COLLEGE OF LAW
KOLLEGE VIR REGSGELEERDHEID

SCHOOL OF LAW: DEPARTMENT OF JURISPRUDENCE
SKOOL VIR REGSGELEERDHEID: DEPARTEMENT JURISPRUDENSIE

THE ORIGINS OF SOUTH AFRICAN LAW
FLS101-V

DIE OORSPRONG VAN DIE SUID-AFRIKAANSE REG
(FLS101-V)

TUTORIAL LETTER 103/2005
STUDIEBRIEF 103/2005

Dear Student

In this tutorial letter we set short questions which should assist you when you prepare for the examination. Similar questions may be asked in the examination. Try to answer them without making use of your study material. The answers are supplied at the back. Remember that this is not an exhaustive list of questions. Some important topics may not have been covered, but that does not mean that they may be left out.

☺ **Keep in mind:** After some questions further comments are made to explain the answer. These comments may contain new information which could be asked in the examination.

Do not hesitate to contact one of the lecturers should you encounter any difficulties with this module.

Best of luck with your preparation for the examination.

PROF GJ VAN NIEKERK
PROF NMI GOOLAM
MRS L WILDENBOER

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Geagte Student

In hierdie studiebrief het ons kortvrae gestel wat u van hulp sal wees wanneer u vir die eksamen voorberei. Soortgelyke vrae kan in die eksamen gevra word. Die antwoorde word agter in die studiebrief gegee. Probeer om die vrae te beantwoord sonder om van u studiemateriaal gebruik te maak. Hou in gedagte dat hierdie nie ‘n volledige lys vrae is nie. Sommige belangrike aspekte is moontlik nie gedek nie, maar dit beteken nie dat u dié afdelings mag uitlaat nie.

☺ **Let wel:** Daar word somtyds addisionele kommentaar na ‘n vraag gegee. Hierdie kommentaar is ter verdere verduideliking, maar bevat soms nuwe inligting wat in die eksamen gevra kan word.

Sou u enige probleme met hierdie module ondervind, moet u nie huiwer om met een van u dosente in aanraking te kom nie.

Sterkte met die voorbereiding vir die eksamen!

PROF GJ VAN NIEKERK
PROF NMI GOOLAM
MEV L WILDENBOER

SHORT QUESTIONS

STUDY UNIT 1

(1) The _____ is an important source of the Western component of our law.

(2) There is no _____ of South African law which has the force of legislation. In other words South African law is not codified.

(3) There are three major components of our law, namely a _____, _____, and _____ component.

(4) The internal history of the law relates to the origins and development of _____ _____ and _____.

(5) The external history of the law relates to _____, _____, _____, _____ and _____ factors which have contributed directly or indirectly to the development of the _____ _____.

(6) The _____ is currently investigating Islamic _____ with a view to integrating it into the South African legal system.

(7) The history of the Western component of our law starts with the _____ _____.

KORTVRAE

STUDIE-EENHEID 1

(1) Die _____ is 'n belangrike bron van die Westerse komponent van ons reg.

(2) Daar is geen _____ van ons reg wat die krag van wetgewing het nie. Met ander woorde ons reg is nie gekodifiseer nie.

(3) Daar is drie hoofkomponente van ons reg, naamlik 'n _____, _____ en _____ komponent.

(4) Die inwendige geskiedenis van die reg het betrekking op die ontstaan en ontwikkeling van _____ en _____.

(5) Die uitwendige geskiedenis van die reg het betrekking op die _____, _____, _____, _____ en _____ faktore wat direk of indirek bygedra het tot die ontwikkeling van die _____.

(6) Die _____ ondersoek huidig die Islamitiese _____ met die oog daarop om dit by die Suid-Afrikaanse regstelsel te integreer.

(7) Die geskiedenis van die Westerse komponent van ons reg ontstaan by die _____.

(8) The origin of the universal component of our law is traced to the rise of the _____ as developed by Greek and Roman thinkers and by the early Christian church fathers from the 4th century AD onwards.

(9) Although historical investigation usually focuses on the _____ foundations of human rights, _____ Islamic thought also impacted on its development.

(10) The _____ occupy the greatest part of Africa south of the Sahara (Sub-Saharan Africa). They established themselves south of the Limpopo _____ ago. However, this was not the time when their law first developed.

STUDY UNIT 2

(1) Since South African law has been influenced by the _____ tradition and the _____ tradition, as well as the _____ tradition, we may say that our legal system is mixed or hybrid.

(2) _____ refers to the willing adoption of a legal system by a community which already has an existing legal system.

(3) _____ refers to the importation of a legal system into a territory which has no legal system.

(8) Die oorsprong van die universele komponent van ons reg kan teruggevoer word na die ontstaan van die _____ soos ontwikkel deur Griekse en Romeinse denkers en die vroeë Christelike kerkvaders vanaf die 4de eeu nC.

(9) Alhoewel die meeste historiese ondersoeke op die _____ grondslag van menseregte fokus, het _____ denke ook ‘n invloed op die ontwikkeling daarvan gehad.

(10) Die _____ bewoon die grootste gebied van Afrika suid van die Sahara. Hulle het hulle sowat _____ gelede suid van die Limpopo gevestig. Dit was egter nie die stadium toe hulle reg die eerste keer ontwikkel het nie.

STUDIE-EENHEID 2

(1) Aangesien die Suid-Afrikaanse reg beïnvloed is deur die _____ en die _____-tradisie, sowel as die _____ tradisie, praat ons van ons regstelsel as ‘n gemengde of hibriede regstelsel.

(2) _____ verwys na die vrywillige absorpsie of oorname van ‘n regstelsel deur ‘n gemeenskap wat reeds ‘n bestaande regstelsel het.

(3) _____ verwys na die invoer van ‘n regstelsel in ‘n gebied wat nie ‘n regstelsel het nie.

(4) There are four phases of the reception of Roman law in Western Europe. The first, starting in the 5th century AD when a few Roman-law rules were randomly incorporated into the indigenous European customary law, is known as the _____ phase. The second, in the 12th century, was the phase of the _____ _____ of Justinian's Roman law. Thirdly, the 13th and 14th centuries saw an increase in the scientific study of Roman law. This was known as the_____ _____ phase. And, finally, during the 15th and 16th centuries when Roman law was incorporated into the legal systems of some European countries forming part of their common law, we speak of the _____ of Roman law.

(5) Although there is a large variety of indigenous African legal systems, their _____ and _____ cause them to be regarded as a single legal family.

(6) Which British author was one of the leading Western authorities on indigenous African law? _____

(7) As a result of their geographical isolation the Bantu-speakers experienced a tradition without writing, that is a _____ tradition. One may then well ask: is it possible to reconstruct the history of such a people? The answer is _____. How? Through _____. Oral traditions are _____, _____ accounts or narrations of the past. How is oral information preserved? _____ _____ _____ .

(4) Daar is vier fases in die resepsie van die Romeinse reg in Wes-Europa. Die eerste het in die 5de eeu nC begin toe ‘n paar Romeinsregtelike reëls blindweg in die inheemse Europese gewoontereg geïnkorporeer is. Dit staan bekend as die _____- fase. Die tweede, in die 12de eeu, was die tydperk van die _____ _____ van Justinianus se Romeinse reg. Derdens, in die 13de en 14de eeue, was daar 'n toename in die wetenskaplike studie van die Romeinse reg. Dit het bekend gestaan as die _____fase. Laastens, gedurende die 15de en 16de eeue, is die Romeinse reg in die regstelsels van sommige Europese lande geïnkorporeer om deel van hulle gemenereg te vorm. Dit het bekend gestaan as die _____ van die Romeinse reg.

(5) Alhoewel daar baie inheemse Afrikaregstelsels is, het hierdie regstelsels genoeg _____ en _____ om as een enkele regsfamilie beskou te word.

(6) Watter Britse outeur was een van die vooraanstaande en hoogs gerespekteerde Westerse gesaghebbendes op die gebied van die inheemse Afrikareg? _____

(7) Vanweë hul geografiese afsondering het die Bantoetaalsprekendes 'n tradisie sonder skrifstelsel, dit wil sê ‘n _____ tradisie. ‘n Mens mag dan vra: Is dit moontlik om die geskiedenis van sulke gemeenskappe te rekonstrueer? Die antwoord is _____. Hoe? Deur _____. Mondelinge tradisies is _____, _____ weergawes van gebeure wat in die verlede plaasgevind het. Hoe word mondelinge inligting bewaar? _____

(8) The main reason for the neglect of research into African history was the erroneous belief that history should be based only on _____. A further reason was the uncertainty as to what _____ should be used in processing oral records and information. These objections were overcome by adopting an _____ approach and through critical _____ of oral narrations. Therefore, in present times, the reconstruction and verification of information contained in unwritten history occurs through _____, _____, _____ and _____ materials.

(9) In the same way that African history is based on oral traditions, so too African or indigenous law is essentially _____ and thus unwritten. This is so even though indigenous law has, to some extent, been recorded through legislation, codification and Western restatements.

(10) Name any two anthropologists-cum-lawyers who engaged in restatements of pre-colonial indigenous law. _____ _____

(11) The "repugnancy" clause means that indigenous law is only recognised if it is not contrary to Western notions of _____, _____ and _____; in other words, if it is not repugnant to Western thinking.

(12) During the colonial period, the only area of the Cape Colony in which indigenous law was officially applied, was the _____.

(13) The first attempt at the codification of indigenous law in Natal was made in 1878 when the _____ was drafted.

(8) Die hoofrede waarom navorsing oor die geskiedenis in Afrika verwaarloos is, is dat daar verkeerdelik geglo is dat geskiedenis slegs op _____ gegrond kon word. Nog 'n rede was die onsekerheid oor watter _____ gebruik kan word om die mondelinge inligting te verwerk. Hierdie besware is oorkom deur 'n _____ benadering en deur kritiese _____ van mondelinge vertellings. Vandag word inligting wat in ongeskrewe geskiedenis vervat is, dus deur _____, _____, _____en _____ ondersoeke gestaaf.

(9) Op dieselfde manier wat geskiedenis in Afrika op mondelinge tradisies gebaseer is, is inheemse reg, alhoewel dit tot 'n mate deur middel van wetgewing, kodifisering en herformulering deur Westerlinge neergeskryf is, nog steeds wesenlik _____ en dit bly grootliks ongeskrewe van aard.

(10) Noem enige twee antropoloë-cum-regsgeleerdes wat met die herformulering van pre-koloniale inheemse reg gemoeid was. _____ _____

(11) Die "weersinsklousule" (*repugnancy clause*) beteken dat inheemse reg erken word in soverre dit nie in stryd met die Westerse begrip van _____, _____ en _____ is nie; met ander woorde, as dit nie teen Westerse denke indruis nie.

(12) Gedurende die koloniale tyd was die enigste gebied in die Kaapkolonie waar die inheemse reg amptelik toegepas is, die _____.

(13) In 1878 is daar vir die eerste keer probeer om die inheemse reg van Natal te kodifiseer toe die _____ aanvaar is.

(14) In the colonial period, the ultimate goal in the administration of justice was the _____ of indigenous law into colonial law. The indigenous communities did not support the imposed _____.

(15) In 1927, colonial legislation regarding indigenous law was consolidated in the _____. This Act provided for _____ courts for blacks and for the _____ recognition of indigenous law. Section 11(1) of this Act contained the notorious _____ clause.

(16) In terms of the Black Administration Act 38 of 1927, limited civil and criminal jurisdiction was granted to the indigenous courts of _____. This Act also instituted _____ courts as an inexpensive means to resolve disputes between blacks. The latter courts were presided over by officials of the Department of Native Affairs who had a discretion to apply either _____ _____or the _____.

(17) In 1986, the Special Courts for Blacks Abolition Act abolished, amongst others, commissioners' courts. The Act afforded the _____ jurisdiction to apply indigenous law and to take _____ thereof.

(18) As from 1996, section 211(3) of South Africa's new Constitution provides that all courts must apply indigenous law, when it is applicable. However, indigenous law still remains subject to the _____ and any _____ dealing with it. This means that indigenous law will for example have to be carefully examined in the light of the _____ clause.

(14) Gedurende die koloniale tyd was die uiteindelike doel van die regspleging om die inheemse reg in die koloniale reg _____. Die inheemse gemeenskappe het die koloniale reg wat op hulle afgedwing is, _____.

(15) In 1927 is die koloniale wetgewing rakende die inheemse reg uiteindelik in die _____ gekonsolideer. Hierdie Wet het vir _____ howe vir swart mense en die _____ erkenning van inheemse reg voorsiening gemaak. Artikel 11(1) van hierdie Wet het die gewraakte _____ bevat.

(16) Kragtens die Swart Administrasiewet 38 van 1927 is beperkte siviele en strafjurisdiksie aan inheemse howe van _____ verleen. Hierdie Wet het ook _____-howe ingestel as 'n goedkoop manier om siviele geskille tussen swart mense te besleg. Hierdie howe was onder toesig van amptenare van die destydse Departement van Naturellesake wat 'n diskresie gehad het om óf _____ óf die _____ toe te pas.

(17) In 1986 het die Wet op die Afskaffing van Spesiale Howe vir Swartes onder andere die kommissarishowe afgeskaf en aan die _____ jurisdiksie verleen om inheemse reg toe te pas en om daarvan _____.

(18) Sedert 1996 bepaal artikel 211(3) van die Grondwet van Suid-Afrika dat alle howe die inheemse reg, wanneer toepaslik, moet toepas. Die toepassing daarvan is egter nog steeds onderworpe aan die _____ en enige _____ wat betrekking op die inheemse reg het. Dit beteken dat inheemse reg byvoorbeeld deeglik in die lig van die _____klousule ondersoek sal moet word.

(19) Although the Dutch authorities in the Cape proclaimed the idea of _____ _____ in 1804, Islam was not allowed to flourish. Islamic _____has not enjoyed official recognition by the State.

(20) Islamic marriages are today still regarded as contrary to _____ because of their potentially polygynous nature.

(21) *Ryland v Edros* 1997 (2) SA 690 (C) and *Amod v Multilateral Motor Vehicle Accidents Fund* 1999 (4) SA 1319 (SCA) are two important cases in which the Courts have indicated that they are prepared to reconsider the status of _____.

STUDY UNIT 3

(1) The main source of _____ is the *Corpus Iuris Civilis*.

(2) The _____ is a code which describes Roman law as it was during the 6th century AD at the end of its development.

(3) Critical legal thinking about the ideals which inspire the Western legal tradition originated in _____.

(4) Athens was famous for philosophers such as _____, _____ and _____.

(5) The ideal of a scientific and rational legal system originated in the work *The Republic*, written by the Greek philosopher _____.

(19) Alhoewel die Nederlandse owerheid in 1804 _____ in die Kaapkolonie verklaar het, is Islam onderdruk. Islamitiese _____ is dus histories nie amptelik deur die Staat erken nie.

(20) Islamitiese huwelike word vandag steeds beskou as teen die _____ vanweë hul potensieel poliginiese aard.

(21) *Ryland v Edros* 1997 (2) SA 690 (C) en *Amod v Multilateral Motor Vehicle Accidents Fund* 1999 (4) SA 1319 (SCA) is twee belangrike sake waarin die howe aangedui het dat hulle bereid is om die status van _____ te heroorweeg.

STUDIE-EENHEID 3

(1) Die belangrikste bron van _____ is die *Corpus Iuris Civilis*.

(2) Die _____ is 'n kode wat die Romeinse reg beskryf soos dit in die 6de eeu nC teen die einde van die ontwikkeling daarvan was.

(3) Kritiese denke oor die ideale wat die Westerse regstradisie voed, het in _____ ontstaan.

(4) Athene was bekend vir filosowe soos _____, _____ en _____.

(5) Die ideaal van 'n wetenskaplike en rasionele regstelsel het ontstaan in die werk *Die Republiek*, geskryf deur die Griekse filosoof _____.

(6) Much of what we know about the earliest origins of Roman history is based on _____ _____. However, the art of writing became known in Rome as early as the _____ and we are thus able to rely on_____ _____ to trace the development of Roman culture.

(7) Roman legal history may be divided into four phases, namely the era of _____ _____, the _____ period, the _____ period and the _____ period.

(8) During the period of _____, law was characterised by strictness and rigidity.

(9) During the _____ period of Roman law the *ius gentium* was established. This law was characterised by _____, _____ and _____.

(10) During the first two centuries of the _____, the power of Rome was at its height and Roman law experienced its greatest development. These two centuries were known as the _____ period of Roman law.

(11) During the _____ period, Roman law was simplified and administered by officials in the distant parts of the Empire. This led to the emergence of vulgar Roman law.

(12) Towards the end of the _____ period there was a renewed interest in _____ Roman law.

(6) Baie van wat ons van die vroegste oorsprong van die Romeinse geskiedenis weet, is op _____ gebaseer. Die skryfkuns het egter so vroeg as die _____ in Rome bekend geword en ons kan dus op _____ steun om die ontwikkeling van die Romeinse kultuur na te vors.

(7) Die Romeinse regsgeskiedenis kan in vier fases verdeel word, naamlik die tydperk van _____, die _____ tydperk, die _____ tydperk en die _____ tydperk.

(8) Gedurende die tydperk van _____ is die reg gekenmerk deur onbuigsaamheid en formalisme.

(9) Gedurende die _____ tydperk van die Romeinse reg is die *ius gentium* geskep. Hierdie reg is gekenmerk deur _____, _____ en _____.

(10) Gedurende die eerste twee eeue van die _____ het die mag van Rome ‘n hoogtepunt bereik en die reg het sy grootste ontwikkeling beleef. Hierdie twee eeue het bekend gestaan as die _____ tydperk van die Romeinse reg.

(11) Gedurende die _____ periode van die Romeinse reg, was die reg vereenvoudig en toegepas deur amptenare in die afgeleë gebiede van die Ryk. Dit het aanleiding gegee tot die ontstaan van vulgêre Romeinse reg.

(12) Teen die einde van die _____ periode was daar ‘n hernude belangstelling in die _____ Romeinse reg.

(13) During the early period of the kings, Roman law consisted of customary law and there was little distinction between _____ and _____. Similarly, in early _____ times and in traditional _____ there was little distinction between _____ and _____.

(14) Traditional indigenous African and early Roman societies were similar. They were both subsistence communities and the emphasis was on _____. The head of the family represented the family in _____, _____, _____ and _____ affairs.

(15) During the Republican period, the three factors which contributed to the growth of Roman customary law into a system which could fulfil the requirements of the vast Roman Empire were the _____, _____ and _____.

(16) The _____ between the plebeians and the patricians led to the promulgation of the Law of the Twelve Tables.

(17) The Law of the Twelve Tables was important because it led to a division between rules of _____ and rules of _____.

