take place in a particular district or regional court.

Application to the facts: The **theft of the car** took place in Tshwane (but also in other districts, because theft is a "continuing crime") and, according to the general rule cited above, X and Y can be tried at any of the said places. They had the car in their possession in Tshwane, Bela Bela and Bronkhorstspruit and, also in accordance with the extended rule above, can therefore stand trial there. The car was driven to within four kilometres of the border between Bela Bela and Modimole. Theft was therefore "committed" within four kilometres of the border and they can be tried in Modimole as well. The **theft of the fuel** took place in Bela Bela, and they can therefore be tried there. It can be assumed, however, that they had some of the fuel in their possession in Bronkhorstspruit and Modimole, and consequently, for the reasons mentioned, they can also be tried in those places. The **assault** took place in Bela Bela and they must be tried for it in that place. Finally it must be borne in mind that because **different** crimes were committed in different places, the NDPP may order a trial in one of the various courts of any of the relevant districts.



SELF-EVALUATION

Discuss the jurisdiction of the Supreme Court of Appeal to determine questions in terms of section 333 of the Criminal Procedure Act.



FEEDBACK ON SELF-EVALUATION

See the discussion in par 5.11 of the handbook. Also refer to the Supreme Court of Appeal decision in the case of *Bolon*.

STUDY UNIT 3

CHAPTER 3 OF THE HANDBOOK

PROSECUTING CRIME

CONTENTS

Learning outcomes

Activity

1 Introduction

2 Structure and composition of the prosecuting authority

3 Private prosecutions

Feedback on activity

Self-evaluation

Feedback on self-evaluation



LEARNING OUTCOMES

When you have worked through this study unit you must be able to

- describe the functions and powers of the prosecuting authority
- describe the nature, extent and consequences of the discretion to prosecute
- explain the purpose of private prosecutions and describe when, how and by whom private prosecutions can be instituted



ACTIVITY

- Study chapter 3 of the handbook and determine why it is necessary for the state to conduct private prosecutions. In the light of this fact, is there a place for the procedural figure of private prosecution?

1 INTRODUCTION

The role of the prosecuting authority in our criminal justice system, its powers, and its relationship with other role players in criminal justice are extensively discussed in this chapter. The discussion begins with an explanation of how an official, enforceable criminal justice system has developed here. It began when the community transferred authority from the private individual to the state, which meant that the right of the victim to exact justice from the offender in his own right was abolished.

As a result of the above-mentioned development, the commission of a criminal act is regarded by most modern states as a violation of public interest. In principle, punishment is meted out on behalf of the community and for the protection of the interest of the individual who is the victim of the crime. It follows that the state should in principle also undertake the necessary prosecuting functions, even in circumstances where an identifiable victim has suffered demonstrable personal harm, for instance as a victim of theft.

2 STRUCTURE AND COMPOSITION OF THE PROSECUTING AUTHORITY

In South Africa the function of public prosecution is carried out by a single National Prosecuting Authority. Its powers are derived from the Constitution and the National Prosecuting Authority Act 32 of 1998, which repealed and replaced the provisions of sections 2 to 5 of the Criminal Procedure Act and repealed *in toto* the Attorney General Act 92 of 1992. By virtue of the Constitution, the National Prosecuting Authority consists of one National Director of Public Prosecutions (also referred to as the "NDPP"), who is the head of the prosecuting authority, and deputy national directors of public prosecutions, directors of public prosecutions (also known as DPP), deputy directors of public prosecutions, and prosecutors. At the seat of each High Court there is an office under the control of the DPP with deputies and prosecutors. (These are the same offices that used to be under the control of the attorneys general and that are now known as the office of the director of public prosecutions, for example the office for the Transvaal, Witwatersrand, Pietermaritzburg and so on. Note too, that the previous designations of "state advocate" and "state prosecutor" have been replaced by the designation "prosecutor".)



The functions, composition and powers of the prosecuting authority that are not laid down by the Constitution are regulated by the National Prosecuting Authority Act 32 of 1998. The NDPP exercises control and authority over the deputy national directors and directors. The NDPP is responsible for the institution of a prosecution policy and the issuing of policy directives, the appointment of prosecutors, directors and deputy directors, and the granting of written authority for them to prosecute. The NDPP is empowered to intervene in any prosecution process where the policy rules are not complied with, and after consulting with the DPP may review the decision to prosecute at the request of persons whom he deems relevant. Prosecutors in lower courts exercise their powers subject to the authority of the relevant DPP in whose area of jurisdiction the relevant lower court is situated.

Remember, however, that the Constitution stipulates that the Minister of Justice takes final *responsibility* for the prosecuting authority. Whether this means that the Minister may interfere with the decision of the prosecuting authority is not certain; it seems as if the Minister is not invested with this power although, in view of the principle of accountability, he may ask the prosecuting authority to supply reasons for its decision — see paragraph 4.5.8 of the handbook.

3 PRIVATE PROSECUTIONS

A prosecution undertaken by the DPP and staff is known as a “public prosecution”, as opposed to a “private prosecution” which is conducted by a private individual, for instance because he feels aggrieved by the decision of the DPP and the NDPP not to institute a prosecution in a particular case.

At first glance it may seem contradictory to say that the state should undertake the prosecution and then immediately speak of something like a “private prosecution”. However, the need for the existence of a “private prosecution” is clear from the fact that the director or prosecutor has the discretion to institute a prosecution or not. This means that, even if the institution that undertakes the investigation (normally the police) identifies the person who committed the crime, the director may still decide not to prosecute him. There are various reasons why the director would take such a decision, for instance, because he is convinced that there is no evidence to prove the offender’s guilt beyond reasonable doubt and that it would therefore be a waste of state money to insist on instituting a prosecution, or because it is a trivial case that does not merit attention from the state (*de minimis non curat lex*). See paragraph 4.14 for other reasons. To prevent an interested party from taking the law into his own hands in such a case and punishing the offender on his own initiative, provision has been made for such a person to institute a prosecution against the offender on his own behalf. Such a prosecution is known as a “private prosecution”, which is essentially a safety valve to relieve the pressure that has built up in society as a result of a decision by the prosecuting authority not to institute a prosecution. In South Africa private prosecutions are rare, but they are nevertheless regarded as an essential part of our criminal justice system. The rules concerning private prosecutions are discussed at length in this chapter. See paragraph 5 of the handbook.



FEEDBACK ON ACTIVITY

The commission of a crime is regarded by most modern states as a violation of public interest. Punishment is imposed in principle on behalf of the community and in order to protect the interest of the individual who was the victim of the crime. For this reason the state should also institute the necessary functions relating to prosecution.

Private prosecutions are essential safety valves or counterbalances through which any dissatisfaction or pressure that builds up in society as a result of the decision of the prosecuting authority not to institute a prosecution can be relieved. The legitimacy of a country’s legal system in general and its prosecuting authority in particular is protected and strengthened by building a system of checks and balances into its legal system.



SELF-EVALUATION

Discuss the functions and powers of the DPP and compare them with those of the NDPP. (15 marks)



FEEDBACK ON SELF-EVALUATION

You must be able to distinguish between the powers of the DPP and those of the NDPP on the one hand — in other words actions for which they have the necessary authority — and their duties or functions on the other hand. A director is authorised to undertake the prosecution of criminal cases and any appeal arising from such cases, as well as the prosecution of criminal cases and any appeal or review arising from such cases in a particular area of jurisdiction of the High Court of South Africa and may delegate this authority. It is the DPP's duty to control and supervise prosecutors in lower courts, while prosecutors are appointed by the NDPP. The DPP also has certain extraordinary powers as provided in section 185 of the Act, as well as the authority to identify certain offences by way of a certificate as special offences that have certain consequences, particularly as regards granting bail to the accused. The DPP's functions must be exercised in accordance with the laws and customs of the Republic, and in accordance with the policy and stipulations of the NDPP. It is the duty of the DPP to exercise discretion concerning the institution of a prosecution in order that the legitimacy of the criminal justice system is not jeopardised by discriminatory prosecution.

You must discuss the powers and duties of the NDPP in the same way as indicated above.

STUDY UNIT 4

CHAPTER 4 OF THE HANDBOOK

THE RIGHT TO LEGAL ASSISTANCE

CONTENTS

Learning outcomes

Activity (1)

1 Introduction

2 The duty of a police officer to inform a person of the right to legal representation during the pretrial phase

3 The duty of a presiding officer to inform a person of the right to legal representation during the criminal proceedings

Activity (2)

Feedback on activity (2)

Self-evaluation

Feedback on self-evaluation



LEARNING OUTCOMES

When you have worked through this study unit you must be able to

- explain the content, extent and impact of the constitutional right to legal counsel in both the pretrial and the trial phase of the criminal process
- describe the role of the police officer, presiding officer and legal counsel as regards information about legal assistance and/or the provision thereof



ACTIVITY (1)

Study chapter 4 of the handbook and the provisions of sections 35(2) and (3) of the Constitution.

1 INTRODUCTION

In this brief but important chapter it is brought to your attention that the right to legal counsel is an essential right which originates in divine and natural law. The right to legal assistance is as important a component of criminal justice as a fair trial and equality before the law. Having access to a legal representative derives from a person's right to have access to the courts (*Mandela v Minister of Prisons* 1983 (1) SA 938 (A) on 957D). This right therefore does not arise only during the trial of the accused, but already in the first phase of the criminal justice system when the person is identified as a suspect in a crime that is under investigation by the police.

Any suspect is immediately entitled to legal representation, especially when the person is interrogated by the police with a view to charging her. Accordingly, criminal procedure law gives statutory recognition to this fundamental right in section 73 of the Criminal Procedure Act. This right has also been embodied in the Constitution and is entrenched in section 35.

A person may not be deprived of the right to legal representation, either by making access to legal counsel impossible (eg by refusing postponement of the criminal procedure involved in retaining legal counsel and thereby rendering the right of the accused meaningless) or by means of a statutory provision. If the legislator wants to deprive an accused of such a right it must be done in clear and unambiguous language (cf *R v Slabbert* 1956 (4) SA 18 (T) on 21G), but if a person is deprived of the right to legal assistance it would make serious inroads on the person's freedom (cf *Li Kui Yu v Superintendent of Labourers* 1906 TS 181 on 187) and is undoubtedly unconstitutional.

2 THE DUTY OF A POLICE OFFICER TO INFORM A PERSON OF THE RIGHT TO LEGAL REPRESENTATION DURING THE PRETRIAL PHASE

The first question that arises when studying the principle of the right to legal counsel is whether the police have a duty to inform the suspect of this right during arrest, interrogation and investigation, and what the consequences of failure to do so would be. If the accused is deprived of the right to legal assistance, all the statements made by her should be excluded as evidence in her trial. The exclusion of evidence is a matter which logically falls under the law of evidence, which is why no further attention is paid to it here.

3 THE DUTY OF A PRESIDING OFFICER TO INFORM A PERSON OF THE RIGHT TO LEGAL REPRESENTATION DURING THE CRIMINAL PROCEEDINGS

The second question that you should ask is whether the presiding officer has a duty to inform the accused of the right to legal representation during pretrial proceedings, and what the consequences would be in the case of failure to do so. It is pointed out in the handbook that various controversial decisions had been made about this matter before the Supreme Court of Appeal pronounced on it in *Rudman; Mthwana* 1992 (1) SA 343 (A) at 382. In this case, Nicholas AJA cites the *dictum* in *Radebe* 1988 (1) SA 194 (T) with approval, namely that presiding officers have a duty to inform unrepresented accused about their right to legal representation under common law. Where the charge is serious and justifies a sentence that is potentially prejudicial to the accused, the court must inform the accused of the gravity of the charge and the possible consequences, encourage her to take advantage of her right to legal representation, and give her the opportunity to retain legal counsel. In *Hlantlala v Dyanti* 1999 (2) SACR 541 (SCA), the court decided that a clear distinction should be made between the **constitutional right** to retain legal counsel at state expense when material injustice would arise without it, and the **common-law right** to legal representation, which entails the right to be informed about it, as well as the right to apply to the Legal Aid Board for legal assistance and for the opportunity to retain legal assistance. A legal officer is duty bound to inform the accused about this in virtue of

her common-law right to legal representation. The court did not decide the position with regard to the duty of a judge concerning the constitutional right (because the court found that the common-law right had been violated), but we suggest that the accused also has to be informed of the content of the constitutional right.

With regard to the question of whether the presiding officer had a duty to inform the accused not only of her right to legal representation, but also of her right to legal assistance, the court referred with approval to the verdict in *Radebe* where it was decided that the content of the common-law right to legal representation required that, **under suitable circumstances, the court** was obliged also to inform the accused that she was entitled to apply to the Legal Aid Board for legal assistance.

Legal consequences of failure to inform

In *Hlantlala v Dyanti (supra)*, *Rudman; Mthwana* 1992 (2) SA 343 (A) was followed, and the court decided that where the presiding officer failed to inform the accused of her common-law right to legal representation, an irregularity might arise. This irregularity does not in itself result in an unfair trial that will persuade the court of appeal to set aside the conviction. The primary question to be resolved is whether the conviction has been affected by the **irregularity**. The accused will have to show on appeal or review that the irregularity resulted in a failure of justice. A trial is not made unfair by failure to inform per se. An irregularity will only lead to a failure of justice if there has been real or material prejudice to the accused (see also *Ramalope* 1995 (1) SACR 16 (A)). The test to determine whether the irregularity of failure to inform the accused of her common-law right led to a failure of justice was stated as follows: Where the accused suffered no prejudice, no failure of justice has been caused, just as there will be no injustice if the accused were found guilty all the same, regardless of the irregularity, and even if the presiding officer did not neglect to inform the accused of her common-law right to legal representation. The accused is therefore entitled to show prejudice by submitting a declaration under oath to the court of appeal in which it is stated that she was unaware of her common-law right and therefore unable, for lack of legal representation, to submit her defence during the trial. Further, that had she been aware of this right, she would have exercised it, either by retaining counsel on her own or with the assistance of the Legal Aid Board.



ACTIVITY (2)

Read the following set of facts and answer the following question:

A and B are charged with theft on the allegation that they have harvested and removed, and thereby stolen, green mealies and pumpkins with an estimated value of R7 320 from the land of the headman, which he had leased to the complainant. A and B are at the same time also involved with the complainant in an ownership claim in virtue of their allegation that the land does not belong to the headman but to their deceased father. A and B are unrepresented during their trial and testify that they have harvested the mealies and pumpkins from their own land. The magistrate asks the accused whether they are going to retain legal counsel, to which they answer that they cannot afford it. A and B did not ask for legal assistance, and the court deals with the case without any legal representation. A and B are found guilty.

Did the presiding officer act correctly by dealing with the case without legal representation? (This question is based on the facts in *Hlantlala*.)



FEEDBACK ON ACTIVITY (2)

The decision in *Hlantlala v Dyanti and Radebe* is relevant with respect to the question of whether the magistrate has caused a failure of justice with respect to the right of the accused to legal representation by trying a complex case without ensuring that by retaining legal counsel the accused was placed in a position equal to that of the prosecutor who has legal expertise. See the discussion above. What is the nature of the possible failure of justice? Is it constitutional or related to common law, or both?



SELF-EVALUATION

"Mere lip service is paid to the unhindered application of the principle of the right to legal representation, and this principle is only partly upheld in the South African system of criminal procedure." Discuss this statement critically and indicate whether you agree with it. (8 marks)



FEEDBACK ON SELF-EVALUATION

Much can be said about this question, which is why there is no simple answer to it. The question can be answered with reference to the following guidelines.

- (1) The right to legal representation is embodied in the Constitution and entrenched in sections 35(2)(b) and (c) as well as 35(3)(f) and (g).
- (2) Historically (since 1819) an accused could only retain the services of legal counsel if she was charged with a serious offence (*S v Wessels* 1966 (4) SA 89 (C)). This limitation has subsequently lapsed.
- (3) Section 73(1) makes the right to legal representation of incarcerated persons subject to the legal stipulations for the management of prisons. This provision therefore influences the free access of legal representatives to their clients in prison.
- (4) The term "legal representative" must be discussed here. Must the legal representative be a qualified legal practitioner, or can the suspect/accused obtain the assistance of a friend or family member? In other words, can a suspect be assisted by a lay person? Refer in this regard to sections 73(1) and 73(3).
- (5) The vexed question that courts have struggled with for a long time, namely whether an accused should be informed of the right to legal counsel, is relevant in the discussion of this controversial statement.
- (6) The question is whether the legislature and the verdicts of the Supreme Court of Appeal really address the problem of legal assistance provided at the expense of the state.

STUDY UNIT 5

CHAPTER 5 OF THE HANDBOOK

THE PRESENCE OF THE ACCUSED AS A PARTY

CONTENTS

Learning outcomes

Activity (1)

1 Introduction

2 Exceptions

2.1 Absence owing to misconduct

2.2 Several accused

2.3 Evidence by means of closed circuit-television

2.4 Admission-of-guilt fines

Self-evaluation

Feedback on self-evaluation



LEARNING OUTCOMES

When you have worked through this study unit you should

- understand why it is necessary for the accused to be present at the trial
- be able to show that confrontation is the essence of the basic principle of the presence of the accused as a party in a criminal trial
- be familiar with the content of the confrontation principle and know when an accused forfeits this right or what exceptions to the exercise of this right are admissible
- be able to name the exceptions, write notes about each of them, explain when each exception applies and describe what procedure has to be followed in each case
- know what constitutional guarantees exist for this right



ACTIVITY (1)

- Study chapter 5 of the handbook.
- Go to the beginning of the study guide and look at the practical examples of a summons, a written notice to appear, and the compounding of minor offences. Note particularly that each provides for either an admission-of-guilt fine or a spot fine.

1 INTRODUCTION

This chapter emphasises the fundamental principle of the law of criminal procedure that an accused must be present at the trial from the beginning to the end so that confrontation with witnesses can take place. If the accused is absent from the trial and therefore deprived of the opportunity to defend himself fully, it can be said that his constitutional right has been infringed. This basic principle is guaranteed in sections 34 and 35(3)(c), (e), and (i) of the Constitution and is also prescribed in section 158 of the Criminal Procedure Act.