(18) The _____ marks the beginning of legal science or jurisprudence in Western legal history.

(19) The Law of the Twelve Tables contained _____ as well as _____.

(13) Gedurende die vroeë tydperk van die konings, het die Romeinse reg uit gewoontereg bestaan en is daar min onderskeid tussen _____ en _____ getref. Insgelyks in die vroeë _____ tyd en in tradisionele _____ was daar min onderskeid tussen _____ en _____.

(14) Tradisionele inheemse Afrika- en vroeë Romeinse gemeenskappe was eenders. Beide was bestaansgemeenskappe en die klem het op _____ geval.Die hoof van die familie het die familie op _____, _____, _____ en _____ gebiede verteenwoordig.

(15) Drie faktore het gedurende die Republiek daartoe aanleiding gegee dat die Romeinse gewoontereg ontwikkel het tot ‘n stelsel wat voldoen het aan die behoeftes van die uitgebreide Romeinse Ryk. Dit was naamlik die _____, die _____ en die _____.

(16) Die _____ tussen die plebejers en die patrisiërs het aanleiding gegee tot die uitvaardiging van die Twaalf Tafels.

(17) Die Wet van die Twaalf Tafels was belangrik omdat dit gelei het tot die skeiding van _____reëls en _____reëls.

(18) Die _____ merk die begin van die regswetenskap of jurisprudensie in die Westerse regsgeskiedenis.

(19) Die Wet van die Twaalf Tafels het _____ _____ sowel as _____ bevat.

(20) The primary task of the *praetor urbanus* was to _____. He appointed a _____ to settle disputes in terms of _____, provided that both parties to a dispute were _____.

(21) Roman law (the *ius civile)* was applicable in disputes between _____.

(22) The office of *praetor peregrinus* was instituted to regulate disputes between _____ or between _____ and _____.

(23) The *praetor peregrinus* developed new legal rules which were known as the _____. This law differed from the *ius civile* in that it was _____ and _____ and was based on _____.

(24) The *praetor urbanus*, who dealt with cases between Roman citizens, had the power to _____. This enabled him to develop a new law which was based on the _____ but influenced by the equitable principles of the _____.

(25) The new, fairer, less formalistic law, developed by the *praetor urbanus*, was known as the _____.

(26) *The Lex Cornelia de Edictis* forbade the *praetor* to_____ _____. However, he was allowed to _____ if this proved necessary.

(20) Die primêre taak van die *praetor urbanus* was om _____. Hy het 'n _____ aangestel om geskille ingevolge die _____ te besleg, mits die partye tot 'n geskil _____ was.

(21) Die Romeinse reg (die *ius civile*) is toegepas in geskille tussen _____.

(22) Die amp van *praetor peregrinus* is ingestel om geskille tussen _____ onderling, of tussen 'n _____ en 'n _____, te besleg.

(23) Die *praetor peregrinus* het nuwe reëls ontwikkel wat bekend gestaan het as die _____. Hierdie reg het van die *ius civile* verskil omdat dit _____ en _____ was en op _____ gegrond was.

(24) Die *praetor urbanus* wat geskille tussen Romeinse burgers hanteer het, het die bevoegdheid gehad om _____. Dit het hom in staat gestel om nuwe regsreëls te ontwikkel wat gebaseer was op die _____ maar beïnvloed deur die billike beginsels van die _____.

(25) Die nuwe, billiker en minder formalistiese reg, ontwikkel deur die *praetor urbanus,* het as die _____ bekendgestaan.

(26) Die *Lex Cornelia de Edictis* het die *praetor* verbied om _____ _____. Hy kon egter _____ indien dit nodig was.

(27) The jurists started their work in the _____ period and continued it throughout the _____. They did their most fruitful work during the _____.

(28) During the _____, Roman law became more accessible to the people. The _____ were responsible for the publication of Roman law and thus helped in this process.

(29) During the _____ the *praetor* became a pawn in the hands of the emperor. The *praetor* was elected by the _____ and acted only upon his instructions. The _____ were eventually codified in AD 130 by a jurist, Julianus (Latin spelling: Iulianus), who was commissioned by the emperor Hadrian.

(30) _____ was one of the most important jurists of the classical period of Roman law. His work, the _____, is one of the few works of the classical period which survived and it gives us a good idea of the law of that time.

(31) The last great jurists of the classical period of Roman law were _____, _____, _____ and _____.

(32) During the Principate _____ became an important branch of the law. However, this law did not contribute much to the development of legal science.

(33) The greatest influences on the development of law during the Principate were the _____, the _____ and the _____.

(27) Die regsgeleerdes het hulle werksaamhede gedurende die _____ periode begin en dit in die _____ voortgesit. Hulle het hul belangrikste werk gedurende die _____ verrig.

(28) Gedurende die _____ het die Romeinse reg toegankliker geword vir die gemeenskap. Die _____ het 'n rol hierin gespeel omdat hulle verantwoordelik was vir die publikasie van die reg.

(29) Gedurende die _____ het die *praetor* 'n pion in die hande van die keiser geword. Hy is deur die _____ aangestel en het slegs in opdrag van die keiser gehandel. Die _____ is in 130 nC in opdrag van keiser Hadrianus deur 'n regsgeleerde, Julianus (Latynse spelling: Iulianus), gekodifiseer.

(30) _____ was een van die belangrikste juriste van die klassieke periode van die Romeinse reg. Sy werk, die _____, is een van die min werke van die klassieke periode wat behoue gebly het en dit gee vir ons 'n idee hoe die reg in daardie tyd gelyk het.

(31) Die laaste groot regsgeleerdes van die klassieke tydperk van die Romeinse reg was _____, _____, _____ en _____.

(32) Gedurende die Prinsipaat het _____'n belangrike vertakking van die reg geword. Dit het egter min bygedra tot die ontwikkeling van die regswetenskap.

(33) Die grootste invloed op die regsontwikkeling gedurende die Prinsipaat is uitgeoefen deur die _____, die _____ en die _____.

(34) During the Dominate a law school was established in _____. This school, and others established afterwards, showed a renewed interest in _____ Roman law, contributed to its survival and enabled the emperor _____ to have Roman law _____.

(35) During the Dominate law consisted mainly of _____.

(36) The *Codex Theodosianus* was a codification of Roman law which applied in the _____ and _____. This codification contained _____ as well as _____ _____. It also contained old laws _____ _____.

STUDY UNIT 4

(1) The *Leges Barbarorum* were the recorded tribal laws of the _____ people.

(2) The establishment of the Holy Roman Empire by a Germanic king was a result of the _____.

(3) The _____ refers to the Germanic peoples' admiration of Roman culture, particularly its _____ and _____ _____. This contributed to the survival of Roman law after the fall of the Western Roman Empire in the 5th century AD before its revival by the _____ in the 12th century.

(34) Gedurende die Dominaat is ‘n belangrike regskool in _____ gestig. Hierdie skool en ander regskole wat daarna gestig is, het ‘n hernude belangstelling in die _____ Romeinse reg getoon, daartoe bygedra dat dit behoue gebly het en keiser _____ in staat gestel om die Romeinse reg te laat _____.

(35) Gedurende die Dominaat het die reg hoofsaaklik uit _____ _____ bestaan.

(36) Die *Codex Theodosianus* was ‘n kodifikasie van die Romeinse reg wat in die _____- en _____ gegeld het. Hierdie kodifikasie het ingesluit _____ sowel as _____. Dit het ook ou wette bevat _____.

STUDIE-EENHEID 4

(1) Die *Leges Barbarorum* was die opgetekende stamregte van die _____ volke.

(2) Die totstandkoming van die “Heilige Romeinse Ryk” deur ‘n Germaanse koning was ‘n uitvloeisel van die _____.

(3) Die _____ spruit uit die geweldige bewondering wat die Germane vir die Romeinse kultuur gehad het, veral hul _____ en _____. Dit het bygedra tot die oorlewing van die Romeinse reg na die val van die Romeinse Ryk in die 5de eeu nC voor dit weer deur die _____ in die 12de eeu herontdek is.

(4) How did recordings of Germanic law help with the preservation of Roman law? Firstly, isolated rules of Roman law were randomly adopted in indigenous Germanic law and later _____ as part of Germanic law. Secondly, the _____ or enactments of the Frankish kings helped to preserve Roman law. As in the case of other Germanic recordings, the _____ who were schooled in Latin and Roman law, drafted these laws and worked _____ _____ into the fabric of the Germanic law.

(5) In the early Middle Ages many tribes inhabited Western Europe. It was not desirable to apply _____ to all the different tribes. Thus every person lived according to the law _____. This is referred to as the _____.

(6) With the accumulation of land in the hands of powerful landowners, people living within a specific feudal territory became subject to the law of that area. This is known as the _____.

(7) The Germanic peoples' records of their own tribal laws were known as the _____.

(8) The survival of Roman law in the West after the fall of the Roman empire (5th to 11th centuries AD) was due, in part, to the "barbarian's" codifications of Roman law. These codifications were called the _____. The best-known of these codifications is the _____, also called the _____.

(4) Hoe kon optekeninge van die Germaanse reg meehelp om die Romeinse reg te bewaar? Eerstens is losstaande reëls uit die Romeinse reg lukraak in die inheemse Germaanse reg opgeneem en later as deel van die Germaanse reg _____. Tweedens, die _____ of verordeninge van die Frankiese konings het gehelp om die Romeinse reg te bewaar. Soos in die geval van ander Germaanse optekeninge, het die _____, wat in die Romeinse reg en Latyn geskool was, die verordeninge opgestel en _____ in die Germaanse reg ingeweef.

(5) In die vroeë Middeleeue het baie stamme Wes-Europa bewoon. Dit was ongewens om al die verskillende stamme aan _____ te onderwerp. Dus het elke persoon volgens die reg _____ geleef. Dit staan bekend as die _____.

(6) Met die opeenhoping van grond in die hande van magtige grondeienaars was mense wat binne 'n bepaalde feodale gebied gelewe het, onderworpe aan die reg van daardie gebied. Dit staan bekend as die _____.

(7) Die Germaanse volke se opgetekende stamwette het bekend gestaan as die _____.

(8) Die voortbestaan van die Romeinse reg in die Weste na die val van die Romeinse Ryk (5de - 11de eeue nC) was deels as gevolg van die “barbare” se kodifikasie van die Romeinse reg. Hierdie kodifikasies staan as _____ bekend. Die bekendste van hierdie kodifikasies is die _____, ook die _____ genoem.

(9) An important factor in the survival of Roman law after the fall of the Roman empire (5th to 11th centuries AD) was the Church. The expansion of the Christian religion was largely due to the granting of _____ to the Christians by the Emperor Constantine. The church was governed by _____.

(10) Between the 5th and the 12th centuries AD two of the sources of Roman law used by the Church were the _____ and the _____. During this period the law of the Church had not yet reached the stage at which it could be regarded as a separate legal system.

(11) The *Collectio Dionysiana* is an important collection of _____ which was compiled during the 6th century AD.

(12) The law of the Church of the early Middle Ages laid the foundation for the development of a separate system of church law namely _____ law. This law, together with _____, was received into the Germanic legal systems during the later Middle Ages. One of the most important influences of this law was that it served to reduce or temper the _____ of Roman law. It became part of the _____ law which was brought to South Africa in 1652.

(13) With the death of Charlemagne, Europe entered a time of cultural and economic stagnation and _____ became the order of the day. Under this system, the landowners allowed the non-landowners (vassals) to cultivate the land in exchange for the performance of certain services.

(14) The *Libri Feudorum* is the best-known recording of _____ which, during the Middle Ages, formed part of the _____.

(9) ‘n Belangrike faktor in die voortbestaan van die Romeinse reg na die val van die Romeinse Ryk (5de - 11de eeue nC) was die _____. Nadat keiser Konstantyn _____ aan die Christene verleen het, het die Christelike geloof vinnig in die Romeinse Ryk veld gewen. Die _____ is in die kerk toegepas.

(10) Tussen die 5de - 11de eeue nC was twee bronne van die Romeinse reg wat deur die Kerk gebruik is die _____ en die _____. Gedurende hierdie periode het die reg van die Kerk nog nie so ontwikkel dat ‘n mens van kerkreg as ‘n afsonderlike stelsel kon praat nie.

(11) Die *Collectio Dionysiana* is ‘n belangrike versameling van _____ wat in die 6de eeu nC saamgestel is.

(12) Die reg van die kerk van die vroeë Middeleeue het die grondslag gelê vir ‘n afsonderlike stelsel van kerkreg, naamlik die _____ reg. Hierdie reg is saam met die _____ in die Germaanse regstelsels in die later Middeleeue geresipieër. Een van die belangrikste invloede van hierdie reg was dat dit 'n matigende invloed op die _____ van die _____ reg gehad het. Dit het deel van die _____ reg geword wat na Suid-Afrika gebring is.

(13) Met die dood van Karel die Grote het Europa 'n tydperk van kulturele en ekonomiese stagnasie betree. _____ het te voorskyn getree. Ingevolge hierdie stelsel het grondeienaars grond aan nie-grondeienaars gegee vir bewerking, wat dan in ruil daarvoor sekere dienste verrig het.

(14) Die bekendste optekening van die leenreg is die _____, wat later, gedurende die Middeleeue, deel van die _____ gevorm het.

STUDY UNIT 5

(1) The South African Law Association refers to countries in Southern Africa whose legal systems consist of _____ law and _____ law, as influenced by _____ law.

(2) The glossator, Vacarius, founded the law school at _____ in England.

(3) The beginning of the 12th century marked the period of the revival or renewal of _____. This revival took the form of a scientific study of _____.

(4) The glossators followed an _____ method in their study of the _____. This means that they _____ the text, tried to _____ the difficult sections and tried to find the _____ of unclear words.

(5) In their study, the glossators first concentrated on understanding the manuscript of the *Corpus Iuris Civilis* and then wrote _____ in the margin of the text and also between the lines.

(6) The notes that the glossators wrote in the margin of the text and between the lines of the *Corpus Iuris Civilis* were called _____ and that is why these scholars were called glossators.

(7) The importance of the glossators' analysis of the text of the *Corpus Iuris Civilis* brought to light the _____ in the text and also the missing parts of the _____ which had been copied in Greek.

STUDIE-EENHEID 5

(1) Die Suid-Afrikaanse Regsvereniging verwys na lande in Suider-Afrika waarvan die regstelsels bestaan uit _____ reg en _____ reg soos beïnvloed deur _____ reg.

(2) Die glossator Vacarius het die regskool in _____ in Engeland gestig.

(3) Die begin van die 12de eeu was 'n tydperk van die "herlewing" of "hernuwing" van die _____. Die herlewing het die vorm aangeneem van 'n wetenskaplike studie van _____.

(4) Die glossatore het 'n _____ metode gevolg in hul studie van die _____. Dit beteken dat hulle die teks _____ het, die moeilike gedeeltes probeer _____het en die _____van onduidelike woorde probeer vind het.

(5) In hul studie van die *Corpus Iuris Civilis* het die glossatore aanvanklik gepoog om die manuskrip te verstaan. Hulle het _____in die kantlyn van die teks, en ook tussen die reëls aangebring.

(6) Die aantekeninge wat die glossatore in die kantlyn van die teks, en ook tussen die reëls geskryf het, is _____ genoem, en dit is waarom hierdie geleerdes die glossatore genoem is.

(7) Die belang van die glossatore se ontleding van die teks van die *Corpus Iuris Civilis* het vroeg reeds _____ in die teks en ook die vermiste gedeeltes van die _____, wat in Grieks oorgeskryf is, geopenbaar.

(8) The three most important glossators were _____, _____ and _____.

(9) _____ was generally recognised as the father of the glossators. _____ was also known as the Bolognese "missionary" because he spread "glossatorial gospel" to England. _____ made the final contribution to the school of glossators through his *Glossa Ordinaria* in which he collected all the previous glosses, made a choice from them and where gaps existed, filled them in.

(10) The *Glossa Ordinaria* was a collection of glosses compiled by _____.

(11) The work of the glossators is significant for three reasons: They carried out an efficient _____ of Roman law; they started a _____ of Roman law; and they contributed to the _____ of Roman law and thus assisted in its early reception phase.

(12) The glossators' work was criticised because it was _____, lacked _____ and because Accursius omitted important glosses in his _____.

(13) The *Decretum Gratiani*, which was a collection of _____ as well as a textbook for students, was published in the 12th century by _____.

(14) The *Corpus Iuris Canonici* consisted of the *Decretum Gratiani* and _____ _____ which were later added to it.

(8) Die drie belangrikste glossatore was _____, _____ en _____.

(9) _____ word algemeen as die vader van die glossatore beskou. _____ word beskou as die "Bolognese sendeling" omdat hy die "glossatoriale evangelie" na Engeland versprei het. _____ het die finale bydrae tot die skool van die glossatore gelewer met sy *Glossa Ordinaria* waarin hy 'n keur van die voorafgaande glosse saamgevat het en, waar nodig, leemtes aangevul het.

(10) Die *Glossa Ordinaria* was 'n versameling glosse wat deur _____ saamgestel is.

(11) Die werk van die glossatore is om drie redes van belang: Hulle het die Romeinse reg in doeltreffende mate _____; hulle het begin om die Romeinse reg op 'n _____; en hulle het meegehelp met die _____ van die Romeinse reg en het dus bygedra tot die vroeë resepsie daarvan.

(12) Die glossatore se werk is gekritiseer omdat dit nie _____ was nie; omdat dit nie _____ gehad het nie; en omdat Accursius sekere belangrike glosse uit sy _____ gelaat het.

(13) Die *Decretum Gratiani* wat 'n versameling van _____, sowel as 'n handboek vir studente was, is in die 12de eeu deur _____ gepubliseer.

(14) Die *Corpus Iuris Canonici* het bestaan uit die *Decretum Gratiani* en ander _____ _____ wat later bygevoeg is.

(15) The *Corpus Iuris Canonici* was a _____.

(16) The jurists who studied the *Corpus Iuris Canonici* were known as the _____.

(17) The _____ were a group of jurists at the French law school of Orléans.

(18) Unlike the glossators, who followed an exegetical approach in their study of the *Corpus Iuris Civilis*, the *ultramontani* adopted a _____ approach. In other words, they regarded the *Corpus Iuris Civilis* as a _____, rather than a rigid system of rules to be accepted without questioning.

(19) The *ultramontani's* goal was to _____ _____. They sought to achieve their goal by investigating other sources of law which were essential for practice, namely, _____, _____ and _____.

(20) _____ and _____ were the two most important *ultramontani*.

(21) The *ultramontani* was the first group of jurists to work out rules for the reception of _____ into _____.