2 EXCEPTIONS

The following exceptions to the rule that the trial must take place in the presence of the accused, exist:

2.1 ABSENCE OWING TO MISCONDUCT

The first exception discussed is the trial of an accused in his absence owing to misconduct. It is necessary to remove an accused from the court if he misbehaves during the trial since he can actually prevent the court from deciding his guilt on the charge in question by making it impossible for the court to continue with the trial. Such a situation would be untenable because it is essential for the proper administration of justice that dignity, order and decorum characterise all proceedings of the court. Flagrant contempt in court for all basic standards of proper conduct is inadmissible, which is why provision has been made in the Act for the removal of the accused and the continuation of the trial in his absence. Presiding officers have discretion in this regard. Nevertheless, as noted in the handbook, the removal of the accused is only a last resort when all other remedies have failed.

The accused has only himself to blame for his absence at the trial and the forfeiture of constitutional rights. These rights can, however, be regained by behaving properly and with the requisite decorum and respect towards the court in particular and the judicial institution in general.

2.2 SEVERAL ACCUSED

The second exception occurs in a situation where there are several accused and one of them is absent. In such cases the trial would normally be postponed to a later date. However, circumstances can be such that the other accused could be prejudiced or embarrassed if the case were postponed, in which case the interests of the absent accused must be weighed against those of the other accused. The Act provides for the trial to continue if it transpires that such continuation is necessary to serve the ends of justice. It stands to reason that the court will only take this course if there is no other alternative (such as separate trials).

2.3 EVIDENCE BY MEANS OF CLOSED CIRCUIT-TELEVISION

The third exception is where the court gives or makes an order for evidence to be given by means of closed circuit-television or similar electronic media. Many reasons exist for this exception, for example it may be in the interest of the security of the state or of public safety, or even in the interests of justice for evidence to be given via such

medium. Such an order by the court may be subject to any conditions that the court may deem necessary.

2.4 ADMISSION-OF-GUILT FINES

The purpose of the admission-of-guilt fine according to section 57 is, firstly, to help the accused to avoid appearance in court, and secondly, to avoid the possibility that courts be swamped by trials that could otherwise be finalised by this simple procedure (of admission-of-guilt fines). Note that an admission of guilt can also be granted to an accused who is awaiting trial while in detention and has already appeared in court on a minor charge (see s 57A). Admission-of-guilt fines are usually only granted for minor offences. The accused must be prepared to pay the fine voluntarily and thereby relinquish the right to confrontation.

You will notice that compounding of minor offences is also discussed here. This matter is included in the chapter because students often confuse the compounding of offences with the payment of an admission-of-guilt fine. These two procedures are distinctly different. In the case of admission-of-guilt fines, the prosecution is instituted at the moment when the summons is issued against the accused. The accused must choose between paying or not paying the fine. If he pays the fine, it serves to indicate that he prefers to be absent at the actual conviction and sentencing. On the other hand, in the case of a spot fine, the payment of a sum of money (note that the word "fine" is completely inappropriate here) is intended to prevent the institution of criminal proceedings.



SELF-EVALUATION

- (1) Briefly discuss the principle that an accused must be present at his trial. (4 marks)
- (2) Briefly discuss each exception to the principle that an accused is entitled to be present at the trial and to confront the accusers (about four to six marks awarded for each exception).
- (3) Discuss compounding of minor offences and explain the difference between compounding offences and the admission-of-guilt fine. (4 marks)



FEEDBACK ON SELF-EVALUATION

- (1) The discussion in this regard is given in par 1 under the heading "The general rule". Remember to refer to decided cases in your discussion.
- (2) The three exceptions are discussed in paragraphs 2.1-2.3 of the handbook. Note that compounding of offences is not an exception to the general principle. Redemption of a crime takes place where an accused may prevent the institution of a prosecution by paying a sum of money. If the amount is paid, there is no prosecution, in which case the presence or absence of the accused is not in dispute. Remember to refer to decided cases in your discussion!
- (3) See par 3 of the handbook.

PART II

THE CRIMINAL PROCESS

GENERAL INTRODUCTION TO PART II

The criminal process itself is discussed in this part. For convenience, the process is divided into four phases: The first is concerned with the criminal process **before the trial**; the second phase discusses the actual trial; the third phase deals with sentencing; and in the fourth phase the opportunity is given for mistakes made during the trial or sentencing phases to be corrected. As indicated earlier, module CMP101–3 is concerned with the first phase and module CMP102–4 with the other phases.

PHASE ONE: THE CRIMINAL PROCESS BEFORE THE TRIAL

GENERAL INTRODUCTION TO PHASE ONE

In the discussion of this phase, particular attention is paid to the powers given to the police, and in certain cases also to other persons, to take steps to identify a person who has committed a crime, to trace or locate the person, to ensure that she will be present at the trial and that all the evidence on which the charge against her is based is available for the prosecuting authority to decide whether there is a *prima facie* case against her so that she can be tried for the court's deliberation as to whether she is guilty as charged. This discussion is concluded with a discussion of certain trial proceedings that can be conducted in the court before the actual trial of the accused commences in earnest.

STUDY UNIT 6

CHAPTER 6 OF THE HANDBOOK

THE EXERCISE OF POWERS AND THE VINDICATION OF INDIVIDUAL RIGHTS

CONTENTS

Learning outcomes

Activity

- 1 Introduction
- 2 Objectivity and unlawful conduct
 - Feedback on activity
 - Self-evaluation
 - Feedback on self-evaluation

LEARNING OUTCOMES



After working through this study unit you should be able to

- write notes about the conflict between the interest of the community in upholding individual rights and its interest in combating crime, and about how this conflict can be resolved
- indicate the principles or guidelines for determining whether the exercise of powers is admissible or not during the pretrial phase of the criminal process

ACTIVITY



- (1) Study chapter 6 of the handbook.
- (2) What is meant by the statement that individual constitutional rights can only be restricted if the limitation is reasonable, justifiable and in proportion to the purpose of the limitation?
- (3) Discuss the concepts "reasonable", "justifiable" and "proportionality" with reference to the criminal procedural powers of the police in the pretrial phase.

1 INTRODUCTION

This chapter serves as an introduction to the first phase of the criminal process and emphasises that the exercise of powers for which provision is made in this phase of the criminal process encroaches on the rights of the individual. The fact that such

encroachment is allowed does not mean, however, that the rights of the individual can simply be ignored in this phase of the criminal process. On the contrary, this chapter highlights the fact that so much value is attached to the rights of the individual that all delegated powers that may make inroads on those rights must be seen as exceptions, and that such powers may therefore only be exercised under narrowly circumscribed conditions for which explicit provision is made by law. Such encroachment may also be reviewed by the court to determine whether it conforms to the requirements of the Constitution.

Any person who should exercise these powers in circumstances that are in conflict with the provisions of the Constitution, and for which no other explicit legislative provision is made, thereby commits an unlawful act (ie acts in conflict with the law) and is liable to civil claims from persons who are prejudiced by such act. In the past, persons who had exceeded their powers in this regard were found guilty of crimes such as murder, culpable homicide, *crimen iniuria* and theft. For example, in *Hammer* 1994 (2) SACR 496(C), the court decided that a policeman or other person with statutory authority who intercepted and read another person's correspondence without that person's permission, was committing the offence of *crimen iniuria*. (*In casu* an 18-year old prisoner wrote a letter from prison to his mother and, without enclosing it in an envelope, handed it over to the police to be posted. The letter was then read by the police without the prisoner's consent and was given to the DPP for a prosecution.) The requirements that have to be met for the person to be guilty of a crime are discussed in the criminal law course and will not be repeated in this course.

Note, however, that in terms of criminal law, the powers for which provision is made in this phase of criminal procedure law are regarded as "justifying grounds". This simply means that the behaviour of persons who act within the powers provided by criminal procedure law is regarded as lawful (ie **not unlawful**). However, when a person has exceeded the said powers delegated to her, her action will be regarded as unlawful. In criminal law a person who exercises the powers for which explicit provision is made in legislation, such as the Criminal Procedure Act, and acts within the limits laid down by such legislation, may invoke the justifying grounds of "legal authority" or "official capacity" if she is charged with a crime as a result of exercising the said powers.

2 OBJECTIVITY AND UNLAWFUL CONDUCT

In Part I of the handbook your attention was drawn to the fact that criminal procedure law was developed explicitly to prevent people from avenging themselves on other people who have prejudiced or inflicted harm on them. By abolishing vengeance and transferring the power to punish people to the state, a certain amount of objectivity was brought into the prosecution of persons and the imposition of punishment, something which had been absent before. The victim no longer needs to decide whether the offender deserves punishment or not, because that function is now being performed by an independent court, and in particular by a judicial officer who has the capacity to determine the guilt of the offender objectively (ie with reference to generally applicable rules), and who is not a personal victim of the offender and therefore not emotionally involved in the harm that has been caused. The same applies to the prosecution and investigation of the crime or alleged crime. By transferring the authority to investigate crimes to an independent government institution, the victim no longer has to personally investigate a crime committed against her. The commission or alleged commission of the crime can moreover be investigated more objectively because the investigating officer is not personally

involved in the harm caused by the offender. Naturally, investigators do become involved with victims to some extent on humanitarian grounds, but they should not become so involved that their objectivity is lost. This is why investigators should not undertake the prosecution of the crime in court lest the demand that the offender be found guilty should overrule all other considerations. The advantages of objectivity in this regard are legion: the officer who is investigating the commission or alleged commission of a crime will not be motivated by a personal desire to exact vengeance, but rather by a desire to determine the facts and thus serve the ends of justice, since from the side of the victim as well as from that of the community she will not harbour a personal grievance against the perpetrator and will consequently record all the evidence, whether it points to the guilt or innocence of the offender, and regardless of whether it reveals aggravating or mitigating circumstances; she will have no desire to punish the offender, but rather wish to bring that person before the court so that justice may prevail, and so on.

Of course it is possible that even an officer charged with investigating a crime or alleged crime, and who approaches the investigation objectively may, in her enthusiasm to establish the facts of the matter, resort to methods of investigation that are unacceptable to society. To rule out such a possibility, strict rules have been laid down by the legislator to ensure that encroachment on individual rights only takes place when it is reasonable and necessary with a view to the proper investigation of crimes, or to the reasonable and effective combating of crime. In order to be constitutional, these laws must be objectively justifiable in the circumstances, which implies that the law or statutory provision must not only be **proportional to the envisaged objective**, but must also be the **least limiting way in which the objective** can be achieved effectively. For example: where force is used in making an arrest, the nature of the force and the way in which it is used must be in proportion to the envisaged objective (to prevent the escape of a suspect so that an arrest can be made, or in order to avert threatening danger). The community also has an interest in the existence of effective methods of combating crime, and it therefore has demands to which the legislator must accede, which could mean that he is not always impartial. The entire polemic between the police, justice and the press about the implementation of the amended section 49(2), which severely restricts the authority of the police to shoot and kill fleeing suspects even as a last resort, is an example of society's demands that the police be permitted to use drastic methods when suspects attempt to escape or offer resistance to arrest. On the other hand, the community also has an interest in the upholding and protection of the constitutionally entrenched values and rights of individuals against forcible methods. A balance has to be achieved between these conflicting interests, which implies that the demands of society must be reasonable and justifiable and based on the constitutional values of human dignity, equality and liberty. In *S v Makwanyane* 1995 (2) SACR 1 (CC) the Constitutional Court decided (with reference to s 33 of the 1993 Constitution) that

“there is no absolute standard which can be laid down for determining reasonableness and necessity. Principles can be established, but the application of those principles to particular circumstances can only be done on a case-by-case basis. This is inherent in the requirement of proportionality, which calls for the balancing of different interests.”

The court then mentions that, in the process of balancing, the factors now mentioned in section 36 of the Constitution would apply. In other words, when any provision which confers powers on the police makes inroads on a person's constitutional right (eg the right to privacy versus the authority to search a house), its constitutionality must be considered in the sense of whether in the eyes of the constitutional state, the

effectiveness or usefulness of the authority in question outweighs the infringement of the constitutional right. Furthermore, if the same purpose can be served with another less drastic method, then the provision is unconstitutional.

The requirement of **reasonableness** in the exercise of these powers ensures that individual rights are not unnecessarily curtailed and that encroachments remain within the limits of what is considered acceptable and tolerable in the circumstances. Exercising these powers is therefore only permissible in so far as it can be considered reasonable in the circumstances. In this chapter, the criterion of reasonableness is analysed, and guidelines are laid down whereby the exercise of a particular authority is permissible or not in a given case. To the limited extent that it is deemed necessary to delegate certain powers to private persons to make inroads on individual rights in the pretrial phase of the criminal process, similar restrictions have been drafted by the legislator, and what is said above applies *mutatis mutandis* where the constitutionality thereof is concerned.



FEEDBACK ON ACTIVITY

- (1) The concepts are explained in detail in the chapter and you must be able to summarise them succinctly.
- (2) Your discussion must proceed from the limiting clause in section 36 of the Constitution.
- (3) Read (do not study) the discussion of the death penalty in chapter 19, paragraph 9 of the handbook as a practical application of these concepts. Formulate your arguments along the same lines to show why the powers of the police, for example to conduct a search without a warrant, are reasonable, justifiable and in proportion to their purpose.



SELF-EVALUATION

Discuss the conflict between the interest of society in upholding individual rights and its interest in combating crime, and indicate how this conflict can be resolved. (5 marks)



FEEDBACK ON SELF-EVALUATION

First you must explain why society has an interest in upholding individual rights (which you must mention); then point out that society has an interest in combating crime and that powers are delegated to people to serve that purpose; that exercising the powers can make inroads on individual rights; and that this causes a conflict, but that such conflict can be resolved by balancing the various conflicting interests and strictly limiting the circumstances in which these powers may be exercised.

STUDY UNIT 7

CHAPTER 7 OF THE HANDBOOK

METHODS OF SECURING THE ATTENDANCE OF THE ACCUSED AT HIS TRIAL

CONTENTS

Learning outcomes

Activity

- 1 Introduction
 - 2 Which method?
 - 3 Indictment, summons, written notice to appear
 - 4 Arrest
- Feedback on activity
- Self-evaluation
- Feedback on self-evaluation



LEARNING OUTCOMES

After working through this study unit you should be able to

- identify different methods of ensuring the presence of an accused at his trial
- write notes about each method
- write notes on the
 - (i) procedure after arrest
 - (ii) the effect of arrest
 - (iii) the duty to arrest
 - (iv) escape from lawful custody
- specify the requirements for
 - (i) lawful arrest
 - (ii) warrants for arrest and the execution thereof
- do the following where the powers of arrest and the overcoming of resistance to arrest are concerned
 - (i) indicate with reference to a set of facts whether an arrest was lawful or not
 - (ii) indicate whether the person who tried to make the arrest had the required authority to arrest or to resort to force to make the arrest



ACTIVITY

- (1) Study chapter 7 of the handbook.
- (2) The following set of facts will help you to understand the content of the study unit with reference to a practical example:
 - (i) X is a police officer who drives a clearly identifiable police vehicle while on patrol late one night. X notices a vehicle that fits the description of a vehicle that was reported stolen earlier that night (make, registration number, etc.). X signals to the driver (Y) to stop, arrests Y and asks him for his personal particulars. Y refuses to give the particulars because X is dressed in civilian clothes. Is X authorised to arrest Y, and may Y refuse?
 - (ii) With reference to the facts in (i), suppose that Y speeds away before X could get him to stop. X sets out in pursuit, but by swerving from side to side across the road Y thwarts every effort of X to pass him. X fires a warning shot, which Y ignores. X then fires several shots at Y and eventually wounds him in the back. The vehicle is brought to a halt and X arrests Y. The body of another person (Z) is found on the passenger seat of the vehicle. It transpires later that Z had assisted Y with the theft of the vehicle, took fright when he noticed the approaching police vehicle and hid on the front seat even before X had given the initial signal to stop. X was unaware of the presence of Z and was under the impression that Y was the only occupant of the vehicle. Ballistic tests prove that Z had been killed by a bullet fired by X. X is charged with the murder of Z and of attempted murder in the case of Y. At his trial X invokes the protection provided by section 49(2). Will his defence succeed?

1 INTRODUCTION

When it has been established with reasonable certainty that a particular person was responsible for a crime and what the particulars of the crime were, steps must be taken to ensure that the suspect will appear in court to be tried for the crime concerned. The different methods that can be followed to achieve this outcome are discussed in this chapter. The methods include:

- (1) issuing a summons
- (2) issuing a written notice to appear
- (3) serving an indictment on the accused
- (4) arresting the suspect
- (5) warning the suspect or accused to appear in court



Compare the examples of documents in the beginning of the guide.

2 WHICH METHOD?

Note that the presumption of innocence (explained in ch 1) means that the suspect is

presumed to be innocent until he is found guilty in a court. This implies that it must be assumed that the person suspected of committing the crime is innocent. It stands to reason that the method entailing the least drastic encroachment on individual freedom must be used to ensure the presence of the accused at the trial. For example, where it would be sufficient to serve a summons on the accused in which he is told to appear at a particular place in court, the accused should not be taken into custody.

Various factors must be considered in deciding which method to use, for example what the chances are that the person will obey the summons, whether there is any reason to believe that the accused will interfere with state witnesses if not held in custody, and so on.

3 INDICTMENT, SUMMONS, WRITTEN NOTICE TO APPEAR

Usually no problems are experienced with this section of the handbook and it therefore requires no further discussion or explanation, except to say that an indictment is the only means whereby the accused can appear in the High Court without being arrested. In most cases the accused appears in the High Court as a result of his arrest. Like the summons used in lower courts, therefore, the indictment serves as a document to inform the accused of the charge (in other words, it is synonymous with the "charge sheet" used in the lower court), and to ensure the appearance of the accused in court. You will find out more about the indictment in CMP301–A.