(22) According to Revigny and Bellaperche, canon law and Roman law had _____ _____, but canon law, by virtue of its fairness, could be used to _____.

(15) Die *Corpus Iuris Canonici* was ‘n _____.

(16) Die regsgeleerdes wat die *Corpus Iuris Canonici* bestudeer het, het bekendgestaan as _____.

(17) Die _____ was ‘n groep regsgeleerdes wat by die Franse regskool van Orléans saamgetrek het.

(18) Anders as die glossatore, wat ‘n eksegetiese werkwyse gevolg het, het die *ultramontani* ‘n _____ werkswyse in hul bestudering van die *Corpus Iuris Civilis* gevolg. Met ander woorde, hulle het die *Corpus Iuris Civilis* as _____ _____ beskou, eerder as ‘n onbuigsame stel reëls wat blindelings aanvaar moes word.

(19) Die *ultramontani* se doel was om _____ _____. Hulle het hulle doel bereik deur ander bronne van die reg wat van belang was vir die praktyk te bestudeer. Hierdie bronne was _____, kanonieke reg en _____.

(20) _____ en _____ was die belangrikste *ultramontani.*

(21) Die *ultramontani* was die eerste groep regsgeleerdes wat reëls uitgewerk het vir die resepsie van _____ in die _____.

(22) Volgens De Ravanis en De Bellapertica het die Romeinse en kanonieke reg _____, maar kanonieke reg kon weens die billikheid daarvan gebruik word om die _____.

(23) From the middle of the 12th century, canon law had a strong influence in France, particularly in the French _____.

(24) The commentators or post-glossators were much more concerned with the _____ of the law than with _____ _____ as glossed in the *Glossa Ordinaria.*

(25) The approach of the commentators was to _____ the glosses on the *Corpus Iuris Civilis* and the text itself. This meant that each individual commentator gave his opinion on the text while at the same time referring to the _____ on the same subject.

(26) The commentators took up the challenge of reconciling the contradictions that arose between Roman law and the rules of _____, _____ and _____.

(27) The commentators are also known as the _____.

(28) Name two of the most important commentators or post-glossators.

_____ _____

(29) The commentator _____ is regarded as the greatest medieval jurist.

(30) The commentators laid the foundation for the 17th century school of _____.

(31) The commentator Bartolus laid the foundation for modern _____ _____.

(23) Vanaf die middel van die 12de eeu het kanonieke reg ‘n sterk invloed in Frankryk uitgeoefen, veral op die gebied van die Franse _____.

(24) Die kommentatore of post-glossatore het hulle eerder besig gehou met die _____ van die reg as met die _____ reg soos dit in die *Glossa Ordinaria* geglosseer is.

(25) Die benadering van die kommentatore was om die glosse op die *Corpus Iuris Civilis,* sowel as die teks self te _____. Dit het beteken dat elke afsonderlike kommentator sy beskouing van die teks gegee het en terselfdertyd na _____ _____oor dieselfde onderwerp verwys het.

(26) Die kommentatore het die uitdaging aanvaar om die teenstrydighede te versoen tussen die Romeinse reg en die reëls van _____, _____ en _____.

(27) Die kommentatore staan ook bekend as _____.

(28) Noem twee van die belangrikste kommentatore of post-glossatore.

_____ _____

(29) Die kommentator _____ word beskou as die grootste middeleeuse juris.

(30) Die kommentatore het die grondslag gelê vir die 17de-eeuse _____.

(31) Die kommentator, Bartolus, het die grondslag gelê vir die moderne _____ _____.

(32) The commentators' influence on the development of the law was not confined to Bologna in Italy. It spread to most parts of Western Europe and played a major role in the creation of the _____.

(33) The commentators facilitated the importation of Roman law into the _____ _____ and it was their influence combined with the invention of printing that ensured the reception of Roman law into the legal systems of Germany, France, and the Netherlands.

(34) According to the commentators, Roman law and canon law should _____ _____. They argued that canon law had to be applied instead of Roman law: in matters _____, in matters _____ _____ and in those cases where the application of Roman law _____.

(35) The European common law or the *ius commune* came into being when _____ and _____ were received into the _____ _____.

STUDY UNIT 6

(1) From the 16th century, a group of scholars called the _____ started a new working method which differed from the approach of the earlier commentators. Calling for study of the original sources of Roman law, they went back to the _____ _____ and even Roman law sources _____ _____.

(32) Die kommentatore se invloed op die ontwikkeling van die reg was nie beperk tot Bologna in Italië nie. Dit het na die meeste dele van Wes-Europa versprei en ‘n belangrike rol in die skepping van ‘n _____ gespeel.

(33) Die kommentatore het die invoer van die Romeinse reg in die _____ _____ vergemaklik en dit was hulle invloed, tesame met die uitvinding van die drukkuns, wat verseker het dat die Romeinse reg in die regstelsels van Duitsland, Frankryk en die Nederlande geresipieer is.

(34) Volgens die kommentatore moes die Romeinse reg en kanonieke reg _____ _____. Hulle was van mening dat kanonieke reg in plek van die Romeinse reg toegepas moes word: by _____ aangeleenthede, by aangeleenthede _____ en waar die toepassing van die Romeinse reg _____.

(35) Die Europese gemenereg of *ius commune* het tot stand gekom toe _____ en _____ in die _____ _____ geresipieer is.

STUDIE-EENHEID 6

(1) Die _____ was 'n groep geleerdes wat vanaf die 16de eeu in reaksie op die werk van die kommentatore met 'n nuwe werkswyse begin het. Hulle wou die oorspronklike bronne van die Romeinse reg bestudeer en het daarom teruggegaan na die _____ en selfs bronne van die Romeinse reg soos dit was _____.

(2) When discussing the reception of Roman law in France, one must distinguish between its reception in the _____ from the reception in the _____ of the country.

(3) The reception of Roman law in the South of France was popular because, *inter alia*, the _____ was promulgated in Toulouse, the _____ founded the law school at Montpellier, and because branches of the _____ school were established at Montpellier and Toulouse.

(4) The reception of Roman law in the North of France was resisted because the _____ and the _____ regarded Roman law as a threat to their authority; and the North wanted to protect its _____.

(5) Name any two of the leading humanists you have studied.

_____ _____

(6) In assessing the contribution of the humanists there are negatives and positives. Their major shortcoming is that they _____ _____ and they studied Roman law in its _____. Their importance is that they _____ Roman legal material.

(7) Which great French jurist wrote a monumental work on the law of obligations and is still referred to as an authority today? _____

(2) Wanneer daar van die resepsie van die Romeinse reg in Frankryk gepraat word, moet mens onderskei tussen die resepsie daarvan in die _____ en die resepsie in die _____.

(3) Sommige van die redes waarom die Romeinse reg soveel aanhang in die Suide van Frankryk geniet het, was dat die _____ in Toulouse gepromulgeer is; die _____ die regskool by Montpellier gestig het; en vertakkings van die _____ skool by Toulouse en Montpellier tot stand gebring is.

(4) Daar was weerstand teen die Romeinse reg in die Noorde van Frankryk omdat die _____ en die _____ die infiltrasie van die Romeinse reg as 'n bedreiging vir hulle gesag gesien het en omdat die Noorde hulle _____ wou beskerm.

(5) Noem enige twee van die belangrikste humaniste wat u bestudeer het.

_____ _____

(6) By die beoordeling van die bydrae van die humaniste is daar positiewe en negatiewe aspekte. Aan die negatiewe kant kan gesê word dat hulle nie _____

_____

en hulle het die Romeinse reg in sy _____ bestudeer. Aan die positiewe kant, het hulle die Romeinse regsmateriaal _____.

(7) Watter groot Franse juris het 'n monumentale werk oor verbintenisreg geskryf en word tot vandag toe as gesag geraadpleeg? _____

(8) Due to the completeness of the reception of Roman law in Germany we refer to it as an _____ reception. Why did this reception take place? Germany was a place of great diversity of law: Every region had its own _____. There was thus a need for a more _____ and _____ _____ legal system and Roman law filled this void.

(9) The legal movement which came to the fore in Germany during the 17th and 18th centuries was the *usus modernus pandectarum*. The jurists within this school followed a _____ line of thought, concerning themselves with Roman law _____. They argued that _____ _____ should have preference over _____ and _____. The leading jurist of this movement was _____.

(10) In the early part of the 19th century the historical school developed in Germany as a reaction against the doctrine of the _____. The main thrust of their approach was that law cannot be eternal but rather _____ and in line with the _____. _____ is regarded as one of the leading figures in the rise of this school of thought.

(11) As opposed to the _____ and _____, the reception of Roman law in England was limited. This was because the _____ ruled England in accordance with their own customs and practices when they took over from the Romans in the 5th century AD and Roman institutions consequently disappeared; political stability lead to an emotional attachment to the _____; Roman law was opposed by the _____ and the _____; and the _____ ensured that the English common law was at the forefront in the training of jurists.

(8) As gevolg van die volledige resepsie van die Romeinse reg in Duitsland praat ons van 'n _____-resepsie. Hoekom het hierdie resepsie plaasgevind? Daar was 'n groot verskeidenheid in die reg in Duitsland. Elke streek het sy eie _____ gehad. Daar was dus 'n behoefte aan 'n meer _____ en _____ regstelsel en die Romeinse reg kon aan hierdie behoefte voldoen.

(9) Die regsbeweging wat in Duitsland op die voorgrond getree het gedurende die 17de en 18de eeue was die *usus modernus pandectarum*. Die voorstanders van hierdie beweging het 'n _____ denkrigting gevolg en het van die Romeinse reg gebruik gemaak in soverre dit _____. Wat hulle betref, moes _____ voorkeur geniet bo die _____ en _____. _____ was die bekendste verteenwoordiger van hierdie denkrigting.

(10) In die vroeë 19de eeu het die historiese skool in Duitsland ontstaan as 'n reaksie op die _____. Hierdie skool het nie enige permanente en onveranderlike reg erken nie, maar was van mening dat die reg wesenlik _____ was en verband hou met die _____. _____ word beskou as een van die leidende figure van hierdie skool.

(11) In teenstelling met die _____ en _____, was die resepsie van die Romeinse reg in Engeland beperk. Dit was so omdat die _____, toe hulle Engeland in die 5de eeu nC van die Romeine oorgeneem het, in ooreenstemming met hul eie gebruike en praktyke regeer het en Romeinse instellings gevolglik verdwyn het. Politieke stabiliteit het tot 'n emosionele verbondenheid aan die _____ gelei; die Romeinse reg is deur die _____ en die _____ teengestaan; die _____ het verseker dat die Engelse gemenereg voorrang geniet het by die opleiding van juriste.

(12) As on the continent of Europe, the _____ played an important role in the survival of Roman law in England. Furthermore, due to the Italian glossator Vacarius who came to _____ in 1143 there developed a renewed interest in the study of Roman law. Roman law was also offered in _____.

(13) Notwithstanding the resistance to Roman law in England, a number of English jurists were influenced by it. Among them were _____(a student of Vacarius), _____ and _____(as Chief Justice).

(14) Scotland experienced a strong reception of Roman law. Being at war with England in the 13th and 14th centuries, Scotland had _____ allies. Students studied at _____ universities. There they were trained in _____ and _____. On their return to Scotland, these students, as legal practitioners, applied the rules and principles of _____ where _____ proved deficient.

(15) The reception of Roman law in the Netherlands took place in two stages: the period of the _____ (late 13th - middle 15th century) and the _____ (second half of 15th - end of 16th century). During the first phase the _____judges and _____, who were trained at Bologna or Orléans played an important role in the reception of Roman law.

(16) In the Netherlands, the reception proper of Roman law took place as a result of _____, _____ and _____ factors.

(12) Net soos in Europa, het die _____'n belangrike rol gespeel in die oorlewing van die Romeinse reg. Ook as gevolg van die inisiatief van die Italiaanse glossator Vacarius, wat in 1143 na _____ gekom het, was daar 'n hernude belangstelling in die studie van die Romeinse reg. Die Romeinse reg is ook by _____ gedoseer.

(13) Ten spyte van die teenkanting teen die Romeinse reg was daar 'n paar Engelse juriste wat daardeur beïnvloed is. Onder hulle was _____(Vacarius se student), _____ en _____(hoofregter).

(14) Daar was 'n sterk resepsie van die Romeinse reg in Skotland. Gedurende die 13de en 14de eeue het Skotland voortdurend met Engeland oorlog gevoer en die Skotte het in _____ Europa politieke bondgenote gevind. Derhalwe het Skotse studente aan _____ universiteite gaan studeer. Hier is hulle in die _____ en _____ opgelei. By hulle terugkeer na Skotland het hierdie studente, as regspraktisyns, die reëls en beginsels van die _____ toegepas in alle gevalle waar die _____ _____ tekort geskied het.

(15) Die resepsie van die Romeinse reg in die Nederlande het in twee fases plaasgevind: die _____ (laat 13de - middel 15de eeu) en die _____ (2de helfte van 15de - einde 16de eeu). Gedurende die eerste fase het die _____ en _____, wat in Bologna of Orléans opgelei is, 'n belangrike rol in die resepsieproses gespeel.

(16) Die eintlike resepsie van die Romeinse reg in die Nederlande het as gevolg van _____, _____ en _____ faktore plaasgevind.

(17) The leading political factor in the reception proper of Roman law in the Netherlands was Burgundian rule, in particular their policy of _____. This policy resulted in various provincial high courts being created. The jurists who sat on their benches were _____. The Burgundians also strove for a uniform legal system and in the 16th century, statutes stated expressly that where the statute was silent _____ should be referred to.

(18) Economic factors in the reception proper of Roman law in the Netherlands included the need for _____ and _____ laws to govern a rapidly developing commercial economy. Local items of legislation (*keuren*) were drafted by persons schooled in _____. _____ was used to fill the gaps in the local laws and use was made of the commentaries of _____ Bartolus and _____.

(19) The most important cultural factor in the reception proper of Roman law in the Netherlands was the University of _____. This university contributed to the reception of Roman law through its _____ and its _____. It has to be kept in mind that the played an important role in the establishment of this university. Therefore students could obtain a doctorate of laws in both _____ and _____ law.

(20) During the reception proper of Roman law in the Netherlands, the Burgandian rulers instructed that local customs be put into writing and be submitted for confirmation. This process was known as the _____ of customs.

(17) Die belangrikste politieke faktor wat betref die eintlike resepsie van die Romeinse reg in die Nederlande was die Boergondiese regering, en spesifiek hul beleid van _____. Deur hierdie beleid is verskillende provinsiale hoë howe ingestel. Die juriste wat posisies beklee het in hierdie howe was _____. Boergondië het ook gepoog om 'n eenvormige regstelsel in te voer en in die 16de eeu, is wette uitgevaardig wat uitdruklik bepaal het dat daar na die _____ verwys moet word waar die wet swyg.

(18) Ekonomiese faktore wat 'n rol gespeel het by die eintlike resepsie van die Romeinse reg in die Nederlande sluit in die behoefte aan _____ en _____ wetgewing om die snel ontwikkelende kommersiële ekonomie te hanteer. Lokale wetgewing (*keuren*) is opgestel deur persone wat in die _____ geskool was. Die _____ is verder gebruik om leemtes in die lokale reg aan te vul en die kommentare van _____ en _____ is gebruik.

(19) Die belangrikste kulturele faktor wat betref die eintlike resepsie van die Romeinse reg in die Nederlande was die _____. Leuven het bygedra tot die resepsie van die Romeinse reg in die Nederlande deur haar _____ en _____. Daar moet in gedagte gehou word dat die _____'n belangrike rol by die stigting van die Universiteit gespeel het en dat studente derhalwe 'n doktorsgraad in beide _____ en _____ reg kon behaal.

(20) Gedurende die eintlike resepsie van Romeinse reg in die Nederlande het die Boergondiërs opdrag gegee dat die plaaslike gewoontes op skrif gestel word en vir goedkeuring voorgelê word. Hierdie proses het as _____ van gewoontes bekendgestaan.

(21) The reception of the actual rules of Roman law is called the _____ reception while the reception of concepts and principles within the system is called the _____ reception of Roman law.

STUDY UNIT 7

(1) _____ developed when Roman law, as glossed by the _____ and commented upon by the _____, was received into the customary laws of _____.

(2) Roman-Dutch law was not brought to the Cape in the form of a book, but rather became applicable in the Cape through _____.

(3) Each of the seven provinces of the Netherlands had its own legal system, but it was the law of the province of _____ which was the leading law of the Netherlands.

(4) The main sources of Roman-Dutch law are _____, _____, _____, _____ and _____.

(5) The old writers or old authorities are jurists who wrote about the law of the _____ _____ prior to _____ of the law in the Netherlands.

(6) In a narrow sense, Roman-Dutch law refers to the _____ as amended by the *Placaeten* or customary law of the province of Holland.

(7) In a broad sense, Roman-Dutch law refers to the _____ as amended by the *Placaeten* or customary law of the province of Holland and as influenced by _____, _____ and the _____ _____.

(21) Die resepsie van die werklike reëls van die Romeinse reg word 'n_____ genoem, terwyl die resepsie van die begrippe en beginsels die _____ van die Romeinse reg genoem wordl.

STUDIE-EENHEID 7

(1) Die _____ het ontwikkel toe die Romeinse reg, geglosseer deur die _____ en kommentaar op gelewer deur die _____, geresipieer is in die gewoontereg van _____ _____.

(2) Die Romeins-Hollandse reg is nie in boekvorm na die Kaap gebring nie, maar het eerder deur _____ in die Kaap inslag gevind.

(3) Elkeen van die sewe provinsies van die Nederlande het sy eie regstelsel gehad, maar die reg van die provinsie _____ was die leidende reg van die Nederlande.

(4) Die hoofbronne van die Romeins-Hollandse reg is _____, _____, _____, _____ en _____.

(5) Die ou skrywers is juriste wat oor die reg van die _____ voor die _____ kodifikasie van die reg in die Nederlande geskryf het.

(6) In ‘n eng sin verwys die Romeins-Hollandse reg na die _____ soos gewysig deur die *placaeten* of gewoontereg van die provinsie van Holland.

(7) In a broad sense, Roman-Dutch law refers to the _____ as amended by the *Placaeten* or customary law of the province of Holland and as influenced by _____, _____ and the _____.

(8) The authoritative writers on our common law are, in the first place, those writers who wrote on the law of the province of _____.

(9) The writers who did not write specifically about the law of Holland are of importance in so far as they bear witness to the _____ phenomenon in Western Europe.

(10) The most important factors that should be taken in account when the old writers or authorities are considered include the _____, the _____ and the _____.

(11) _____ was the first jurist to see the law of Holland as an independent system and describe it as such.