4 ARREST

You will notice that the discussion of arrest as a method of ensuring that a person turns up at his trial also deals with the possibility of arrest with a view to interrogation of the suspect and completion of the investigation. Strictly speaking, arrest should be discussed separately with this last object in view. However, since the same rules apply to the method of carrying out the arrest, the authority to resort to forcible means to carry out the arrest, the procedure to follow after the arrest, and so on, it would be a duplication of effort to discuss arrest for interrogation or further investigation separately.

Although extradition is likewise not essentially a method to ensure the presence of the accused at the trial, it is covered in this chapter because it is a means to ensure that the accused is handed over to the authorities of another state so as to enable them to bring him before the court of that state. In order to extradite a person, he has to be arrested, which is why section 40(1)(k) of the Act provides that a police officer may arrest a person without a warrant on the reasonable charge or credible information that the person was involved in an act that was committed outside the Republic and is recognised as an offence in South Africa. It is therefore suitable to discuss extradition in conjunction with arrest although the extradition process is *sui generis* and is regulated by a specific statute.

Section 49 has been amended and put into effect on the 18th of July 2003. It reads as follows:

49(1) For the purposes of this section:

- (a) 'arrestor' means any person authorised under this Act to arrest or assist in arresting a suspect; and
- (b) 'suspect' means any person in respect of whom an arrestor has or had

a reasonable suspicion that such person is committing or has committed an offence.

- (2) If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing: Provided that the arrestor is justified in terms of this section in using deadly force that is intended or is likely to cause death or grievous bodily harm to a suspect, only if he or she believes on reasonable grounds:
- (a) that the force is immediately necessary for the purposes of protecting the arrestor, any person lawfully assisting the arrestor or any other person from imminent or future death or grievous bodily harm;
 - (b) that there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed; or
 - (c) that the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening violence or a strong likelihood that it will cause grievous bodily harm.

You must study the discussion in par 5.8.1 in the handbook.



FEEDBACK ON ACTIVITY

- (2)(i) In this section you first had to discuss the position regarding an arrest by a police officer without a warrant. Secondly, you had to select the relevant provision of section 40 to determine whether X had sufficient grounds to arrest Y. What alleged offence had Y committed? It was reasonable for X to suspect that Y had perpetrated a theft or was in possession of suspected stolen property. If X had carried out the arrest according to section 39 of the Act (state the four "pillars" of a lawful arrest), then X had acted lawfully. X was also justified according to section 41 to ask Y for his particulars and to arrest him immediately for refusing to disclose the requested information. Did Y commit an offence by refusing to give his particulars? If Y knew that the person who wished to arrest him was a police officer, regardless of how X was dressed, his refusal to provide his particulars would constitute an unlawful act. It would depend on the fact of whether he was or could have been aware of the identity of the arresting officer.
- (ii) In answering this question you must indicate that the burden of proof is on X to show that all the requirements for a successful invocation of section 49 have been met. Then you must mention each specific requirement and state whether it has been fulfilled.

In respect of the justification for killing Z and wounding Y you must also consider the following aspects:

- (1) What are the nature and the seriousness of the offences committed or suspected to have been committed by the suspects? When lethal force or potentially lethal force is used, the court in *Walters* (see the handbook par 5.8.2) found that the offences committed by the suspect(s) had to have

involved the infliction or threatened infliction of serious bodily harm. (In the question under discussion, the offence was one of theft which did not involve any infliction or threatened infliction of serious bodily harm.)

- (2) What were the circumstances under which X used his firearm? Were they such that it was reasonable and necessary for X to use such force in order to carry out the arrest?
- (3) Was there any immediate threat of violence or of the infliction of death or serious bodily harm against X in the given circumstances?
- (4) Was there any other reasonable means of carrying out the arrest, then or later, other than killing Z or seriously wounding Y? (See paragraph 5.8.2 in the handbook.)

In this particular case, X cannot successfully invoke the protection offered by section 49(2) to justify the killing of Z. He was unaware of the presence of Z and consequently cannot prove that he had made an effort to arrest him (see requirement (4) and (6)) in the handbook) or that he had had the intention of arresting him (see requirements (3), (4) and (5) of para 5.8.2.

(Note that X retains his other defences under criminal law, such as a lack of unlawfulness (eg justifying the unlawful act on the grounds of necessity or private defence excludes the unlawfulness of the action) according to the principles of criminal law. It is interesting to note here that a review of the principles of criminal law will reveal that X cannot be convicted on a charge of murder because he did not foresee the possibility that another person besides Y could be present in the vehicle. It is open to debate, however, whether X would not be found guilty of culpable homicide where Z is concerned.)



SELF-EVALUATION

- (1) Discuss the concepts of a summons, a written notice to appear, an indictment, and a warning to appear in court as methods of ensuring the presence of an accused at his trial. (Between four and six marks are awarded for a discussion of each method.)
- (2) Discuss the requirements for lawful arrest, warrants of arrest and the execution of arrest, the effect of arrest, the duty to arrest, and escape from lawful custody. (Between four and six marks are awarded for a discussion of each subject.)



FEEDBACK ON SELF-EVALUATION

- (1)-(2) The relevant discussion appears in the handbook under headings that correspond with the subjects of the questions. Remember to refer to court decisions!

STUDY UNIT 8

CHAPTER 8 OF THE HANDBOOK

INTERROGATION, INTERCEPTION AND ESTABLISHING THE BODILY FEATURES OF A PERSON

CONTENTS

- Learning outcomes
- Activity
- Methods of gaining information
- 1 Interrogation
 - 1.1 The police
 - 1.1.1 Interrogating witnesses
 - 1.1.2 Interrogating a suspect/accused
 - 1.2 The prosecuting authority
- 2 Interception of private communications
- 3 Determining bodily characteristics, identification parades
- Self-evaluation
- Feedback on self-evaluation



LEARNING OUTCOMES

After working through this study unit you should know the powers granted by law to

- enter premises in order to interrogate persons
- obtain the names and addresses of persons
- compel persons who are suspected of being able to provide material evidence concerning the commission of a crime to disclose the relevant information if they refuse to do so
- intercept communications between private persons
- determine the bodily characteristics of persons



ACTIVITY

- Study chapter 8 of the handbook.

This chapter looks at the specific methods available to the police to gain information about the commission or alleged commission of a crime.

METHODS OF GAINING INFORMATION

1 INTERROGATION

In the investigation of crime, the police are largely dependent on information supplied by members of the public. To gain such information, the police normally question persons if they have sound reasons to suspect that the persons concerned are in possession of information about the commission of a crime. Examples include persons who observed the commission of the crime, have gained information about the commission of the crime by other means, or were personally involved in the commission of the crime.

People are not always willing to divulge information to the police, especially if they have been involved in the commission of a crime. Moreover, it sometimes happens that persons to whom it is important that the police fail to identify the person who committed the crime or to secure evidence that can lead to proving the person's guilt in court, take steps to prevent the police from questioning people who could supply them with valuable information in this regard.

1.1 THE POLICE

1.1.1 Interrogation of witnesses

To assist the police in their task of investigating crime, and to protect them against actions that may arise if cooperation is not given willingly, the police have been invested with legal powers to enter premises — if necessary by forcible means — to take statements from persons. Naturally the police are indemnified against actions only if they have acted within their powers. These powers are discussed in paragraph 1.1 in the handbook.

1.1.2 Interrogation of a suspect/accused

These powers are discussed in paragraphs 1.1 and 1.3 in the handbook. Note that the suspect has a constitutional right to remain silent and cannot be forced to incriminate herself. (See chapter 1 par 3.5 *supra*.)

1.2 THE PROSECUTING AUTHORITY

Special powers are delegated to the prosecuting authority to enable it to summon people to appear before a judge, magistrate or regional magistrate in order to answer questions about the commission of a crime. Such a summons can be used in terms of section 205 to bring a person before a court. The person can obviously decide to cooperate with the state voluntarily, and if she answers questions to the satisfaction of the prosecutor or the DPP, she no longer has to appear before the court. Special powers are also delegated to the prosecuting authority by virtue of section 185, whereby a witness can be placed in custody if, in the opinion of the DPP, she would probably testify on behalf of the state but is scared because her life is in danger or is likely to flee without giving evidence. In such cases interrogation or further interrogation of the witness takes place in the prison or in a place of safety.

Note that some investigative directorates in the office of the National Director of Public Prosecutions have special interrogation powers under the law. (See the National Prosecuting Authority Act 32 of 1998.)

2 INTERCEPTION OF PRIVATE COMMUNICATIONS

Legislation makes provision for third parties to intercept private communications between persons by post or telephone where serious offences are concerned. A mandate from a judge is required. In *Kidson* 1999 (1) SACR 338 (WLD), Cameron R warns of the need to guard against an "inappropriately extravagant notion of privacy" that takes the form of protecting the right to privacy in cases that do not deserve such protection. For example, the right to privacy is not violated if the private conversations of persons between whom there is no particular tie of confidentiality are intercepted by means of a tape recorder, for instance the telephone conversations of an accused with an accomplice or suspect. However, the court recognises a privacy interest in conversations between marriage partners, life partners, pastoral confidants or persons in contractual relations.

3 DETERMINING BODILY CHARACTERISTICS, IDENTIFICATION PARADES

Finally, powers have been delegated to the police to ascertain certain bodily characteristics of persons who are under reasonable suspicion of being involved in the commission of certain crimes. These powers are exercised by such measures as obtaining blood samples and finger-, foot- and palmprints.



SELF-EVALUATION

- (1) X, a police officer, is on duty. He receives a telephone call from a lady at a private dwelling who complains that a friend who is sharing her home is damaging her property. X drives to the address given by the lady. When he knocks on the front door of the house he hears somebody crying inside. A man's voice asks who is at the door. X explains who he is, that he has received the complaint in question and that he wishes to enter the dwelling to speak to the lady. He also requests permission to enter for his stated purpose. Without offering any explanation for his behaviour the man in the house refuses entry to X and orders him to leave the premises at once. What can X do? Discuss. (6 marks)
- (2) X, a police officer, is on duty. He drives to a certain address in response to a radio message. On his arrival he notices a body lying on the sidewalk. By this time a number of people have begun to gather at the scene. As X examines the corpse, he overhears a bystander (Y) telling another person that, shortly after hearing a scream coming from the direction of the scene, he (Y) had seen someone running from the scene. X asks Y if he is prepared to give a statement relating the facts as communicated to the other bystander. Y refuses, saying that he has no time to "waste" in court. What can X do? Discuss fully. (8 marks)



FEEDBACK ON SELF-EVALUATION

- (1) In your answer to this question you have to discuss the entering of premises to question persons and the use of force to achieve that purpose. X can obviously enter the house and use reasonable force to accomplish his purpose. Remember to refer in your answer to the facts mentioned in the question which provide X with reasonable grounds to believe that there is a lady on the premises and that she is in possession of information about the alleged damage to property. See par 1.1.1 of the handbook and sections 26-27 of the Criminal Procedure Act.
- (2) Obtaining the name and address of a person in accordance with section 41 and the issue of a summons in virtue of section 205 apply here. Remember to explain whether, and how, (if relevant), it can be said that X has reason to believe that Y would be able to give material evidence concerning the commission of a crime.

STUDY UNIT 9

CHAPTER 9 OF HANDBOOK

SEARCH AND SEIZURE

CONTENTS

Learning outcomes

Activity

- 1 Introduction
- 2 Search and seizure with a warrant
- 3 Search and seizure without a warrant
- 4 The purpose of search warrants and the discovery of objects during a search
Self-evaluation
- 5 Disposal and forfeiture of seized articles
Feedback on self-evaluation



LEARNING OUTCOMES

After working through this study unit you should be able to

- indicate what the authority of police officers and the occupants of premises is as regards search and seizure
- judge whether a given set of facts regarding searching and/or seizure constitute lawful conduct
- know how to dispose of seized articles



ACTIVITY

- Study chapter 9 of the handbook.

1 INTRODUCTION

A person's right to property and right to privacy are threatened by searches and seizures that take place without his consent. Consequently the law prescribes strict rules that have to be observed in this regard. Each power delegated to a person to carry out a search or to seize an article is an exception to the rule that nobody may make inroads on an individual's right to privacy or property without the person's consent. A search that is carried out without a person's consent and without a warrant in circumstances where the person who conducts the search does not have the

statutory authority to do so would therefore be unlawful and could lead to the institution of a civil claim for damages against him and might even imply that he is guilty of an offence. Most rules concerning search and seizure are contained in the Criminal Procedure Act, although various other laws confer certain powers on specific persons to carry out searches and seizures. For the purposes of this course we confine ourselves to the provisions contained in the Act.

The purpose of this chapter is to inform you about the circumstances under which search and seizure can occur so that you can determine whether in certain cases a search or the seizure of objects can be carried out forcibly, whether an actual search was conducted lawfully and with due regard to the constitutional guarantees of the right to personal privacy, freedom and safety, as well as the right to bodily and physical integrity, and whether it was legal to seize the objects concerned.

Note that some of the subjects discussed in this chapter are, and will always be, generally applicable to searches and the seizure of objects. They include:

- the rules relating to the **kind of objects** that can be seized
- the requirement of **propriety** where searching is concerned
- the **disposal** of seized objects

2 SEARCH AND SEIZURE WITH A WARRANT

The general rule is that a search should only be conducted on the strength of a search warrant. In addition, although justices of the peace (including police officers from the rank of captain upwards, but not constables, sergeants or inspectors) are competent to authorise search warrants, it is preferable that such officers only grant authorisation in the absence of a presiding officer, and under circumstances where the search and seizure have to be done quickly. Note that search warrants must clearly describe the objects to be seized.

3 SEARCH AND SEIZURE WITHOUT A WARRANT

Searching without a warrant may only take place in narrowly circumscribed circumstances with the person's consent or where the police officer reasonably concludes that a search warrant will be issued on request, **and** that the purpose of the search would be defeated if a warrant had to be issued beforehand.

4 THE PURPOSE OF SEARCH WARRANTS AND THE DISCOVERY OF OBJECTS DURING A SEARCH

The purpose of search warrants is explained as follows in *Mkhize* 1999 (2) SACR 632 (WLD). (In this appeal case the matter at issue was whether a pistol found in the locker of the accused after the police had forcibly opened the locker without a warrant should be excluded as evidence that was obtained unlawfully):

“It seems to me that the provisions of the Act [the reference is to sections 22 and 21 of the Criminal Procedure Act] relating to the obtaining of search warrants are there not for the purposes of ensuring the fairness of a trial of an accused person but to protect the ordinary law-abiding citizens of our land from an abuse of the formidable powers which the police necessarily have.”

With reference to the discovery of evidence found in good faith and failure to comply with legal requirements, the judge remarks:

“Even if steps had been taken properly to obtain a search warrant, nothing the appellant could lawfully have done would have prevented the discovery of the pistol. The ‘no difference’ principle then becomes relevant. ... It would, in my view, make a mockery of our law of criminal procedure to hold that evidence stumbled upon in the search for evidence in another case would, for this reason, be held to be inadmissible against the present appellant.”

5 DISPOSAL AND FORFEITURE OF SEIZED ARTICLES

What happens to seized articles? Study paragraph 9 of the handbook.



SELF-EVALUATION

X, a police officer, is on duty. He notices two persons standing on a street corner and glancing nervously about them all the time. X notices one of the persons passing an amount of money to the other. The other person counts the money, takes out a small package from his pocket and hands it to the first person. The latter opens the package, places the contents on a piece of glass, sniffs it and nods to the other person. X walks over to them. On seeing him they start running away with X in pursuit. They run into a block of flats, enter a specific flat, close the door and lock it. What can X do? Discuss in detail. (10 marks)



FEEDBACK ON SELF-EVALUATION

When you answer this question you must discuss the subjects covered under the following headings in your handbook: paragraph 2 (objects that can be confiscated); paragraph 3 (search warrants — to a limited extent); paragraphs 4.2; 4.4-5; 5; 6 and 7. In this case it can be said that X had reason to believe that he had observed an unlawful transaction in drugs, that he was therefore justified to resort to what is known as the no-knock clause and to search the flat and the persons who entered it for the package and the money. **Remember to refer to decided cases in your answer**, and also to indicate that the requirement of propriety must be met. You should also indicate why X did not first have to apply for a warrant in this case.

STUDY UNIT 10

CHAPTER 10 OF THE HANDBOOK

BAIL AND OTHER FORMS OF RELEASE

CONTENTS

- Learning outcomes
- Activity (1)
- 1 Why grant bail?
 - 1.1 Introduction
 - 1.2 Constitutionality of or ratio for the existence of bail
 - 1.3 When is bail not in the interest of justice?
- Activity (2)
- 1.4 Are there other methods of release besides bail?
- 1.5 What is the practical meaning of bail?
- 2 Who grants bail?
 - 2.1 The police
 - 2.2 The Director of Public Prosecutions
 - 2.3 A court of law
- 3 Bail on account of prison conditions
- Activity (3)
- Feedback on activity (3)

LEARNING OUTCOMES



After you have worked through this study unit you should be able to

- explain the necessity and constitutionality of bail
- identify the three different role players in granting bail and name the powers of each
- describe the risks and factors relating to bail
- name the different statutory considerations that serve as judicial guidelines to determine when it would be in the interest of justice to release a person on bail
- explain that bail may be subject to discretionary special bail conditions, distinguish them from normal essential conditions, and know what each of these categories of conditions entails
- explain that bail can be revoked and declared forfeit for failure to comply with bail conditions and to name these conditions
- describe the conditions under which bail can be amended in terms of S63A of the Act.



ACTIVITY (1)

- Study chapter 10 of the handbook.

1 WHY GRANT BAIL?

1.1 INTRODUCTION

After a person suspected of committing a crime has been arrested, it could take a long time before the trial commences. There are various reasons for the delay, for example, that the police investigation into the crime is not complete when the arrest is made. In addition, the trial itself may extend over several months, particularly where a large number of witnesses have to testify. If the suspect must remain in custody until the trial is concluded, her incarceration may extend over a long period.