(12) The *Inleidinge* and *De Jure Belli ac Pacis* are the two best-known works of _____.

(13) The *Inleidinge* of _____ was the first treatise on _____ and was written in Dutch.

(14) The *Inleidinge* of _____ was translated into Latin by _____.

(7) In ‘n breë sin verwys die Romeins-Hollandse reg na die _____ soos gewysig deur die *placaeten* of gewoontereg van die provinsie van Holland en beïnvloed deur _____, _____ en die _____.

(8) Die gesaghebbende skrywers oor ons gemenereg is in die eerste plek die skrywers wat oor die reg van die provinsie _____ geskryf het.

(9) Die skrywers wat nie spesifiek oor die Hollandse reg geskryf het nie, is belangrik in soverre hulle getuig van die _____ in Wes-Europa.

(10) Die belangrikste faktore wat in ag geneem moet word wanneer ons die ou skrywers bestudeer, sluit in die _____, die _____, en die _____ _____.

11) _____ was die eerste juris wat die reg van die provinsie Holland as ‘n onafhanklike stelsel beskou het en dit aldus beskryf het.

(12) _____ se twee bekendste werke is die *Inleidinge* en die *De Iure Belli ac Pacis*.

(13) _____ se *Inleidinge* was die eerste verhandeling oor die _____ en is in Nederlands geskryf.

14) _____ se *Inleidinge* is deur _____ in Latyn vertaal.

(15) The *De Jure Belli ac Pacis* of _____ was the first comprehensive treatise published on _____.

(16) _____ wrote the *Tractatus*, in which he took the *Institutes*, the *Digest*, the *Codex*, the *Novellae*, and the *Libri Feudorum* text by text and showed which propositions were still valid and which were no longer in use.

(17) _____ was the first writer to refer to the existing Dutch law as Roman-Dutch law.

(18) Important 17th century writers on the law of Holland are _____, _____, _____ and _____.

(19) _____ wrote the *Observationes* which was a collection of decisions given by the Supreme Council during his term of office.

(20) The *Theses Selectae* of _____ consisted of short notes on the *Inleidinge* of Grotius and it was the last outstanding work in the field of Roman-Dutch law before _____.

(21) The fact that it was written in Dutch was an important consideration for choosing the Koopmans Handboek, written by _____, as official "code" of the ZAR (Zuid-Afrikaansche Republiek).

(22) The 17th century Dutch jurist, _____, supplemented the *Inleidinge* of Grotius and wrote the important work the *Tractatus*. This work became an important authority on Roman-Dutch law.

(15) Die *De Iure Belli ac Pacis* van _____ was die eerste omvattende verhandeling wat oor die _____ gepubliseer is.

(16) _____ se belangrikste werk is die *Tractatus*. In hierdie omvattende werk het hy die *Institute*, die *Digesta*, die *Codex*, die *Novellae* en die *Libri Feodorum* teks vir teks ontleed en aangetoon watter stellings steeds geldig was en watter nie langer ter sake was nie.

(17) _____ was die eerste skrywer wat na die bestaande Hollandse reg verwys het as “Romeinse-Hollandse reg”.

(18) Belangrike 17de-eeuse skrywers oor Hollandse reg is _____, _____, _____ en _____.

19) _____ se *Observationes* was 'n versameling van uitsprake van die *Hooge Raad* gedurende sy ampstermyn.

(20) _____ se *Theses Selectae* bestaan uit kort notas oor die *Inleidinge* van De Groot, en dit was die laaste uitstaande werk op die gebied van die Romeins-Hollandse reg voordat _____.

(21) Die feit dat _____ se *Koopmans Handboek* in Nederlands geskryf is, was ‘n belangrike rede waarom hierdie werk as die amptelike “kode” van die ZAR (Zuid-Afrikaansche Republiek) gekies is.

(22) Die 17de-eeuse Nederlandse juris, _____, het De Groot se *Inleidinge* aangevul en ‘n belangrike werk, die *Tractatus*, geskryf. Hierdie werk is ‘n belangrike bron van die Romeins-Hollandse reg.

(23) *De Statutis*, an important work on private international law/conflict of laws, was written by _____.

(24) _____ wrote *De Criminibus,* an important work on criminal law.

(25) The *Groot Placaet Boeck* (*GPB*) is a collection of the _____ of the Netherlands.

(26) The 17th and 18th century Dutch courts did not apply the principle of _____ and therefore previous decisions had _____ authority only.

(27) The collections of opinions of Roman-Dutch jurists were not binding on the Dutch courts but enjoyed great _____ authority.

STUDY UNIT 8

(1) During the period 1652-1795 the four formal sources of law at the Cape were _____, _____, _____ and _____.

(2) Four agencies which had the power to legislate or issue edicts at the Cape from 1652 - 1795 were the _____, the _____, the _____ and the _____.

(3) Before 1652 the Governor-General in Batavia had already issued a mass of *placaeten*. These were codified and became known as the _____.

(4) The _____ had no authority to issue *placaeten* which would have force in the Cape.

(23) *De Statutis*, 'n belangrike werk oor konfliktereg/internasionale privaatreg is deur _____ geskryf.

(24) _____ het *De Criminibus,* 'n belangrike werk oor die strafreg, geskryf.

(25) Die *Groot-Placaet-Boek (GPB)* is 'n versameling van Nederlandse _____.

(26) Die 17de- en 18de-eeuse Nederlandse howe het nie die beginsel van _____ toegepas nie en vroeëre uitsprake het dus slegs _____ gesag gehad.

(27) Die versamelings van opinies van Romeins-Hollandse juriste het nie die howe gebind nie, maar het sterk _____ gesag gehad.

STUDIE-EENHEID 8

(1) Gedurende die tydperk 1652 - 1795 was die vier formele regsbronne aan die Kaap _____, _____, _____ en _____.

(2) Vier instansies wat vanaf 1652 - 1795 bevoeg was om wette of edikte vir die Kaap uit te vaardig, was die _____, die _____, die _____ en die _____.

(3) Voor 1652 is 'n massa *placaeten* reeds deur die Goewerneur-Generaal in Batavië uitgevaardig. Hulle is gekodifiseer en hierdie kodifikasie het bekend gestaan as die _____.

(4) Die _____ het geen bevoegdheid gehad om *placaeten* uit te vaardig wat aan die Kaap sou geld nie.

(5) Who promulgated the First Charter of Justice in 1827? This Charter was implemented in 1828.

_____

(6) Where an earlier judgment is regarded as binding authority we say that the doctrine of _____ is being applied. Did the Dutch courts apply this doctrine? _____. Did the English courts apply this doctrine? _____

(7) The Charters of Justice brought about important changes in the formal law, that is in the law of _____ and _____ and in the _____ structure. With the implementation of the First Charter of Justice in 1828 came a new system of legal administration.

(8) The Charters of Justice instituted appeals to the _____ in London.

(9) The Charters of Justice determined that judges had to be recruited from the advocates of _____, _____ and _____.

(10) The Charters of Justice laid down that the old colonial law, namely _____, should be applied by the courts. Viscount Goderich indicated that there should be a gradual assimilation of _____ into the law of the Colony.

(11) The fact that the Cape received the whole of the English Companies Act, the English law of negotiable instruments and their law dealing with parliamentary conventions, indicates that in some areas of the law both a _____ and _____ reception of English law had taken place.

(5) Wie het in 1827 die eerste *Charter of Justice* wat in 1828 geïmplimenteer is, uitgevaardig?

_____

(6) Waar 'n vorige uitspraak van bindende krag is, word die _____-reël nagevolg. Het die Nederlandse howe hierdie reël nagevolg? _____. Het die Engelse howe hierdie reël nagevolg? _____

(7) Die *Charters of Justice* het belangrike veranderinge in die formele reg teweeggebring, te wete in die _____reg en _____reg en in die _____ se struktuur. Met die implementering van die eerste *Charter of Justice* in 1828 is 'n nuwe stelsel van regspleging ingevoer.

(8) Die *Charters of Justice* het appèlle na die _____ in Londen ingestel.

(9) Die *Charters of Justice* het bepaal dat regters moes kom uit die geledere van die advokate van _____, _____ en _____.

(10) Die *Charters of Justice* het bepaal dat die ou reg van die Kolonie, te wete die _____, deur die howe toegepas moes word. Burggraaf Goderich het egter aangedui dat daar 'n geleidelike assimilasie van die _____ in die reg van die Kolonie moet wees.

(11) Die feit dat die Engelse Maatskappyewet in sy geheel die Engelse reg met betrekking tot verhandelbare dokumente en Engelse reg met betrekking tot parlementêre konvensies in die Kaap geresipieer is, toon aan dat daar beide 'n _____ en 'n _____ resepsie van die Engelse reg in sommige gebiede van die reg plaasgevind het.

(12) In 1838, the Voortrekkers in Natal declared that the _____ would be the basis for the administration of justice. However, after the British occupation of Natal the legal system resembled that of the _____.

(13) In the Transvaal, the *Hollandsche Wet* formed the basis of their law. This referred to _____.

(14) The constitution of the Orange Free State determined that _____ be the basic law of the state.

(15) In the years after 1910 a considerable amount of legislation covering a wide variety of subjects was promulgated by Parliament. Many argue that the direct incorporation of entire sections of _____ hampered the healthy development of South African law.

(16) Since 1910 the _____ played a very significant role in legal development in South Africa.

(17) During the 1960's a debate arose as to whether Roman-Dutch or English law should take preference. The so-called _____ insisted that Roman-Dutch law should be applied in its pure form without any English-law influence. The _____ said that English law should be applied where Roman-Dutch law was silent. The _____ held a moderate view between these two extremes.

(18) The Appellate Division's role in legal development may be said to be limited in that it did not have the power to question the _____ of legislation. It, therefore, often had to apply unjust and oppressive laws.

(12) Die Voortrekkers in die provinsie Natal het in 1838 verklaar dat die _____ as grondslag vir hulle regspleging sou dien. Ná die Britse besetting van Natal het die regsisteem egter dieselfde patroon as dié van die _____ gevolg.

(13) In Transvaal is bepaal dat die *Hollandsche Wet* die grondslag van die reg sou vorm. Dit het na _____ verwys.

(14) Die grondwet van die Oranje-Vrystaat het bepaal dat die _____ die basiese reg van die staat sou wees.

(15) Sedert 1910 is 'n groot hoeveelheid wetgewing rakende 'n menigte uiteenlopende onderwerpe deur die Parlement uitgevaardig. Baie glo dat die heelhuidse invoering van _____ gesonde Suid-Afrikaanse regsontwikkeling gedwarsboom het.

(16) Sedert 1910 het die _____'n baie belangrike rol gespeel in die regsontwikkeling in Suid-Afrika.

(17) Gedurende die 1960's het 'n debat ontstaan oor die vraag of Romeins-Hollandse of Engelse reg voorkeur moet geniet. Die _____ het geëis dat die Romeins-Hollandse reg in 'n suiwer vorm toegepas word, vry van Engelsregtelike invloed. Die _____ was van mening dat die oplossings van die Engelse reg aanvaar moes word waar die Roemins-Hollandse reg geswyg het. Die _____ het 'n middeweg tussen hierdie twee standpunte gevolg.

(18) Die Appèlafdeling se rol in regsontwikkeling was beperk omdat dit nie die gesag gehad het om die _____ te bevraagteken nie. Dit moes dus dikwels blatante onregverdige en diskriminerende wetgewing toepas.

STUDY UNIT 9

(1) In 1993, a new era or beginning in South Africa's legal history was ushered in by the promulgation of the _____.

(2) The principle of _____ is based on the idea that the power of the state should be controlled.

(3) The concept of _____ is an inseparable part of the principle of constitutionalism.

(4) In the strict sense, constitutionalism simply means that the government of a country is obliged to rule in accordance with the prescriptions or limitations laid down in a _____.

(5) The mechanisms that may be contained in a constitution to control the power of the state include the following: procedures for the making of _____, a _____, the separation of power between the _____, _____ and _____ authorities, an independent _____, and a division of power between the _____ and _____ levels of government.

(6) The principle of constitutionalism is sometimes referred to as _____.

(7) In the history of South African law, there are three different perspectives on the principle of constitutionalism, namely, _____, _____ and _____ of constitusionalism.

STUDIE-EENHEID 9

(1) In 1993 is ‘n nuwe era in die Suid-Afrikaanse regsgeskiedenis betree toe die _____ uitgevaardig is.

(2) Die beginsel van _____ is gebaseer op die idee dat die mag van die staat beheer moet word.

(3) Die konsep van _____ is ‘n onlosmaaklike deel van die beginsel van konstitusionalisme.

(4) Strenggesproke beteken konstitusionalisme bloot dat die regering van ’n land volgens die voorskrifte neergelê in ‘n _____ moet regeer.

(5) Die meganismes vervat in ‘n grondwet om die magte van die staat te beperk sluit die volgende in: prosedures vir die maak van _____, ‘n _____, verdeling van magte tussen die _____, _____ en _____ gesag,’n onafhanklike _____ en die verdeling van magte tussen die _____ en _____ vlakke van regering.

(6) Die beginsel van konstitusionalisme word soms _____ genoem.

(7) In die Suid-Afrikaanse regsgeskiedenis is daar drie verskillende sienings van die beginsel van konstitusionalisme, naamlik, _____, _____ _____ van konstitusionalisme.

(8) The view that the will of the majority in a democracy may not be limited by the rules and procedure of a constitution constitutes a _____ of constitutionalism.

(9) _____of constitutionalism prevailed in the Zuid-Afrikaansche Republiek at the end of the 19th century.

(10) Where the principle of constitutionalism enjoys _____, state power may only be exercised in terms of clearly defined rules of law.

(11) Where the principles of constitutionalism enjoys partial recognition, parliament remains _____ and can make whatever laws it deems fit, as long as the procedure for the adoption of those laws is followed.

(12) Where the principle of constitutionalism enjoys partial recognition, courts may only declare laws invalid if the prescribed _____ was not followed, and not because the laws are _____.

(13) Under the 1910 Union of South Africa Constitution and the 1961 and 1983 Republic of South Africa Constitutions, courts lacked the power to declare laws invalid if they were _____.

(14) Where the principle of constitutionalism enjoys _____, the restrictions on state power must include a _____ which can be used to test the content of the law and legislation.

(15) Where the principle of constitutionalism enjoys full recognition, the _____ is considered to be sovereign.

(8) Die standpunt dat die wil van die meerderheid in ‘n demokrasie nie deur die reëls en prosedure van ‘n grondwet beperk mag word nie, kom neer op _____ van konstitusionalisme.

(9) _____ van konstitusionalisme is teen die einde van die 19de eeu in die Zuid-Afrikaansche Republiek aangetref.

(10) Waar die beginsel van konstitusionalisme _____ geniet, mag staatsmag slegs aan die hand van duidelik omskrewe regsreëls uitgeoefen word.

(11) Waar die beginsel van konstitusionalisme gedeeltelike erkenning geniet, bly die parlement _____ en kan dit enige wette maak, solank die prosedure vir die maak van die wette nagevolg is.

(12) Waar die beginsel van konstitusionalisme gedeeltelike erkenning geniet, kan die howe slegs wette ongeldig verklaar indien die voorgeskrewe _____ nie nagevolg is nie, en nie omdat die wette _____ is nie.

(13) Kragtens die Grondwet van die Unie van Suid-Afrika van 1910, en die 1961- en 1983-Grondwette van die Republiek van Suid-Afrika het die howe nie die mag gehad om wette wat _____ was ongeldig te verklaar nie.

(14) Waar die beginsel van konstitusionalisme _____ geniet, moet die beperkings op staatsmag ‘n _____ insluit aan die hand waarvan die inhoud van die reg en wetgewing getoets kan word.

(15) Waar die beginsel van konstitusionalisme volle erkenning geniet, word die _____ as soewerein beskou.

(16) Where the principle of constitutionalism enjoys full recognition, the Constitution is regarded as the _____ of the land against which all other laws and actions may be tested.

(17) In section 7 of the 1996 Constitution the Bill of Rights is described as the cornerstone of _____ in South Africa.

(18) The origin of the idea of human rights in South Africa is traceable to the _____ tradition of the Western component of our law and the African philosophy of _____.

(19) The South African Bill of Rights was first put to test in the constitutional court case of _____.

(20) In *S v Makwanyane* 1995 (6) BCLR 665 (CC) the _____ pointed out that the Constitution and the Bill of Rights are not merely a Western import, but that they are also a reflection of _____ values.

(21) The value of *ubuntu* was mentioned in the postscript of the _____ as being a source of the underlying values of the new legal order in South Africa.

(22) South Africa's Bill of Rights was born out of the country's long struggle against _____ and _____.

(23) *Ubuntu* implies a coexistence of human rights and freedoms and _____, because it emphasises the role of the individual as member of a community.

(16) Waar die beginsel van konstitusionalisme volle erkenning geniet, word die Grondwet as die _____ beskou aan die hand waarvan alle ander reg getoets kan word.

(17) Die Handves van Regte word in artikel 7 van die Grondwet van 1996 as die hoeksteen van _____ in Suid-Afrika beskryf.

(18) Die oorsprong van menseregte in Suid-Afrika kan teruggevoer word na die _____ van die Westerse komponent van die reg en na die Afrika-filosofie van _____.

(19) In Suid-Afrika is die Handves van Regte vir die eerste keer getoets in die konstitusionele hofsaak van _____.

(20) In *S v Makwanyane* 1995 (6) BCLR 665 (CC) het die _____ Hof aangetoon dat die Grondwet en die Handves van Regte nie uitsluitlik ‘n Westerse produk is nie, maar dat dit ook _____-waardes weerspieël.

(21) Die waarde van *ubuntu* is in die naskrif van die _____ vermeld as ‘n bron van onderliggende waardes in ‘n nuwe Suid-Afrikaanse regsorde.

(22) Suid-Afrika se Handves van Regte is gebore uit die land se lang stryd teen _____ en _____.

(23) *Ubuntu* impliseer die saambestaan van menseregte en vryhede en _____, omdat dit die rol van die individu as ‘n lid van die gemeenskap beklemtoon.

(24) The South African Bill of Rights has both _____ and _____ application.

(25) The Bill of Rights applies _____ when it regulates the interaction between the state and its subjects.

(26) The Bill of Rights applies _____ when it regulates the interaction between private persons.

(27) According to _____ the content of natural law is dictated by human reason.

(28) According to natural law theorists, there is a higher set of _____ and _____ norms that has not been created by human beings but which exists in nature.

(29) The _____ was a time in the history of Western culture in which there was great emphasis on the rational nature of man and his ability to draw up rules applicable to all people at all times.

(30) The Age of Enlightenment in the history of Western culture is also known as the _____.

(31) The English philosopher _____ was the first to suggest that natural law consisted of the inalienable human rights to _____, _____ and _____.

(24) Die Suid-Afrikaanse Handves van Regte het beide _____ en _____ toepassing.

(25) Die Handves van Regte het _____ toepassing wanneer dit die verhouding tussen die staat en sy onderdane reguleer.

(26) Die Handves van Regte het _____ toepassing wanneer dit die verhouding tussen privaat individue onderling reguleer.

(27) Volgens _____ word die inhoud van natuurreg deur die menslike rede gedikteer.

(28) Volgens die natuurregfilosowe is daar 'n stel _____ en _____ norme wat nie deur die mens geskep is nie, maar wat in die natuur bestaan.

(29) Die _____ was 'n tyd in die geskiedenis van die Westerse kultuur toe groot klem gelê is op die mens se rede en sy vermoë om reëls op te stel wat te alle tye op alle mense van toepassing sou wees.

(30) Die Eeu van die Verligting in die geskiedenis van die Westerse kultuur staan ook bekend as die _____.

(31) Die Engelse filosoof _____ was die eerste person wat gesê het dat die natuurreg uit die onvervreembare regte van die mens op _____, _____ en _____ bestaan.

(32) According to John Locke's idea of a _____ between the state and its citizens, the state's only function is to protect the basic human rights of every citizen.

(33) The constitutional grounding of first generation rights can be linked to the 1789 _____ and the 1776 _____.

(34) The 1948 Universal Declaration of Human Rights was an agreement which came about in an effort to give content to the idea of fundamental rights at an _____.

(35) According to the Truth and Reconciliation Commission (TRC) the inability of courts to make a stand against the onslaught of apartheid was mainly because of the doctrine of _____, which allowed judges only to administer justice and not create it.

(36) The courts' capacity to formally test legislation means that the courts may enquire whether the _____ in the passing of legislation and whether the _____ was composed correctly and functioned correctly.

(37) In order to sufficiently protect the underlying principle of an open and free democracy, the principle of constitutionalism requires that not only a correct procedure be followed when law is made, but also that the _____ be tested against a Bill of Rights.

(38) _____ of the final Constitution by the Constitutional Court means that the Constitution complies with the constitutional principles that were laid down in the interim Constitution.

(32) Volgens John Lock se idee van ‘n _____ tussen die staat en sy onderdane, is die enigste funksie van die staat om die individu se basiese menseregte te beskerm.

(33) Eerstegenerasieregte se grondwetlike beslag hang saam met die _____ van 1789 en die _____ van 1776.

(34) Die universele Verklaring van Menseregte was ‘n internasionale verdrag wat tot stand gekom het in ‘n poging om inhoud aan die gedagte van fundamentele regte op _____ vlak te gee.

(35) Volgens die Waarheids-en Versoeningskommissie was die howe se onvermoë om standpunt in te neem teen die aanslag van apartheidswetgewing, die gevolg van die beginsel van _____ wat regters slegs toegelaat het om die reg toe te pas en nie reg te skep nie.

(36) Die howe se formele toetsbevoegdheid behels dat hulle mag navraag doen of die _____ by die aanneming van wetgewing en of die _____ korrek saamgestel is en korrek gefunksioneer het.

(37) Ten einde die onderliggende beginsels van ‘n oop en vrye demokrasie te beskerm, vereis die beginsel van konstitusionalisme dat nie slegs die korrekte prosedure by die aanname van wetgewing gevolg word nie, maar ook dat die _____ aan die hand van die Handves van Regte getoets word.

(38) Die feit dat die finale Grondwet deur die Konstitusionele Hof _____ is, beteken dat die Grondwet voldoen aan die grondwetlike beginsels wat in die tussentydse Grondwet neergelê is.

(39) According to the final Constitution, fundamental rights may be amended only if the amendment is supported by at least _____ of the members of the _____ and at least _____ of the nine provinces represented in the _____.

(40) Since the coming into operation of the interim Constitution, parliament is _____ to the Constitution and courts enjoy the capacity _____ _____.

(41) First generation rights are also known as _____. They prohibit the _____ from interfering in the affairs of the individual.

(42) Second generation rights are also known as _____. These rights oblige the state to play an active role in providing certain basic amenities of life to the individual.

(43) Third generation rights in the final Constitution include the rights of _____, _____ and _____ communities and the right to an _____.

(39) Ingevolge die finale Grondwet mag fundamentele regte slegs gewysig word met die steun van minstens _____ van die lede van die _____ _____ en van minstens _____ van die nege provinsies in die _____.

(40) Sedert die inwerkingtreding van die tussentydse Grondwet is die parlement _____ aan die Grondwet en het die howe die uitdruklike bevoegdheid om _____.

(41) Eerstegenerasieregte staan ook bekend as _____. Hierdie regte verbied die _____ se inmenging by die sake van die individu.

(42) Tweedegenerasieregte staan ook bekend as _____. Hulle verplig die staat om 'n aktiewe rol te speel in die voldoening aan sekere basiese behoeftes in die lewe van die individu.

(43) Derdegenerasieregte in die finale Grondwet sluit die regte van _____-, _____- en _____ gemeenskappe in en die reg op 'n omgewing _____.

ANSWERS TO SHORT QUESTIONS

STUDY UNIT 1

(1) The **common law** is an important source of the Western component of our law.

☺ **Keep in mind:**

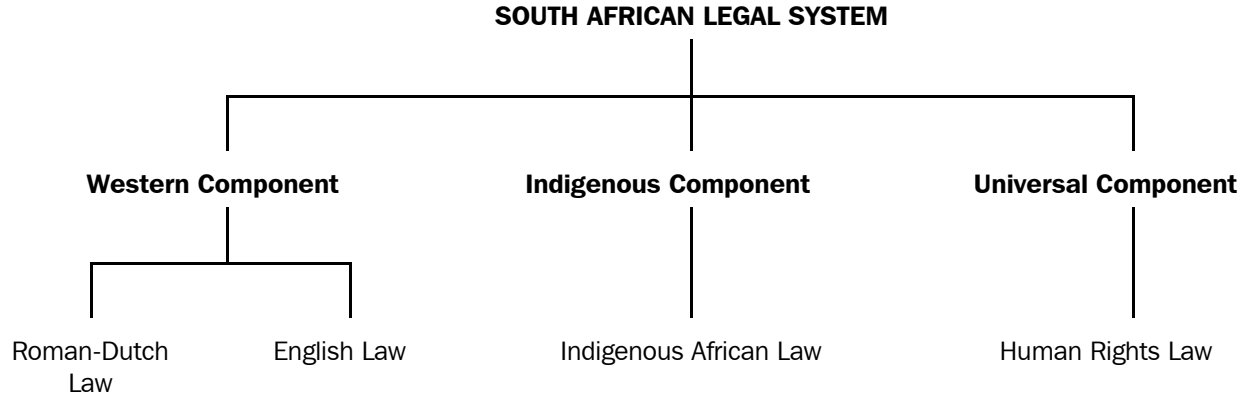
In South Africa the term "common law" refers to Roman-Dutch law as influenced by English law. This "common law" is a source or a place of origin of South African law and must be distinguished from other sources such as decisions of the courts, legislation and customary law.

In a broader sense "common law" also has another meaning, namely the common law of England. The English common law influenced the legal systems of many countries (eg America, Australia). The legal systems of countries which have been influenced by English law are thus referred to as "common-law systems". In contrast, the legal system which have been influenced by Roman law are referred to as "civil-law systems". Now read the comments on question 1 of Study Unit 2.

(2) There is no **comprehensive written version** of South African law which has the force of legislation. In other words South African law is not codified.

(3) There are three major components of our law, namely a **Western**, **indigenous African**, and **universal** component.

☺ **Take a look at this diagram:**



ANTWOORDE OP KORTVRAE

STUDIE-EENHEID 1

(1) Die **gemenereg** is ‘n belangrike bron van die Westerse komponent van ons reg.

☺ **Let wel:**

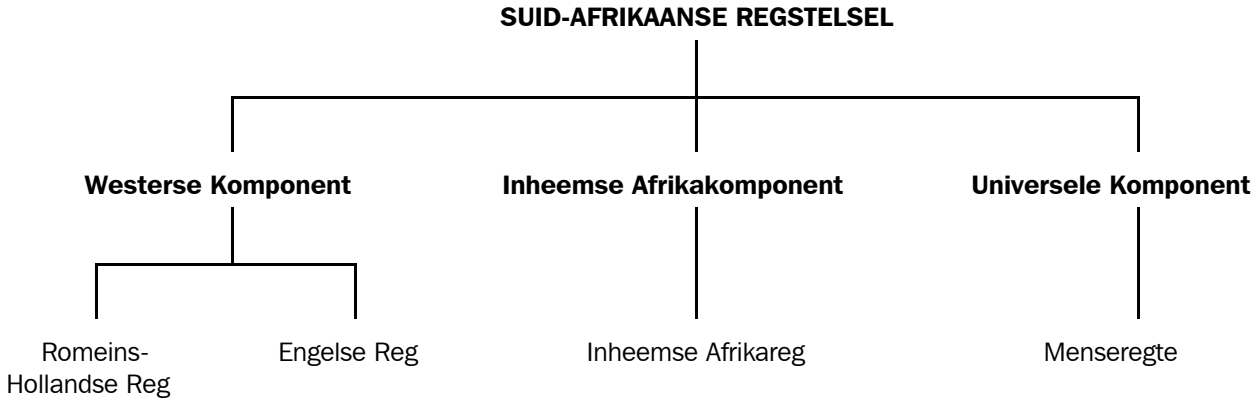
Die begrip “gemenereg” in Suid-Afrika verwys na die Romeins-Hollandse reg soos beïnvloed deur die Engelse reg. Hierdie “gemenereg” is ‘n bron of ‘n plek van oorsprong van die Suid-Afrikaanse reg en moet onderskei word van ander bronne soos hofbeslissings, wetgewing en gewoontereg.

In ‘n breër sin het “gemenereg” ook ‘n ander betekenis, naamlik die “common law” van Engeland. (Let daarop dat in lg geval die begrip “common law” meestal ook in Afrikaans gebruik word, aangesien dit ‘n tegniese betekenis het.) Die Engelse common law het die regstelsels van baie lande beïnvloed (bv Amerika en Australië). Daar word na die regstelsels van lande wat deur Engelse reg beïnvloed is, verwys as common law-regstelsels. In teenstelling hiermee word daar na die regstelsels van lande wat deur Romeinse reg beïnvloed is, verwys as *civil law*-regstelsels. Lees nou die kommentaar op vraag 1 van Studie-eenheid 2.

(2) Daar is geen **volledig geskrewe weergawe** van ons reg wat die krag van wetgewing het nie. Met ander woorde ons reg is nie gekodifiseer nie.

(3) Daar is drie hoofkomponente van ons reg, naamlik ‘n **Westerse, inheemse Afrika-** en **universele** komponent.

☺ **Kyk na hierdie diagram:**



(4) The internal history of the law relates to the origins and development of **legal rules** and **principles**.

(5) The external history of the law relates to **political, constitutional, sociological, economic** and **religious** factors which have contributed directly or indirectly to the development of the **legal system**.

(6) The **South African Law Commission** is currently investigating Islamic **law of marriage** with a view to integrating it into the South African legal system.

(7) The history of the Western component of our law starts with the **foundation of Rome (or 8th century BC; or 753BC)**.

(8) The origin of the universal component of our law is traced to the rise of the **natural-law theory** as developed by Greek and Roman thinkers and by the early Christian church fathers from the 4th century AD onwards.

(9) Although historical investigation usually focuses on the **Western** foundations of human rights, **Islamic** thought also impacted on its development.

(10) The **Bantu-speakers** occupy the greatest part of Africa south of the Sahara (Sub-Saharan Africa). They established themselves south of the Limpopo **1500 years (approximately AD 500)** ago. However, this was not the time when their law first developed.

STUDY UNIT 2

(1) Since South African law has been influenced by the **European/Roman/civilian** tradition and the **English/common-law** tradition, as well as the **indigenous/African** tradition, we may say that our legal system is mixed or hybrid.

☺ **Keep in mind:**

The Western component of our law comprises **both** Roman-Dutch law (which has characteristics of the Roman or civilian law which prevailed in Europe until the 19th century) **as well as** English law (which has characteristics of the English common law which prevails in England). In addition, our law has an African component which comprises the indigenous African law. It is because there are characteristics of all these legal systems in our law, that we may speak of a "hybrid legal system".

(2) **Reception** refers to the willing adoption of a legal system by a community which already has an existing legal system.

(4) Die inwendige geskiedenis van die reg het betrekking op die ontstaan en ontwikkeling van **regsreëls** en **regsbeginsels**.

(5) Die uitwendige geskiedenis van die reg het betrekking op die **politieke, konstitusionele, sosiologiese, ekonomiese** en **godsdienstige** faktore wat direk of indirek bygedra het tot die ontwikkeling van die **regstelsel**.

(6) Die **Suid-Afrikaanse Regskommissie** ondersoek huidig die Islamitiese **huweliksreg** met die oog daarop om dit by die Suid-Afrikaanse regstelsel te integreer.

(7) Die geskiedenis van die Westerse komponent van ons reg ontstaan by die **stigting van Rome (of die 8ste eeu vC; of 753 vC)**.

(8) Die oorsprong van die universele komponent van ons reg kan teruggevoer word na die ontstaan van die **natuurregteorie** soos ontwikkel deur Griekse en Romeinse denkers en die vroeë Christelike kerkvaders vanaf die 4de eeu nC.

(9) Alhoewel die meeste historiese ondersoeke op die **Westerse** grondslag van menseregte fokus, het **Islamitiese** denke ook ‘n invloed op die ontwikkeling daarvan gehad.

(10) Die **Bantoesprekers** bewoon die grootste gebied van Afrika suid van die Sahara. Hulle het hulle sowat **1 500 jaar (ongeveer 500 nC)** gelede suid van die Limpopo gevestig. Dit was egter nie die stadium toe hulle reg die eerste keer ontwikkel het nie.

STUDIE-EENHEID 2

(1) Aangesien die Suid-Afrikaanse reg beïnvloed is deur die **Europese/Romeinse/civil law**-tradisie en die **Engelse/common law**-tradisie, sowel as die **inheemse/ Afrika**tradisie, praat ons van ons regstelsel as ‘n gemengde of hibriede regstelsel.

☺ **Let wel:**

Die Westerse komponent van ons reg bestaan uit **beide** die Romeins-Hollandse reg (wat karaktertrekke vertoon van die Romeinse reg of civil law [‘n tegniese term] wat in Europa gegeld het tot die 19de eeu) **en** die Engelse reg (wat karaktertrekke vertoon van die Engelse reg of common law wat in Engeland geld). Ons reg het verder ‘n Afrika komponent wat uit inheemse Afrikareg bestaan. Dit is juis omdat daar karaktertrekke van al hierdie regstelsels in ons reg is, dat ons van ‘n “hibriede regstelsel” kan praat.

(2) **Resepsie** verwys na die vrywillige absorpsie of oorname van ‘n regstelsel deur ‘n gemeenskap wat reeds ‘n bestaande regstelsel het.

(3) **Transplantation** refers to the importation of a legal system into a territory which has no legal system.

(4) There are four phases of the reception of Roman law in Western Europe. The first, starting in the 5th century AD when a few Roman-law rules were randomly incorporated into the indigenous European customary law, is known as the **infiltration/ pre-reception** phase. The second, in the 12th century, was the phase of the **intellectual rediscovery** of Justinian's Roman law. Thirdly**,** the 13th and 14th centuries saw an increase in the scientific study of Roman law. This was known as the **early reception** phase. And, finally, during the 15th and 16th centuries when Roman law was incorporated into the legal systems of some European countries forming part of their common law, we speak of the **reception *in complexu*/ reception proper** of Roman law.

(5) Although there is a large variety of indigenous African legal systems, their **common features** and **fundamental similarities** cause them to be regarded as a single legal family.

(6) Which British author was one of the leading Western authorities on indigenous African law? **Antony Allott**

(7) As a result of their geographical isolation the Bantu-speakers experienced a tradition without writing, that is a **pre-literate** tradition. One may then well ask: is it possible to reconstruct the history of such a people? The answer is **yes.** How? Through **oral traditions**. Oral traditions are **unwritten, verbal** accounts or narrations of the past. How is oral information preserved? **Through songs, legends and epic poems, memorised and transmitted from generation to generation**.

(8) The main reason for the neglect of research into African history was the erroneous belief that history should be based only on **written documents**. A further reason was the uncertainty as to what **methodology/method** should be used in processing oral records and information. These objections were overcome by adopting an **interdisciplinary** approach and through critical **analysis** of oral narrations. Therefore, in present times, the reconstruction and verification of information contained in unwritten history occurs through **ethnographical, archaeological**, **paleaeontological** and **linguistic** materials**.**

(3) **Oorplanting** verwys na die invoer van ‘n regstelsel in ‘n gebied wat nie ‘n regstelsel het nie.

(4) Daar is vier fases in die resepsie van die Romeinse reg in Wes-Europa. Die eerste het in die 5de eeu nC begin toe ‘n paar Romeinsregtelike reëls blindweg in die inheemse Europese gewoontereg geïnkorporeer is. Dit staan bekend as die **pre-resepsie-/infiltrasie**fase. Die tweede, in die 12de eeu, was die tydperk van die **intellektuele herontdekking** van Justinianus se Romeinse reg. Derdens, in die 13de en 14de eeue, was daar ‘n toename in die wetenskaplike studie van die Romeinse reg. Dit het bekend gestaan as die **vroeë resepsie**fase. Laastens, gedurende die 15de en 16de eeue, is die Romeinse reg in die regstelsels van sommige Europese lande geïnkorporeer om deel van hulle gemenereg te vorm. Dit het bekend gestaan as die **resepsie *in complexu*/eintlike resepsie** van die Romeinse reg.

(5) Alhoewel daar baie inheemse Afrikaregstelsels is, het hierdie regstelsels genoeg **gemeenskaplike eienskappe** en **fundamentele ooreenkomste** om as een enkele regsfamilie beskou te word.

(6) Watter Britse outeur was een van die vooraanstaande en hoogs gerespekteerde Westerse gesaghebbendes op die gebied van die inheemse Afrikareg? **Antony Allott**.