1.2 CONSTITUTIONALITY OF OR RATIO FOR THE EXISTENCE OF BAIL

Release from custody by means of bail or some other method (eg on the person's own recognisance) is guaranteed in the Constitution (S 35(1)(f)) as a right, but it is subject to the qualification that a prisoner may only be released if it is in the interest of justice to do so. In considering the rights of the accused (ie the right to freedom and the right to be deemed innocent until the contrary has been proved) and the interests of the public ensuring that criminals do not walk freely about the streets after they have been apprehended, bail is the solution, compromise or method whereby the rights of the accused are curtailed as little as possible. Bail serves both the public interest, in the sense that the capacity of crowded prisons is not placed under further strain and that households are not unnecessarily deprived of breadwinners, and the interests of the accused, namely the right to freedom. Because bail is a compromise between two competing interests, it may never assume the character of punishment in law, nor may it be used as a mechanism of negotiation between the state and the accused.

In order to assess whether a person should be released on bail or not, the presiding officer or the police (under circumscribed conditions) may determine whether the granting of bail is in the interest of justice. The consideration of what is in the interest of justice in dealing with a bail application is the catalyst by means of which the obvious tension between the constitutional rights of the accused to be **presumed innocent** until found guilty on the one hand, and **detention** on the other hand, is relieved. Whereas it is not in the interest of justice to detain a person who will definitely stand trial, it is as little in the interest of justice to release an accused who will probably not stand trial.

1.3 WHEN IS BAIL NOT IN THE INTEREST OF JUSTICE?

In some cases a person cannot be released from custody because she simply cannot be trusted to appear in court on a particular date and in a particular place, or not to interfere in any way with witnesses or with the investigation of the alleged crime.

The legislator has tried to encode all the judgements passed by courts over a long

period on what is not in the interest of justice — or as the Constitutional Court put it in *Dlamini* — to provide a check list by establishing five main factors whereby it is justifiable to refuse bail if the grounds indicated in section 60(4)(a)–(e) have been established. These factors, which the court must consider, are discussed in paragraph 5.2 of the handbook and are not repeated here. You will notice that the specific considerations are grouped with each of the factors according to the nature of the relevant factor. In considering the factor “whether the accused will evade his/her trial”, for example, the court must consider matters that are logical and specifically related to that factor. A person will probably not evade trial if she has sufficient assets or strong social ties within the country; but there is a greater incentive for the accused to evade trial if the case against her is serious and could carry a heavy penalty.



ACTIVITY (2)

- Draw up a list of the main factors (stated in par 5.2 of the handbook) used as criteria to determine what is in the interest of justice when bail is refused, and also write down what considerations a court may take into account for each of these factors.

1.4 ARE THERE OTHER METHODS OF RELEASE BESIDES BAIL?

Detention must not be seen as the only method of getting an accused/suspect before a court. Quite often it will be sufficient to release a suspect and merely warn her to appear in court, trusting that she will not hamper the investigation. Consequently the suspect/accused can be released on her own recognisance with a warning to appear in court on a certain day. Release on warning can be cancelled, however, if it is not in the interest of justice. A person awaiting trial in prison may in certain limited circumstances and depending on the offence he or she is charged with (Schedule 6 offences are excluded), be released on warning on account of prison conditions (e.g. overcrowdings) — section 63A. Note that there are also specific alternative methods besides bail that can be used for youthful offenders, such as placing the youth in a place of safety, in the care of a correctional or a probation officer pending the appearance in court of the youthful accused, or until other measures can be taken to deal with her. See paragraph 10 in the handbook.

1.5 WHAT IS THE PRACTICAL MEANING OF BAIL?

When bail is granted, the suspect is not released without further ado, but is compelled to deposit a predetermined amount of money as security and as a guarantee that she will not abscond (jump bail). In addition, conditions can be attached to the release, for example, to report to a police station at regular intervals, not to contact any witnesses for the state, and so on. If the suspect fails to comply with the conditions, she can be arrested immediately and the bail money declared forfeit to the state.

2 WHO GRANTS BAIL?

2.1 THE POLICE

The function of setting bail is judicial and should only be performed by a competent

court. There are exceptions, however, where the police or the prosecutor may grant bail. Certain police officials, in consultation with the investigating officers, have the legal capacity to grant bail in certain circumstances and in narrowly circumscribed cases before the first court appearance of the accused. This is known in common parlance as “police bail”. Note that police bail can only be granted in the case of minor offences and strictly cash payments. No guarantees may be accepted, and no discretionary conditions may be attached to the granting of police bail. Police bail may be amended by the court, but it normally extends to the first court appearance of the accused.

2.2 THE DIRECTOR OF PUBLIC PROSECUTIONS

“Prosecution bail” may be granted only in the case of Schedule 7 offences, which exclude grave offences such as murder and rape, but include serious offences such as public violence, robbery housebreaking, culpable homicide, assault with the intention to commit serious bodily injury, and fraud or forgery where the amount involved is lower than R20 000. The powers of the DPP or the authorised prosecutor, as well as the limitations, differ to some extent from those for police bail in the sense that guarantees and cash amounts are acceptable as means of payment; that bail conditions may be made by the DPP; and that the prosecution bail extends up to and including the first court appearance of the suspect/accused. At this appearance the court reconsiders the bail granted by the DPP, which implies that bail can be extended on the same or amended conditions, or the court can consider the court application in accordance with the powers vested in the court by virtue of section 60. Note that in both “police bail” and “prosecution bail” the relevant officials must consult with the police officials (investigating officer) charged with the investigation

2.3 A COURT OF LAW

When the powers of the court as regards granting bail are considered, general questions have to be answered first:

- (1) What forum has jurisdiction or legal competence to hear a bail application?
 - (a) Any court where the accused appears in court for the first time before her trial has jurisdiction (ie any lower court, or a High Court if the accused appears before a High Court for the first time in exceptional cases, or if the accused in detention stands trial before a High Court and applies for bail to that court).
 - (b) If the accused is charged with a Schedule 6 offence, the bail application must be heard by a district court. The DPP or designated prosecutor may order, in writing, that in the interest of justice, the bail application is heard by a regional court.
 - (c) Since a High Court has inherent jurisdiction to grant bail, it can hear an application for bail pending an appeal to the Supreme Court of Appeal.
- (2) Can bail applications be heard outside normal court hours?

According to the provisions of section 50(6)(i)(b), bail may not be heard after hours, but there is nothing to prevent a High Court from hearing a bail application outside normal court hours by virtue of its inherent extraordinary powers.
- (3) Who has *locus standi* to appeal against a bail decision?

The answer is clear in sections 65 and 65A of the Act (pars 4.3, 4.4 and 4.5 of the handbook).

(4) What is the role of the court in a bail application?

See paragraph 9.1 of the handbook. In *Mauk* 1999 (2) SACR 479 (W), the court addresses the role of the prosecutor and concludes that the court will not allow the state to assume a passive role in bail applications in the hope that the accused would be unable to comply with the burden of proof or disproof concerned in the case. The state must give the accused a reasonable chance to deal with the matter, for example by granting access to the police dossier. However, note the provisions of section 60(14) (par 9.6 of the handbook) which provide the opposite.

3 BAIL ON ACCOUNT OF PRISON CONDITIONS

In terms of section 63A of the Act, the head of a prison may, in the case of a prisoner awaiting trial who has been granted bail but cannot afford to pay bail, apply to a lower court for either the release on warning of such a prisoner, or the reduction of the set amount of bail. To qualify for such an application, bail must have been granted to the accused by a lower court. Before lodging such an application, the head of prison must be satisfied that the prison where the accused is incarcerated is overcrowded to such an extent that it constitutes a material threat to the human dignity, physical health or safety of the accused. By the insertion of this section, the legislator acknowledges the problem of overpopulation in our prisons which is mainly caused by prisoners awaiting trial.



ACTIVITY (3)

X is arrested on a charge of high treason and is held in custody in the police cells for questioning. X addresses a request to be released on bail to the sergeant who is in charge of the cells. Discuss the legal principles involved.



FEEDBACK ON ACTIVITY (3)

In your answer you must consider the following questions, legal principles and rules: Can the police grant bail to X? Can the DPP grant bail? Surely not, because the crime of high treason is serious and is explicitly excluded by section 59, read together with Part II or III of Schedule 2. Schedule 7 does not include this particular offence either. Does a suspect/accused have the right to apply for bail, and if so, at what stage can such a person apply to be released from detention? Section 35(1)(f) of the Constitution grants this right to everybody, subject to compliance with certain provisions. Section 60(1)(a) provides that, subject to the provisions of section 50(6) and (7), an accused in detention is entitled to be released on bail at any stage before she is convicted for the offence in question, unless the court finds that it is in the interest of justice that she be kept in detention. Can the DPP prevent the granting of bail to the suspect/accused in the context of the relevant set of facts? No. The DPP can only lodge an appeal to a higher court (section 65A(1)(a)) against the decision of a lower court to release an accused on bail or against the imposition of a bail condition. An appeal against a higher court's decision to grant bail can also be lodged with the Supreme Court of Appeal — section 65A(2)(a).