(7) Vanweë hul geografiese afsondering het die Bantoetaalsprekendes ‘n tradisie sonder skrifstelsel, dit wil sê ‘n **‘n pre-literêre** tradisie. ‘n Mens mag dan vra: Is dit moontlik om die geskiedenis van sulke gemeenskappe te rekonstrueer? Die antwoord is **ja**. Hoe? Deur **mondelinge oorlewering/tradisies**. Mondelinge tradisies is **ongeskrewe, mondelinge** weergawes van gebeure wat in die verlede plaasgevind het. Hoe word mondelinge inligting bewaar? **Deur middel van liedere, legendes en epiese gedigte wat gememoriseer en van geslag tot geslag oorgedra word.**

(8) Die hoofrede waarom navorsing oor die geskiedenis in Afrika verwaarloos is, is dat daar verkeerdelik geglo is dat geskiedenis slegs op **geskrewe dokumente** gegrond kon word. Nog ‘n rede was die onsekerheid oor watter **metodologie/metode** gebruik kan word om die mondelinge inligting te verwerk. Hierdie besware is oorkom deur ‘n **interdissiplinêre** benadering en deur kritiese **ontleding** van mondelinge vertellings. Vandag word inligting wat in ongeskrewe geskiedenis vervat is, dus deur **etnografiese, argeologiese, paleontologiese** en **linguistiese** ondersoeke gestaaf.

(9) In the same way that African history is based on oral traditions, so too African or indigenous law is essentially **oral law** and thus unwritten. This is so even though indigenous law has, to some extent, been recorded through legislation, codification and Western restatements.

☺ **Keep in mind:**

The transcription (writing down) of indigenous law has mainly been done by Westerners and these transcriptions are mostly in English (or Afrikaans) and not in an African language. The fact that it had been reduced to writing, does not mean that the natural development of indigenous law has ceased. The law still develops within the indigenous communities and is still orally transmitted from generation to generation. That is why field research is still done in indigenous communities to establish the extent to which the law has changed. For example, the Centre for Indigenous Law at Unisa, conducted research in Atteridgeville and Mamelodi to determine whether bridewealth (*lobolo*) still plays a role in modern indigenous marriages.

(10) Name any two anthropologists-cum-lawyers who engaged in restatements of pre-colonial indigenous law. **Myburgh, Schapera, Breutz, Lestrade, Van Warmelo**.

(11) The "repugnancy" clause means that indigenous law is only recognised if it is not contrary to Western notions of **public policy, natural justice** and **good morals**; in other words, if it is not repugnant to Western thinking.

(12) During the colonial period, the only area of the Cape Colony in which indigenous law was officially applied, was the **Transkei.**

(13) The first attempt at the codification of indigenous law in Natal was made in 1878 when the **Code of Zulu Law** was drafted.

(14) In the colonial period, the ultimate goal in the administration of justice was the **assimilation** of indigenous law into colonial law. The indigenous communities did not support the imposed **colonial law**.

(15) In 1927, colonial legislation regarding indigenous law was consolidated in the **Black Administration Act (38 of 1927)**. This Act provided for **separate** courts for blacks and for the **limited** recognition of indigenous law. Section 11(1) of this Act contained the notorious **"repugancy"** clause.

(9) Op dieselfde manier wat geskiedenis in Afrika op mondelinge tradisies gebaseer is, is inheemse reg, alhoewel dit tot ‘n mate deur middel van wetgewing, kodifisering en herformulering deur Westerlinge neergeskryf is, nog steeds wesenlik **mondelinge reg** en dit bly grootliks ongeskrewe van aard.

☺ **Let wel:**

Die inheemse reg is grootliks in Engels (soms Afrikaans) neergeskryf en nie in ‘n Afrikataal nie. Dit is ook oor die algemeen deur Westerlinge gedoen. Die feit dat dit neergeskryf is, beteken nie dat die natuurlike ontwikkeling van die inheemse reg opgehou het nie. Die reg onwikkel steeds binne die inheemse gemeenskappe en word steeds mondelings oorgedra van geslag tot geslag. Dit is die rede waarom daar steeds veldwerk in inheemse gemeenskappe gedoen word om vas te stel tot welke mate die reg verander het. Byvoorbeeld, die Sentrum vir Inheemse Reg by Unisa het navorsing in Atteridgeville en Mamelodi gedoen om te bepaal of bruidskat (*lobolo*) nog ‘n rol speel in moderne inheemse huwelike.

(10) Noem enige twee antropoloë-cum-regsgeleerdes wat met die herformulering van pre-koloniale inheemse reg gemoeid was. **Myburgh, Schapera, Brentz, Lestrade, Van Warmelo**.

(11) Die “weersinsklousule” (*repugnancy clause*) beteken dat inheemse reg erken word in soverre dit nie in stryd met die Westerse begrip van **openbare beleid, goeie sedes** en **natuurlike geregtigheid** is nie; met ander woorde, as dit nie teen Westerse denke indruis nie.

(12) Gedurende die koloniale tyd was die enigste gebied in die Kaapkolonie waar die inheemse reg amptelik toegepas is, die **Transkei**.

(13) In 1878 is daar vir die eerste keer probeer om die inheemse reg van Natal te kodifiseer toe die **Kode van Zoeloereg** aanvaar is.

(14) Gedurende die koloniale tyd was die uiteindelike doel van die regspleging om die inheemse reg in die koloniale reg **op te neem**. Die inheemse gemeenskappe het die koloniale reg wat op hulle afgedwing is, **nie ondersteun nie**.

(15) In 1927 is die koloniale wetgewing rakende die inheemse reg uiteindelik in die **Swart Administrasiewet (38 van 1927)** gekonsolideer. Hierdie Wet het vir **aparte** howe vir swart mense en die **beperkte** erkenning van inheemse reg voorsiening gemaak. Artikel 11(1) van hierdie Wet het die gewraakte **“weersinsklousule”** bevat.

(16) In terms of the Black Administration Act 38 of 1927, limited civil and criminal jurisdiction was granted to the indigenous courts of **chiefs and headmen**. This Act also instituted **commissioners'** courts as an inexpensive means to resolve disputes between blacks. The latter courts were presided over by officials of the Department of Native Affairs who had a discretion to apply either **indigenous African law** or the **general law of the land/common law**.

(17) In 1986, the Special Courts for Blacks Abolition Act abolished, amongst others, commissioners' courts. The Act afforded the **magistrates' courts** jurisdiction to apply indigenous law and to take **judicial cognisance/notice** thereof.

(18) As from 1996, section 211(3) of South Africa's new Constitution provides that all courts must apply indigenous law, when it is applicable. However, indigenous law still remains subject to the **Constitution** and any **legislation** dealing with it. This means that indigenous law will for example have to be carefully examined in the light of the **equality** clause.

(19) Although the Dutch authorities in the Cape proclaimed the idea of **freedom of religion** in 1804, Islam was not allowed to flourish. Islamic **family law** has not enjoyed official recognition by the State.

(20) Islamic marriages are today still regarded as contrary to **public policy** because of their potentially polygynous nature.

Keep in mind:

In 2003 the South African Law Commission published a report on Islamic marriages and related matters. The report contains a draft bill on Islamic marriages. Remember further that the Recognition of Customary Marriages Act came into operation towards the end of 2000 thereby giving full recognition to indigenous African marriages.

(21) *Ryland v Edros* 1997 (2) SA 690 (C) and *Amod v Multilateral Motor Vehicle Accidents Fund* 1999 (4) SA 1319 (SCA) are two important cases in which the Courts have indicated that they are prepared to reconsider the status of **Muslim/Islamic marriages /law**.

STUDY UNIT 3

(1) The main source of **Roman law** is the *Corpus Iuris Civilis***.**

(2) The ***Corpus Iuris Civilis*** is a code which describes Roman law as it was during the 6th century AD at the end of its development.

(3) Critical legal thinking about the ideals which inspire the Western legal tradition originated in **Athens**.

(16) Kragtens die Swart Administrasiewet 38 van 1927 is beperkte siviele en strafjurisdiksie aan inheemse howe van **kapteins en hoofmanne** verleen. Hierdie Wet het ook **kommissaris**-howe ingestel as 'n goedkoop manier om siviele geskille tussen swart mense te besleg. Hierdie howe was onder toesig van amptenare van die destydse Departement van Naturellesake wat 'n diskresie gehad het om óf **inheemse Afrikareg** óf die **algemene landsreg/gemenereg** toe te pas.

(17) In 1986 het die Wet op die Afskaffing van Spesiale Howe vir Swartes onder andere die kommissarishowe afgeskaf en aan die **landdroshowe** jurisdiksie verleen om inheemse reg toe te pas en om daarvan **geregtelik kennis te neem**.

(18) Sedert 1996 bepaal artikel 211(3) van die Grondwet van Suid-Afrika dat alle howe die inheemse reg, wanneer toepaslik, moet toepas. Die toepassing daarvan is egter nog steeds onderworpe aan die **Grondwet** en enige **wetgewing** wat betrekking op die inheemse reg het. Dit beteken dat inheemse reg byvoorbeeld deeglik in die lig van die **gelykheids**klousule ondersoek sal moet word.

(19) Alhoewel die Nederlandse owerheid in 1804 **godsdiensvryheid** in die Kaapkolonie verklaar het, is Islam onderdruk. Islamitiese **familiereg** is dus histories nie amptelik deur die Staat erken nie.

(20) Islamitiese huwelike word vandag steeds beskou as teen die **openbare beleid** vanweë hul potensieel poliginiese aard.

☺ **Let wel:**

In 2003 het die Suid-Afrikaanse Regskommissie 'n verslag oor die status van die Islamitiese familiereg en verwante aangeleenthede gepubliseer wat 'n wetsontwerp oor Islamitiese huwelike bevat. Onthou verder dat die Wet op die Erkenning van Gewoonteregtelike Huwelike teen die einde van 2000 in werking getree het en dat daar nou volle erkenning aan inheemse Afrika huwelike verleen word.

(21) *Ryland v Edros* 1997 (2) SA 690 (C) en *Amod v Multilateral Motor Vehicle Accidents Fund* 1999 (4) SA 1319 (SCA) is twee belangrike sake waarin die howe aangedui het dat hulle bereid is om die status van **Moslem/Islamitiese huwelike/reg** te heroorweeg.

STUDIE-EENHEID 3

1) Die belangrikste bron van **Romeinse reg** is die *Corpus Iuris Civilis*.

2) Die ***Corpus Iuris Civilis*** is 'n kode wat die Romeinse reg beskryf soos dit in die 6de eeu nC teen die einde van die ontwikkeling daarvan was.

3) Kritiese denke oor die ideale wat die Westerse regstradisie voed, het in **Athene** ontstaan.

(4) Athens was famous for philosophers such as **Socrates, Plato** and **Aristotle**.

☺ **Keep in mind:**

In the 5th century BC, Greece as we know it today, consisted of a number of independent states. For our purposes, the most important was Athens. Thus, Athens in question (3) refers to the State of Athens.

(5) The ideal of a scientific and rational legal system originated in the work *The Republic*, written by the Greek philosopher **Plato**.

(6) Much of what we know about the earliest origins of Roman history is based on **oral traditions**. However, the art of writing became known in Rome as early as the **7th or 6th centuries BC** and we are thus able to rely on **written documents/sources** to trace the development of Roman culture.

(7) Roman legal history may be divided into four phases, namely the era of **early Roman law**, the **pre-classical** period, the **classical** period and the **post-classical** period.

☺ **Keep in mind:**

Roman **political history** may be divided into four phases: The Period of the Kings, the Republic, the Principate and the Dominate. There are also four phases in the development of **Roman law**: the period of early Roman law, the pre-classical, classical and post-classical periods. These phases in the development of Roman law do not necessarily coincide with the phases of the political history.

(8) During the period of **early Roman law**, law was characterised by strictness and rigidity.

(9) During the **pre-classical** period of Roman law the *ius gentium* was established. This law was characterised by **fairness, flexibility** and **lack of formalism**.

(10) During the first two centuries of the **Principate**, the power of Rome was at its height and Roman law experienced its greatest development. These two centuries were known as the **classical** period of Roman law.

(11) During the **post-classical** period, Roman law was simplified and administered by officials in the distant parts of the Empire. This led to the emergence of vulgar Roman law.

(12) Towards the end of the **post-classical** period there was a renewed interest in **classical** Roman law.

(4) Athene was bekend vir filosowe soos **Socrates, Plato** en **Aristoteles**.

☺ **Let wel:**

Griekeland, soos ons dit vandag ken, het in die 5de eeu vC uit 'n aantal onafhanklike state bestaan. Die belangrikste vir ons doeleindes was Athene. Die Athene waarna daar in vraag (3) verwys word, is die Staat van Athene.

(5) Die ideaal van 'n wetenskaplike en rasionele regstelsel het ontstaan in die werk *Die Republiek*, geskryf deur die Griekse filosoof **Plato**.

(6) Baie van wat ons van die vroegste oorsprong van die Romeinse geskiedenis weet, is op **mondelinge tradisies** gebaseer. Die skryfkuns het egter so vroeg as die **7de of 6de eeue vC** in Rome bekend geword en ons kan dus op **geskrewe dokumente/bronne** steun om die ontwikkeling van die Romeinse kultuur na te vors.

(7) Die Romeinse regsgeskiedenis kan in vier fases verdeel word, naamlik die tydperk van **vroeë Romeinse reg**, die **voor-klassieke** tydperk, die **klassieke** tydperk en die **na-klassieke** tydperk.

☺ **Let wel:**

Die Romeinse **politieke geskiedenis** kan ingedeel word in vier fases: die tydperk van die Konings, die Republiek, Prinsipaat en Dominaat. Daar is ook vier fases in die ontwikkeling van die **Romeinse reg**: die tydperk van die vroeë Romeinse reg, die voor-klassieke, klassieke en na-klassieke tydperke. Hierdie tydperke val nie noodwendig saam met die tydperke in die politieke geskiedenis nie.

(8) Gedurende die tydperk van **vroeë Romeinse reg** is die reg gekenmerk deur onbuigsaamheid en formalisme.

(9) Gedurende die **voor-klassieke** tydperk van die Romeinse reg is die *ius gentium* geskep. Hierdie reg is gekenmerk deur **billikheid**, **soepelheid** en **gebrek aan formalisme**.

(10) Gedurende die eerste twee eeue van die **Prinsipaat** het die mag van Rome 'n hoogtepunt bereik en die reg het sy grootste ontwikkeling beleef. Hierdie twee eeue het bekend gestaan as die **klassieke** tydperk van die Romeinse reg.

(11) Gedurende die **na-klassieke** periode van die Romeinse reg, was die reg vereenvoudig en toegepas deur amptenare in die afgeleë gebiede van die Ryk. Dit het aanleiding gegee tot die ontstaan van vulgêre Romeinse reg.

(12) Teen die einde van die **na-klassieke** periode was daar 'n hernude belangstelling in die **klassieke** Romeinse reg.

(13) During the early period of the kings, Roman law consisted of customary law and there was little distinction between **law** and **religion**. Similarly, in early **Germanic** times and in traditional **Africa** there was little distinction between **law** and **religion**.

(14) Traditional indigenous African and early Roman societies were similar. They were both subsistence communities and the emphasis was on **group solidarity**. The head of the family represented the family in **economic, legal, political** and **religious** affairs.

(15) During the Republican period, the three factors which contributed to the growth of Roman customary law into a system which could fulfil the requirements of the vast Roman Empire were the **Twelve Tables, jurists** and ***praetors***.

(16) The **class struggle** between the plebeians and the patricians led to the promulgation of the Law of the Twelve Tables.

(17) The Law of the Twelve Tables was important because it led to a division between rules of **law** and rules of **religion**.

(18) The **Law of the Twelve Tables** marks the beginning of legal science or jurisprudence in Western legal history.

(19) The Law of the Twelve Tables contained **contemporary Roman law (in other words law of the time it was published)** as well as **ancient customary law.**

(20) The primary task of the *praetor urbanus* was to **administer justice**. He appointed a **judge** to settle disputes in terms of **Roman law/*ius civile***, provided that both parties to a dispute were **Roman citizens**.

(21) Roman law (the *ius civile)* was applicable in disputes between **Roman citizens**.

(22) The office of *praetor peregrinus* was instituted to regulate disputes between **foreigners** or between **a foreigner** and **a Roman citizen**.

(23) The *praetor peregrinus* developed new legal rules which were known as the ***ius gentium***. This law differed from the *ius civile* in that it was **less formalistic** and **less severe/strict** and was based on **equity/fairness**.

(24) The *praetor urbanus*, who dealt with cases between Roman citizens, had the power to **allow and refuse actions and defences**. This enabled him to develop a new law which was based on the ***ius civile*** but influenced by the equitable principles of the ***ius gentium***.

(13) Gedurende die vroeë tydperk van die konings, het die Romeinse reg uit gewoontereg bestaan en is daar min onderskeid tussen **reg** en **godsdiens** getref. Insgelyks in die vroeë **Germaanse** tyd en in tradisionele **Afrika** was daar min onderskeid tussen **reg** en **godsdiens**.

(14) Tradisionele inheemse Afrika- en vroeë Romeinse gemeenskappe was eenders. Beide was bestaansgemeenskappe en die klem het op **groepsolidariteit** geval.Die hoof van die familie het die familie op **ekonomiese, regs-, politieke** en **godsdienstige** gebiede verteenwoordig.

(15) Drie faktore het gedurende die Republiek daartoe aanleiding gegee dat die Romeinse gewoontereg ontwikkel het tot ‘n stelsel wat voldoen het aan die behoeftes van die uitgebreide Romeinse Ryk. Dit was naamlik die **Twaalf Tafels**, die **regsgeleerdes** en die ***praetors***.

(16) Die **klassestryd** tussen die plebejers en die patrisiërs het aanleiding gegee tot die uitvaardiging van die Twaalf Tafels.

(17) Die Wet van die Twaalf Tafels was belangrik omdat dit gelei het tot die skeiding van **regs**reëls en **godsdiens**reëls.

(18) Die **Wet van die Twaalf Tafels** merk die begin van die regswetenskap of jurisprudensie in die Westerse regsgeskiedenis.

(19) Die Wet van die Twaalf Tafels het **geldende Romeinse reg/oftewel Romeinse reg ten tyde van publikasie daarvan** sowel as **antieke gewoontereg** bevat.

(20) Die primêre taak van die *praetor urbanus* was om **die regspleging te behartig**. Hy het ‘n **regter** aangestel om geskille ingevolge die **Romeinse reg/*ius civile*** te besleg, mits die partye tot ‘n geskil **Romeinse burgers** was.

(21) Die Romeinse reg (die *ius civile*) is toegepas in geskille tussen **Romeinse burgers**.

(22) Die amp van *praetor peregrinus* is ingestel om geskille tussen **vreemdelinge** onderling, of tussen ‘n **vreemdeling** en ‘n **Romeinse burger**, te besleg.

(23) Die *praetor peregrinus* het nuwe reëls ontwikkel wat bekend gestaan het as die ***ius gentium***. Hierdie reg het van die *ius civile* verskil omdat dit **minder formalisties** en **minder streng** was en op **billikheid/regverdigheid** gegrond was.

(24) Die *praetor urbanus* wat geskille tussen Romeinse burgers hanteer het, het die bevoegdheid gehad om **aksies en verwere toe te laat en af te wys**. Dit het hom in staat gestel om nuwe regsreëls te ontwikkel wat gebaseer was op die ***ius civile*** maar beïnvloed deur die billike beginsels van die ***ius gentium***.

(25) The new, fairer, less formalistic law, developed by the *praetor urbanus*, was known as the ***ius honorarium***.

In summary then (questions 21 - 25):

The *ius civile* was a strict and formalistic law which was applicable in disputes between Roman citizens. The *ius gentium* was a less formalistic, fairer law which was applicable in disputes between foreigners or foreigners and Roman citizens. The *ius honorarium* developed when the *praetor urbanus* developed a new law which was based on the *ius civile* but influenced by the equitable principles of the *ius gentium*. This law was applicable in disputes between Roman citizens.

As Roman society developed, the *ius honorarium* was increasingly used in disputes between Roman citizens. It eventually replaced the archaic *ius civile*. In AD 212, the Emperor Caracalla abolished the distinction between Roman citizens and foreigners. Thus, from early in the 3rd century AD, there was no longer a need to distinguish between the *ius civile, ius gentium* and *ius honorarium*. A "new" legal system evolved which was based on the *ius gentium* and the *ius honorarium*.

(26) *The Lex Cornelia de Edictis* forbade the *praetor* to **deviate from the edicts published at the beginning of his term of office**. However, he was allowed to **issue new edicts** if this proved necessary.

(27) The jurists started their work in the **Republican** period and continued it throughout the **Principate.** They did their most fruitful work during the **Principate.**

(28) During the **Republic**, Roman law became more accessible to the people. The **jurists** were responsible for the publication of Roman law and thus helped in this process.

(29) During the **Principate** the *praetor* became a pawn in the hands of the emperor. The *praetor* was elected by the **emperor** and acted only upon his instructions. The **praetorian edicts** were eventually codified in AD 130 by a jurist, Julianus (Latin spelling: Iulianus), who was commissioned by the emperor Hadrian.

(30) **Gaius** was one of the most important jurists of the classical period of Roman law. His work, the ***Institutiones*/Institutes,** is one of the few works of the classical period which survived and it gives us a good idea of the law of that time.

(31) The last great jurists of the classical period of Roman law were **Papinian, Ulpian, Paul** and **Modestinus**.

(25) Die nuwe, billiker en minder formalistiese reg, ontwikkel deur die *praetor urbanus,* het as die ***ius honorarium*** bekendgestaan.

☺ **Kortliks dan (vrae 21 - 25):**

Die *ius civile* was 'n streng, formalistiese reg wat van toepassing was in dispute tussen Romeinse burgers. Die *ius gentium* was minder formalisties en billiker en was van toepassing in dispute tussen vreemdelinge of tussen vreemdelinge en Romeinse burgers. Die *ius honorarium* het ontwikkel toe die *praetor urbanus* regsreëls ontwikkel het wat gebaseer was op die *ius civile*, maar beïnvloed is deur die billike beginsels van die *ius gentium*.

Met die ontwikkeling van die Romeinse gemeenskap, is die *ius honorarium* al hoe meer in dispute tussen Romeinse burgers onderling toegepas. Dit het uiteindelik die argaïese *ius civile* vervang. In 212 nC het Keiser Caracalla die onderskeid tussen Romeinse burgers en vreemdelinge afgeskaf. Daarmee het die behoefte om onderskeid te tref tussen die *ius civile, ius gentium* en *ius honorarium* verval. 'n "Nuwe" regstelsel het ontwikkel wat op die *ius gentium* en *ius honorarium* gebaseer is.

(26) Die *Lex Cornelia de Edictis* het die *praetor* verbied om **van die edikte wat aan die begin van sy ampstermyn gepubliseer is, af te wyk**. Hy kon egter **nuwe edikte uitvaardig** indien dit nodig was.

(27) Die regsgeleerdes het hulle werksaamhede gedurende die **Republikeinse** periode begin en dit in die **Prinsipaat** voortgesit. Hulle het hul belangrikste werk gedurende die **Prinsipaat** verrig.

(28) Gedurende die **Republiek** het die Romeinse reg toegankliker geword vir die gemeenskap. Die **regsgeleerdes** het 'n rol hierin gespeel omdat hulle verantwoordelik was vir die publikasie van die reg.

(29) Gedurende die **Prinsipaat** het die *praetor* 'n pion in die hande van die keiser geword. Hy is deur die **keiser** aangestel en het slegs in opdrag van die keiser gehandel. Die **praetoriese edikte** is in 130 nC in opdrag van keiser Hadrianus deur 'n regsgeleerde, Julianus (Latynse spelling: Iulianus), gekodifiseer.

(30) **Gaius** was een van die belangrikste juriste van die klassieke periode van die Romeinse reg. Sy werk, die ***Institutiones*/Institute**, is een van die min werke van die klassieke periode wat behoue gebly het en dit gee vir ons 'n idee hoe die reg in daardie tyd gelyk het.

(31) Die laaste groot regsgeleerdes van die klassieke tydperk van die Romeinse reg was **Papinianus, Ulpianus, Paulus** en **Modestinus**.

(32) During the Principate **imperial legislation** became an important branch of the law. However, this law did not contribute much to the development of legal science.

(33) The greatest influences on the development of law during the Principate were the ***praetor*****,** the **emperor** and the **jurists**.

(34) During the Dominate a law school was established in **Beirut.** This school, and others established afterwards, showed a renewed interest in **classical** Roman law, contributed to its survival and enabled the emperor **Justinian** to have Roman law **codified**.

(35) During the Dominate law consisted mainly of **imperial legislation**.

(36) The *Codex Theodosianus* was a codification of Roman law which applied in the **Eastern** and **Western Roman Empires**. This codification contained **classical Roman law** as well as **imperial legislation**. It also contained old laws **which were no longer in force.**

STUDY UNIT 4

(1) The *Leges Barbarorum* were the recorded tribal laws of the **Germanic** people.

(2) The establishment of the Holy Roman Empire by a Germanic king was a result of the **"Rome idea"/"Rome ideal"**.

(3) The **"Rome idea"/"Rome ideal"** refers to the Germanic peoples' admiration of Roman culture, particularly its **legal system** and **ordered government**. This contributed to the survival of Roman law after the fall of the Western Roman Empire in the 5th century AD before its revival by the **glossators** in the 12th century.

(4) How did recordings of Germanic law help with the preservation of Roman law? Firstly, isolated rules of Roman law were randomly adopted in indigenous Germanic law and later **codified** as part of Germanic law. Secondly, the ***capitularia*** or enactments of the Frankish kings helped to preserve Roman law. As in the case of other Germanic recordings, the **clerics**, who were schooled in Latin and Roman law, drafted these laws and worked **Romanist principles** into the fabric of the Germanic law.

(5) In the early Middle Ages many tribes inhabited Western Europe. It was not desirable to apply **one general law** to all the different tribes. Thus every person lived according to the law **of his or her tribe**. This is referred to as the **personality principle**.

(6) With the accumulation of land in the hands of powerful landowners, people living within a specific feudal territory became subject to the law of that area. This is known as the **territoriality principle**.

(32) Gedurende die Prinsipaat het **keiserlike wetgewing** 'n belangrike vertakking van die reg geword. Dit het egter min bygedra tot die ontwikkeling van die regswetenskap.

(33) Die grootste invloed op die regsontwikkeling gedurende die Prinsipaat is uitgeoefen deur die ***praetor***, die **keiser** en die **regsgeleerdes**.

(34) Gedurende die Dominaat is 'n belangrike regskool in **Beiroet** gestig. Hierdie skool en ander regskole wat daarna gestig is, het 'n hernude belangstelling in die **klassieke** Romeinse reg getoon, daartoe bygedra dat dit behoue gebly het en keiser **Justinianus** in staat gestel om die Romeinse reg te laat **kodifiseer**.

(35) Gedurende die Dominaat het die reg hoofsaaklik uit **keiserlike wetgewing** bestaan.

(36) Die *Codex Theodosianus* was 'n kodifikasie van die Romeinse reg wat in die **Oos-** en **Wes-Romeinse Ryke** gegeld het. Hierdie kodifikasie het ingesluit **klassieke Romeinse reg** sowel as **keiserlike wetgewing**. Dit het ook ou wette bevat **wat nie meer van krag was nie**.

STUDIE-EENHEID 4

(1) Die *Leges Barbarorum* was die opgetekende stamregte van die **Germaanse** volke.

(2) Die totstandkoming van die "Heilige Romeinse Ryk" deur 'n Germaanse koning was 'n uitvloeisel van die **"Rome-idee"/"Rome-ideaal"**.

(3) Die **"Rome-idee"/"Rome-ideaal"** spruit uit die geweldige bewondering wat die Germane vir die Romeinse kultuur gehad het, veral hul **regstelsel** en **geordende regeringswyse**. Dit het bygedra tot die oorlewing van die Romeinse reg na die val van die Romeinse Ryk in die 5de eeu nC voor dit weer deur die **glossatore** in die 12de eeu herontdek is.

(4) Hoe kon optekeninge van die Germaanse reg meehelp om die Romeinse reg te bewaar? Eerstens is losstaande reëls uit die Romeinse reg lukraak in die inheemse Germaanse reg opgeneem en later as deel van die Germaanse reg **gekodifiseer**. Tweedens, die ***capitularia*** of verordeninge van die Frankiese konings het gehelp om die Romeinse reg te bewaar. Soos in die geval van ander Germaanse optekeninge, het die **kerklikes**, wat in die Romeinse reg en Latyn geskool was, die verordeninge opgestel en **Romanistiese beginsels** in die Germaanse reg ingeweef.

(5) In die vroeë Middeleeue het baie stamme Wes-Europa bewoon. Dit was ongewens om al die verskillende stamme aan **een algemene reg** te onderwerp. Dus het elke persoon volgens die reg **van sy of haar eie stam** geleef. Dit staan bekend as die **personaliteitsbeginsel**.

(6) Met die opeenhoping van grond in die hande van magtige grondeienaars was mense wat binne 'n bepaalde feodale gebied gelewe het, onderworpe aan die reg van daardie gebied. Dit staan bekend as die **territorialiteitsbeginsel**.

(7) The Germanic peoples' records of their own tribal laws were known as the ***Leges Barbarorum***.

(8) The survival of Roman law in the West after the fall of the Roman empire (5th to 11th centuries AD) was due, in part, to the "barbarian's" codifications of Roman law. These codifications were called the ***Leges Romanorum*/*Leges Romanae Barbarorum***. The best-known of these codifications is the ***Lex Romana Visigothorum***, also called the ***Breviarum Alarici***.

(9) An important factor in the survival of Roman law after the fall of the Roman empire (5th to 11th centuries AD) was the Church. The expansion of the Christian religion was largely due to the granting of **freedom of religion** to the Christians by the Emperor Constantine. The church was governed by **Roman law**.

(10) Between the 5th and the 12th centuries AD two of the sources of Roman law used by the Church were the ***Breviarum Alarici*/*Lex Romana Visigothorum*** and the ***Corpus Iuris Civilis***. During this period the law of the Church had not yet reached the stage at which it could be regarded as a separate legal system.

(11) The *Collectio Dionysiana* is an important collection of **church laws** which was compiled during the 6th century AD.

(12) The law of the Church of the early Middle Ages laid the foundation for the development of a separate system of church law namely **canon** law**.** This law, together with **Roman law**, was received into the Germanic legal systems during the later Middle Ages. One of the most important influences of this law was that it served to reduce or temper the **strictness/rigidity** of Roman law. It became part of the **Roman-Dutch** law which was brought to South Africa in 1652.

☺ **Keep in mind:**

The missionaries that came to South and Southern Africa did not bring canon law to South Africa. Canon law became part of South African law through the Roman-Dutch law.

(13) With the death of Charlemagne, Europe entered a time of cultural and economic stagnation and **feudalism** became the order of the day. Under this system, the landowners allowed the non-landowners (vassals) to cultivate the land in exchange for the performance of certain services.

(14) The *Libri Feudorum* is the best-known recording of **feudal law** which, during the Middle Ages, formed part of the ***Corpus Iuris Civilis***.

(7) Die Germaanse volke se opgetekende stamwette het bekend gestaan as die ***Leges Barbororum***.

(8) Die voortbestaan van die Romeinse reg in die Weste na die val van die Romeinse Ryk (5de - 11de eeue nC) was deels as gevolg van die "barbare" se kodifikasie van die Romeinse reg. Hierdie kodifikasies staan as ***Leges Romanorum*/*Leges Romanae Barbarorum*** bekend. Die bekendste van hierdie kodifikasies is die ***Lex Romana Visigothorum***, ook die ***Breviarum Alarici*** genoem.

(9) 'n Belangrike faktor in die voortbestaan van die Romeinse reg na die val van die Romeinse Ryk (5de - 11de eeue nC) was die **Kerk**. Nadat keiser Konstantyn **geloofsvryheid** aan die Christene verleen het, het die Christelike geloof vinnig in die Romeinse Ryk veld gewen. Die **Romeinse reg** is in die kerk toegepas.

(10) Tussen die 5de - 11de eeue nC was twee bronne van die Romeinse reg wat deur die Kerk gebruik is die ***Breviarum Alarici*/*Lex Romana Visigothorum*** en die ***Corpus Iuris Civilis***. Gedurende hierdie periode het die reg van die Kerk nog nie so ontwikkel dat 'n mens van kerkreg as 'n afsonderlike stelsel kon praat nie.

(11) Die *Collectio Dionysiana* is 'n belangrike versameling van **kerklike reg** wat in die 6de eeu nC saamgestel is.

(12) Die reg van die kerk van die vroeë Middeleeue het die grondslag gelê vir 'n afsonderlike stelsel van kerkreg, naamlik die **kanonieke** reg. Hierdie reg is saam met **die Romeinse reg** in die Germaanse regstelsels in die later Middeleeue geresipieër. Een van die belangrikste invloede van hierdie reg was dat dit 'n matigende invloed op die **strengheid/rigiditeit** van die **Romeinse** reg gehad het. Dit het deel van die **Romeins-Hollandse** reg geword wat na Suid-Afrika gebring is.

☺ **Let wel:**

Die sendelinge wat na Suid- en Suider Afrika gekom het, het nie die kanonieke reg na Suid-Afrika gebring nie. Kanonieke reg het deur die Romeins-Hollandse reg deel van die Suid-Afrikaanse reg geword.

(13) Met die dood van Karel die Grote het Europa 'n tydperk van kulturele en ekonomiese stagnasie betree. **Feodalisme** het te voorskyn getree. Ingevolge hierdie stelsel het grondeienaars grond aan nie-grondeienaars gegee vir bewerking, wat dan in ruil daarvoor sekere dienste verrig het.

(14) Die bekendste optekening van die leenreg is die ***Libri Feodorum***, wat later, gedurende die Middeleeue, deel van die ***Corpus Iuris Civilis*** gevorm het.

STUDY UNIT 5

(1) The South African Law Association refers to countries in Southern Africa whose legal systems consist of **indigenous African** law and **Roman-Dutch** law, as influenced by **English** law.

(2) The glossator, Vacarius, founded the law school at **Oxford** in England.

(3) The beginning of the 12th century marked the period of the revival or renewal of **Roman law**. This revival took the form of a scientific study of **Justinian's codification of the law/the *Corpus Iuris Civilis***.

(4) The glossators followed an **exegetical** method in their study of the ***Corpus Iuris Civilis***. This means that they **analysed** the text, tried to **understand** the difficult sections and tried to find the **meaning** of unclear words.

(5) In their study, the glossators first concentrated on understanding the manuscript of the *Corpus Iuris Civilis* and then wrote **explanatory grammatical notes** in the margin of the text and also between the lines.

(6) The notes that the glossators wrote in the margin of the text and between the lines of the *Corpus Iuris Civilis* were called **glosses** and that is why these scholars were called glossators.

(7) The importance of the glossators' analysis of the text of the *Corpus Iuris Civilis* brought to light the **contradictions** in the text and also the missing parts of the **Codex** which had been copied in Greek.

(8) The three most important glossators were **Irnerius, Vacarius** and **Accursius**.

(9) **Irnerius** was generally recognised as the father of the glossators. **Vacarius** was also known as the Bolognese "missionary" because he spread "glossatorial gospel" to England. **Accursius** made the final contribution to the school of glossators through his *Glossa Ordinaria* in which he collected all the previous glosses, made a choice from them and where gaps existed, filled them in.

(10) The *Glossa Ordinaria* was a collection of glosses compiled by **Accursius**.

STUDIE-EENHEID 5

(1) Die Suid-Afrikaanse Regsvereniging verwys na lande in Suider-Afrika waarvan die regstelsels bestaan uit **inheemse Afrika**reg en **Romeins-Hollandse** reg soos beïnvloed deur **Engelse** reg.

(2) Die glossator Vacarius het die regskool in **Oxford** in Engeland gestig.

(3) Die begin van die 12de eeu was 'n tydperk van die "herlewing" of "hernuwing" van die **Romeinse reg**. Die herlewing het die vorm aangeneem van 'n wetenskaplike studie van **Justinianus se kodifikasie van die reg/*Corpus Iuris Civilis***.

(4) Die glossatore het 'n **eksegetiese** metode gevolg in hul studie van die ***Corpus Iuris Civilis***. Dit beteken dat hulle die teks **ontleed** het, die moeilike gedeeltes probeer **verstaan** het en die **betekenis** van onduidelike woorde probeer vind het.

(5) In hul studie van die *Corpus Iuris Civilis* het die glossatore aanvanklik gepoog om die manuskrip te verstaan. Hulle het **verklarende grammatikale aantekeninge** in die kantlyn van die teks, en ook tussen die reëls aangebring.

(6) Die aantekeninge wat die glossatore in die kantlyn van die teks, en ook tussen die reëls geskryf het, is **glosse** genoem, en dit is waarom hierdie geleerdes die glossatore genoem is.

(7) Die belang van die glossatore se ontleding van die teks van die *Corpus Iuris Civilis* het vroeg reeds **teenstrydighede** in die teks en ook die vermiste gedeeltes van die ***Codex,*** wat in Grieks oorgeskryf is, geopenbaar.

(8) Die drie belangrikste glossatore was **Irnerius, Vacarius** en **Accursius**.