STUDY UNIT 11

CHAPTER 11 OF THE HANDBOOK

PRETRIAL INVESTIGATIONS

CONTENTS

- Learning outcomes
- Activity
- 1 Summary trials
- 2 Pretrial investigations
 - 2.1 Introduction
 - 2.2 The nature of pretrial investigations
 - 2.3 The purpose of pretrial investigations
- 3 The difference between preparatory examinations, summary trials and other pretrial investigations
 - 3.1 Pretrial investigations, summary trials
 - 3.2 Preparatory examinations and abridged/minipreparatory examinations
- Feedback on activity
- Self-evaluation
- Feedback on self-evaluation



LEARNING OUTCOMES

After working through this study unit you should be able to

- indicate the difference between a summary trial and a pretrial investigation
- explain the purpose of pretrial investigations
- write notes about the types of pretrial investigations, the circumstances in which each of them will be the appropriate investigation, and the procedure that will be followed with each of them



ACTIVITY

- (1) Study chapter 11 of the handbook.
- (2) Explain the following procedures:
 - (a) pleading in a magistrate's court on charges that are justiciable in the regional court according to section 122A
 - (b) pleading in a magistrate's court on charges that are justiciable in a High Court according to section 119
 - (c) a preliminary investigation according to section 123

1 SUMMARY TRIALS

The preceding chapters dealt with powers relating to crime, the methods that can be used to investigate crime, the methods of ensuring the presence of the accused at the trial, and the granting of bail. If the case is heard in the district court, then, besides the final formulation of the charges against the accused and, perhaps, several postponements of the trial, the accused can be tried summarily in the district court with legal jurisdiction without following other pretrial procedures. If the accused has to be tried in the regional court as the competent court for the case, the prosecutor in the district court where the accused appeared for the first time can refer the case against the accused to the regional court for summary trial. No further proceedings before the commencement of the trial will take place in the district court. However, as far as High Court trials are concerned, the district court plays a distinctive role in the pretrial proceedings.

Note that the DPP is authorised by the Criminal Procedure Act to appoint any judicial court as the forum for summary trial, and a court cannot interfere with this decision. The DPP must obviously take account of the substantive and territorial jurisdiction of a court in the decision lest a situation should arise where the court has no jurisdiction with reference to the offence charged, or no relevant penal jurisdiction over the case concerned.

2 PRETRIAL INVESTIGATIONS

2.1 INTRODUCTION

The Criminal Procedure Act provides that, if the accused has to stand trial in a regional or a high court, a pretrial investigation can be held in a district court before the case goes to trial in the regional or high court.

2.2 THE NATURE OF PRETRIAL INVESTIGATIONS

A pretrial investigation comprises criminal proceedings, but not a trial, and takes place in a magistrate's court before the commencement of the trial. No verdict of guilty or not guilty follows these investigations, and no appeal based on double jeopardy can succeed as a result of such an investigation. A pretrial investigation takes place on the initiative of the state in accordance with chapters 19, 19A and 20 of the Criminal Procedure Act. The pretrial investigations authorised by the Criminal Procedure Act are the following:

- (1) pleading in the magistrate's court on a charge that is justiciable in the regional court
- (2) pleading in a magistrate's court on a charge that is justiciable in a High Court
- (3) preparatory examinations
- (4) converting a trial, but only up to the stage before the verdict in a lower court in a preparatory examination

2.3 THE PURPOSE OF PRETRIAL INVESTIGATIONS

The rules in terms of which an accused can be required to plead in a magistrate's court on charges that are justiciable in the regional court or a High Court are calculated to reduce the burden on the regional or high court since the cooperation of the accused during such proceedings may prevent a protracted trial in the regional or high court. The rationale is that it provides the DPP with the opportunity to establish what the defence of the accused is, so that a trial is not instituted unnecessarily if it should transpire that the defence is valid. On the other hand, it is a useful method whereby the state can obtain refuting evidence in good time so that, when the trial takes place, it can be concluded without postponing the proceedings unnecessarily.

The pretrial investigation procedures mentioned in (1) and (2) above make provision for an accused to plead in a magistrate's court on a charge or charges that can be heard in the magistrate's court, but of which the gravity or extent is such, in the opinion of the DPP, that it justifies punishment that exceeds the jurisdiction of a magistrate's court.

The purpose of a preparatory examination is to enable the DPP to assess the case for the state, and to decide in which court the accused should be charged, and with what offence.

3 THE DIFFERENCE BETWEEN PREPARATORY EXAMINATIONS, SUMMARY TRIALS AND OTHER PRETRIAL INVESTIGATIONS

3.1 PREPARATORY EXAMINATIONS, SUMMARY TRIALS

Preparatory examinations also take place in the magistrate's court, but the procedures differ from those of a summary trial in the sense that:

- (1) the charge sheet is read to the accused at the end of the state's evidence
- (2) the accused is only asked to plead at that stage (at the conclusion of the state's case, ie after all the state's witnesses have testified)
- (3) after the accused has pleaded, and depending on whether he pleads guilty or not guilty, the magistrate questions him in terms of sections 112 or 115 about the allegations made against him in order to
 - (a) determine in the case of a plea of guilty whether the accused acknowledges all the allegations against him, or not (S 112)
 - (b) determine what the defence of the accused is in the case of a plea of not guilty, and to clear up uncertainties (S 115)
- (4) the court does not deliver a verdict with respect to the guilt or innocence of the accused

Instead of reaching a decision, the court proceedings are stopped at this point and the record of the proceedings is sent to the DPP who may then decide to adopt one of the following measures:

- (1) convert the preparatory examinations into a trial so that the magistrate can adjudicate the case as if it were a summary trial
- (2) bring the accused before the regional or the High Court for sentencing, in which case the court can find the accused guilty and sentence him on the grounds of the evidence led during the preparatory examinations
- (3) bring the accused before a regional or High Court to stand trial there

3.2 PREPARATORY EXAMINATIONS AND ABRIDGED/ MINIPREPARATORY EXAMINATIONS

Preparatory examinations differ from minipreparatory investigations in that the object of the latter procedures is to obtain the plea of the accused as soon as possible in order to discover the defence of the accused while the latter is unaware of what evidence the state has against him. The purpose of the preparatory examination is to enable the DPP to decide whether the evidence against the accused is sufficient and reliable (witnesses are only led in preparatory examinations and are subjected to cross-examinations). Note that the legislator forbids the state to institute new proceedings on conclusion of the preparatory examinations in cases where the court has informed the accused that the DPP refuses to prosecute the accused on the strength of the preparatory investigation. The accused can thereafter plead *autrefois acquit* if he is charged on the same facts. This impediment does not apply in cases where abridged preliminary investigations or other pretrial investigations have been held.



FEEDBACK ON ACTIVITY

These subjects are discussed in this chapter and need not be repeated here. As regards (a) and (b), you must refer in your answers to the cases where these forms of procedure are followed because the crimes concerned are so serious that they deserve the imposition of a penalty that exceeds the jurisdiction of a magistrate's court. As regards (c), you must refer to the circumstances in which a preliminary investigation can be instituted, the procedure followed in pursuing such an investigation, and the powers of the DPP at its conclusion.



SELF-EVALUATION

X is charged with assault in the magistrate's court. In the course of his cross-questioning, X admits that he had the intention of killing the victim of the assault, and would in fact have done so had a witness for the state not appeared on the scene. The prosecutor realises that he should have charged X with attempted murder. How can he correct the error procedurally? Explain the procedures.



FEEDBACK ON SELF-EVALUATION

When you answer this question, you must cover the aspects referred to in (e) below, and you can include (a) to (d). This question is also a good indication of how closely interrelated principles in the criminal process are, and that what happens during the pretrial phase has a definite impact on proceedings later in the trial itself. (The references to chapters of the handbook dealt with in CMP301-A are added here for reference purposes, and you are not expected to study them at this stage.):

- (a) The charge cannot be amended to one of attempted murder because that would prejudice the interest of the accused — see chapter 12 (par 4(2)) of the handbook.
- (b) The accused has the right to be found either guilty or not guilty on the charge of assault — see chapter 14 (par 5) of the handbook.
- (c) If he is found guilty of assault, he will be able to enter the plea *autrefois convict* if he were charged with attempted murder on the same facts later — see chapter 14 (par 4.4.2) of the handbook.
- (d) The prosecutor can continue with the trial and argue that the intention of the accused should be taken into account as an aggravating circumstance when a fitting sentence is considered — see generally chapter 19. Note in this regard that the court may impose the maximum penalty within its jurisdiction for assault, and that even if the accused had been charged in the magistrate's court with attempted murder, that court would in any case have lacked the jurisdiction to impose a heavier penalty.
- (e) The prosecutor can approach the DPP and request that the trial be converted to a preparatory examination under section 123(b). This should be done **before conviction** and not before sentencing (see the *Tieties* case discussed in par 4.2 of this chapter of the handbook). If the DPP decides that the request must be met, the record of proceedings will be forwarded to him and he will be able to recommend that the accused stand trial before a regional or a higher court, both of which have the jurisdiction to impose a heavier penalty than the magistrate's court. In this case the accused will be charged with attempted murder in the court determined by the DPP.