(9) **Irnerius** word algemeen as die vader van die glossatore beskou. **Vacarius** word beskou as die "Bolognese sendeling" omdat hy die "glossatoriale evangelie" na Engeland versprei het. **Accursius** het die finale bydrae tot die skool van die glossatore gelewer met sy *Glossa Ordinaria* waarin hy 'n keur van die voorafgaande glosse saamgevat het en, waar nodig, leemtes aangevul het.

(10) Die *Glossa Ordinaria* was 'n versameling glosse wat deur **Accursius** saamgestel is.

(11) The work of the glossators is significant for three reasons: They carried out an efficient **restoration** of Roman law; they started a **scientific study** of Roman law; and they contributed to the **spread** of Roman law and thus assisted in its early reception phase.

☺ **Keep in mind:**

Question (11) deals with the importance of the work of the glossators for general legal development. Question (7) indicates the importance of the **specific technique** they followed in their study of the *Corpus Iuris Civilis*.

(12) The glossators' work was criticised because it was **not systematic**, lacked **historical perspective** and because Accursius omitted important glosses in his ***Glossa Ordinaria***.

(13) The *Decretum Gratiani*, which was a collection of **canon law sources** as well as a textbook for students, was published in the 12th century by **Gratianus.**

(14) The *Corpus Iuris Canonici* consisted of the *Decretum Gratiani* and other **papal decrees and official codifications** which were later added to it.

(15) The *Corpus Iuris Canonici* was a **collection/codification of canon law (sources)**.

(16) The jurists who studied the *Corpus Iuris Canonici* were known as the **canonists.**

(17) The ***ultramontani*** were a group of jurists at the French law school of Orléans.

(18) Unlike the glossators, who followed an exegetical approach in their study of the *Corpus Iuris Civilis*, the *ultramontani* adopted a **dialectical** approach. In other words, they regarded the *Corpus Iuris Civilis* as a **source book for critical discussion**, rather than a rigid system of rules to be accepted without questioning.

(19) The *ultramontani's* goal was to **incorporate Roman law into contemporary practice**. They sought to achieve their goal by investigating other sources of law which were essential for practice, namely, **town law**, **canon law** and **Germanic customary law.**

(20) **Revigny** and **Bellaperche** were the two most important *ultramontani*.

(21) The *ultramontani* was the first group of jurists to work out rules for the reception of **canon law** into **secular law.**

(11) Die werk van die glossatore is om drie redes van belang: Hulle het die Romeinse reg in doeltreffende mate **herstel**; hulle het begin om die Romeinse reg op 'n **wetenskaplike wyse te bestudeer**; en hulle het meegehelp met die **verspreiding** van die Romeinse reg en het dus bygedra tot die vroeë resepsie daarvan.

☺ **Let wel:**

Vraag (11) handel oor die belang van die glossatore se werk vir algemene regsontwikkeling. Vraag (7) toon aan waarom die **tegniek** wat hulle in hul studie van die *Corpus Iuris Civilis* gevolg het, van belang was.

(12) Die glossatore se werk is gekritiseer omdat dit nie **sistematies** was nie; omdat dit nie **historiese perspektief** gehad het nie; en omdat Accursius sekere belangrike glosse uit sy ***Glossa Ordinaria*** gelaat het.

(13) Die *Decretum Gratiani* wat 'n versameling van **bronne van die kanonieke reg**, sowel as 'n handboek vir studente was, is in die 12de eeu deur **Gratianus** gepubliseer.

(14) Die *Corpus Iuris Canonici* het bestaan uit die *Decretum Gratiani* en ander **pouslike dekrete en amptelike kodifikasies** wat later bygevoeg is.

(15) Die *Corpus Iuris Canonici* was 'n **versameling/kodifikasie van kanoniekereg(bronne)**.

(16) Die regsgeleerdes wat die *Corpus Iuris Canonici* bestudeer het, het bekendgestaan as **kanoniste.**

(17) Die ***ultramontani*** was 'n groep regsgeleerdes wat by die Franse regskool van Orléans saamgetrek het.

(18) Anders as die glossatore, wat 'n eksegetiese werkwyse gevolg het, het die *ultramontani* 'n **dialektiese** werkswyse in hul bestudering van die *Corpus Iuris Civilis* gevolg. Met ander woorde, hulle het die *Corpus Iuris Civilis* as **bron vir kritiese bespreking** beskou, eerder as 'n onbuigsame stel reëls wat blindelings aanvaar moes word.

(19) Die *ultramontani* se doel was om **die Romeinse reg in die praktyk van daardie tyd op te neem**. Hulle het hulle doel bereik deur ander bronne van die reg wat van belang was vir die praktyk te bestudeer. Hierdie bronne was **stadsreg, kanonieke reg** en **Germaanse gewoontereg.**

(20) **De Ravanis** en **De Bellapertica** was die belangrikste *ultramontani.*

(21) Die *ultramontani* was die eerste groep regsgeleerdes wat reëls uitgewerk het vir die resepsie van **kanonieke reg** in die **sekulêre reg.**

(22) According to Revigny and Bellaperche, canon law and Roman law had **separate spheres of application**, but canon law, by virtue of its fairness, could be used to **soften the strictness of Roman law**.

(23) From the middle of the 12th century, canon law had a strong influence in France, particularly in the French **law of procedure.**

(24) The commentators or post-glossators were much more concerned with the **practical aspects** of the law than with **substantive Roman law** as glossed in the *Glossa Ordinaria.*

(25) The approach of the commentators was to **interpret** the glosses on the *Corpus Iuris Civilis* and the text itself. This meant that each individual commentator gave his opinion on the text while at the same time referring to the **views of other writers** on the same subject.

(26) The commentators took up the challenge of reconciling the contradictions that arose between Roman law and the rules of **town law, canon law** and **Germanic customary law.**

(27) The commentators are also known as the **post-glossators.**

(28) Name two of the most important commentators or post-glossators. **Bartolus**, **Cinus, Baldus**.

(29) The commentator **Bartolus** is regarded as the greatest medieval jurist.

(30) The commentators laid the foundation for the 17th century school of **natural law**.

(31) The commentator Bartolus laid the foundation for modern **private international law/conflict of laws**.

(32) The commentators' influence on the development of the law was not confined to Bologna in Italy. It spread to most parts of Western Europe and played a major role in the creation of the **European common law/*ius commune***.

(33) The commentators facilitated the importation of Roman law into the **practical administration of justice** and it was their influence combined with the invention of printing that ensured the reception of Roman law into the legal systems of Germany, France, and the Netherlands.

(34) According to the commentators, Roman law and canon law should **be kept separate**. They argued that canon law had to be applied instead of Roman law: in matters **of a purely spiritual nature**, in matters **concerning the church** and in those cases where the application of Roman law **would amount to sin.**

(22) Volgens De Ravanis en De Bellapertica het die Romeinse en kanonieke reg **elk sy eie toepassingveld gehad**, maar kanonieke reg kon weens die billikheid daarvan gebruik word om die **strengheid van die Romeinse reg te versag.**

(23) Vanaf die middel van die 12de eeu het kanonieke reg 'n sterk invloed in Frankryk uitgeoefen, veral op die gebied van die Franse **prosesreg**.

(24) Die kommentatore of post-glossatore het hulle eerder besig gehou met die **praktiese aspekte** van die reg as met die **substantiewe Romeinse reg** soos dit in die *Glossa Ordinaria* geglosseer is.

(25) Die benadering van die kommentatore was om die glosse op die *Corpus Iuris Civilis,* sowel as die teks self te **interpreteer.** Dit het beteken dat elke afsonderlike kommentator sy beskouing van die teks gegee het en terselfdertyd na **die standpunte van ander skrywers** oor dieselfde onderwerp verwys het.

(26) Die kommentatore het die uitdaging aanvaar om die teenstrydighede te versoen tussen die Romeinse reg en die reëls van **stadsreg, kanonieke reg** en **Germaanse gewoontereg**.

(27) Die kommentatore staan ook bekend as **post-glossatore**.

(28) Noem twee van die belangrikste kommentatore of post-glossatore. **Bartolus, Cinus, Baldus**.

(29) Die kommentator **Bartolus** word beskou as die grootste middeleeuse juris.

(30) Die kommentatore het die grondslag gelê vir die 17de-eeuse **natuurregskool**.

(31) Die kommentator, Bartolus, het die grondslag gelê vir die moderne **internasionale privaatreg/konfliktereg**.

(32) Die kommentatore se invloed op die ontwikkeling van die reg was nie beperk tot Bologna in Italië nie. Dit het na die meeste dele van Wes-Europa versprei en 'n belangrike rol in die skepping van 'n **Europese gemenereg/*ius commune*** gespeel.

(33) Die kommentatore het die invoer van die Romeinse reg in die **praktiese regspleging** vergemaklik en dit was hulle invloed, tesame met die uitvinding van die drukkuns, wat verseker het dat die Romeinse reg in die regstelsels van Duitsland, Frankryk en die Nederlande geresipieer is.

(34) Volgens die kommentatore moes die Romeinse reg en kanonieke reg **apart gehou word**. Hulle was van mening dat kanonieke reg in plek van die Romeinse reg toegepas moes word: by **suiwer geestelike** aangeleenthede, by aangeleenthede **betreffende die kerk** en waar die toepassing van die Romeinse reg **op sonde sou neerkom**.

(35) The European common law or the *ius commune* came into being when **Roman law** and **canon law** were received into the **Germanic customary legal systems.**

STUDY UNIT 6

(1) From the 16th century, a group of scholars called the **humanists** started a new working method which differed from the approach of the earlier commentators. Calling for study of the original sources of Roman law, they went back to the ***Corpus Iuris Civilis*** and even Roman law sources **that came before Justinian's codification**.

(2) When discussing the reception of Roman law in France, one must distinguish between its reception in the **North** from the reception in the **South** of the country.

(3) The reception of Roman law in the South of France was popular because, *inter alia*, the ***Lex Romana Visigothorum/Breviarum Alarici*** was promulgated in Toulouse, the **glossators** founded the law school at Montpellier, and because branches of the ***ultramontani*** school were established at Montpellier and Toulouse.

(4) The reception of Roman law in the North of France was resisted because the **pope** and the **king** regarded Roman law as a threat to their authority; and the North wanted to protect its **customary law**.

(5) Name any two of the leading humanists you have studied. **Cujacius, Donellus**, **Gentilis, Alciatus, Zasius**.

(6) In assessing the contribution of the humanists there are negatives and positives. Their major shortcoming is that they **did not take account of the needs of their time/they were not practically oriented** and they studied Roman law in its **pure classical** f**orm.** Their importance is that they **systematised** Roman legal material.

(7) Which great French jurist wrote a monumental work on the law of obligations and is still referred to as an authority today? **Pothier**.

(8) Due to the completeness of the reception of Roman law in Germany we refer to it as an ***in complexu*** reception. Why did this reception take place? Germany was a place of great diversity of law: Every region had its own **customary law**. There was thus a need for a more **general** and **better developed** legal system and Roman law filled this void.

(35) Die Europese gemenereg of *ius commune* het tot stand gekom toe **die Romeinse reg** en **kanonieke reg** in die **Germaanse gewoonteregstelsels** geresipieer is.

STUDIE-EENHEID 6

(1) Die **humaniste** was 'n groep geleerdes wat vanaf die 16de eeu in reaksie op die werk van die kommentatore met 'n nuwe werkswyse begin het. Hulle wou die oorspronklike bronne van die Romeinse reg bestudeer en het daarom teruggegaan na die ***Corpus Iuris Civilis*** en selfs bronne van die Romeinse reg soos dit was **voor Justinianus se kodifikasie**.

(2) Wanneer daar van die resepsie van die Romeinse reg in Frankryk gepraat word, moet mens onderskei tussen die resepsie daarvan in die **Suide** en die resepsie in die **Noorde.**

(3) Sommige van die redes waarom die Romeinse reg soveel aanhang in die Suide van Frankryk geniet het, was dat die ***Lex Romana Visigothorum/Breviarum Alarici*** in Toulouse gepromulgeer is; die **glossatore** die regskool by Montpellier gestig het; en vertakkings van die ***ultramontani*** skool by Toulouse en Montpellier tot stand gebring is.

4) Daar was weerstand teen die Romeinse reg in die Noorde van Frankryk omdat die **pous** en die **koning** die infiltrasie van die Romeinse reg as 'n bedreiging vir hulle gesag gesien het en omdat die Noorde hulle **gewoontereg** wou beskerm.

5) Noem enige twee van die belangrikste humaniste wat u bestudeer het. **Cujacius, Donellus, Gentilis, Alciatus, Zasius**.

6) By die beoordeling van die bydrae van die humaniste is daar positiewe en negatiewe aspekte. Aan die negatiewe kant kan gesê word dat hulle nie **die behoeftes van die tyd waarin hulle geleef het in ag geneem het nie/of hulle was nie prakties georiënteerd nie** en hulle het die Romeinse reg in sy **suiwer klassieke vorm** bestudeer. Aan die positiewe kant, het hulle die Romeinse regsmateriaal **gesistematiseer**.

7) Watter groot Franse juris het 'n monumentale werk oor verbintenisreg geskryf en word tot vandag toe as gesag geraadpleeg? **Pothier**.

8) As gevolg van die volledige resepsie van die Romeinse reg in Duitsland praat ons van 'n ***in-complexu***-resepsie. Hoekom het hierdie resepsie plaasgevind? Daar was 'n groot verskeidenheid in die reg in Duitsland. Elke streek het sy eie **gewoontereg** gehad. Daar was dus 'n behoefte aan 'n meer **algemene** en **beter ontwikkelde** regstelsel en die Romeinse reg kon aan hierdie behoefte voldoen.

(9) The legal movement which came to the fore in Germany during the 17th and 18th centuries was the *usus modernus pandectarum*. The jurists within this school followed a **theoretical-practical** line of thought, concerning themselves with Roman law **as applied in practice**. They argued that **German customary law** should have preference over **Roman law** and **canon law**. The leading jurist of this movement was **Carpzovius II**.

Keep in mind:

German law is the law of Germany and **Germanic** law is the law of the Germanic tribes as referred to in Study Unit 4.

(10) In the early part of the 19th century the historical school developed in Germany as a reaction against the doctrine of **the law of nature**. The main thrust of their approach was that law cannot be eternal but rather **changeable/adaptable** and in line with the **national spirit**. **Savigny** is regarded as one of the leading figures in the rise of this school of thought.

(11) As opposed to the **South of France** and **Germany**, the reception of Roman law in England was limited. This was because the **Anglo-Saxons** ruled England in accordance with their own customs and practices when they took over from the Romans in the 5th century AD and Roman institutions consequently disappeared; political stability lead to an emotional attachment to the **native/indigenous English law**; Roman law was opposed by the **king** and the **church**; and the **Inns of Court** ensured that the English common law was at the forefront in the training of jurists.

(12) As on the continent of Europe, the **church** played an important role in the survival of Roman law in England. Furthermore, due to the Italian glossator Vacarius who came to **Oxford** in 1143 there developed a renewed interest in the study of Roman law. Roman law was also offered in **Cambridge**.

(13) Notwithstanding the resistance to Roman law in England, a number of English jurists were influenced by it. Among them were **Glanville** (a student of Vacarius), **Bracton** and **Lord Mansfield** (as Chief Justice).

(14) Scotland experienced a strong reception of Roman law. Being at war with England in the 13th and 14th centuries, Scotland had **European** allies. Students studied at **European** universities. There they were trained in **Roman law** and **canon law**. On their return to Scotland, these students, as legal practitioners, applied the rules and principles of **Roman law** where **Scots customary law** proved deficient.

(15) The reception of Roman law in the Netherlands took place in two stages: the period of the **early reception** (late 13th - middle 15th century) and the **reception proper** (second half of 15th - end of 16th century). During the first phase the ***officiales*/ecclesiastical judges** and ***legistae*/jurists,** who were trained at Bologna or Orléans played an important role in the reception of Roman law.

(9) Die regsbeweging wat in Duitsland op die voorgrond getree het gedurende die 17de en 18de eeue was die *usus modernus pandectarum*. Die voorstanders van hierdie beweging het ‘n **teoreties-praktiese** denkrigting gevolg en het van die Romeinse reg gebruik gemaak in soverre dit **in die praktyk toegepas is**. Wat hulle betref, moes **Duitse gewoontereg** voorkeur geniet bo **die Romeinse** en **kanonieke reg**. **Carpzovius II** was die bekendste verteenwoordiger van hierdie denkrigting.

(10) In die vroeë 19de eeu het die historiese skool in Duitsland ontstaan as 'n reaksie op die **natuurreg**. Hierdie skool het nie enige permanente en onveranderlike reg erken nie, maar was van mening dat die reg wesenlik **veranderbaar/aanpasbaar** was en verband hou met die **nasionale gees**. **Von Savigny** word beskou as een van die leidende figure van hierdie skool.

(11) In teenstelling met die **Suide van Frankryk** en **Duitsland**, was die resepsie van die Romeinse reg in Engeland beperk. Dit was so omdat die **Angel-Saksers**, toe hulle Engeland in die 5de eeu nC van die Romeine oorgeneem het, in ooreenstemming met hul eie gebruike en praktyke regeer het en Romeinse instellings gevolglik verdwyn het. Politieke stabiliteit het tot ‘n emosionele verbondenheid aan die **inheemse Engelse reg** gelei; die Romeinse reg is deur die **koning** en die **kerk** teengestaan; die **Inns of Court** het verseker dat die Engelse gemenereg voorrang geniet het by die opleiding van juriste.

(12) Net soos in Europa, het die **Kerk** 'n belangrike rol gespeel in die oorlewing van die Romeinse reg. Ook as gevolg van die inisiatief van die Italiaanse glossator Vacarius, wat in 1143 na **Oxford** gekom het, was daar ‘n hernude belangstelling in die studie van die Romeinse reg. Die Romeinse reg is ook by **Cambridge** gedoseer.

(13) Ten spyte van die teenkanting teen die Romeinse reg was daar ‘n paar Engelse juriste wat daardeur beïnvloed is. Onder hulle was **Glanville** (Vacarius se student), **Bracton** en **Lord Mansfield** (hoofregter).

(14) Daar was 'n sterk resepsie van die Romeinse reg in Skotland. Gedurende die 13de en 14de eeue het Skotland voortdurend met Engeland oorlog gevoer en die Skotte het in **Europa** politieke bondgenote gevind. Derhalwe het Skotse studente aan **Europese** universiteite gaan studeer. Hier is hulle in die **Romeinse reg** en **kanonieke reg** opgelei. By hulle terugkeer na Skotland het hierdie studente, as regspraktisyns, die reëls en beginsels van **die Romeinse reg** toegepas in alle gevalle waar die **Skotse gewoontereg** tekort geskied het.

(15) Die resepsie van die Romeinse reg in die Nederlande het in twee fases plaasgevind: die **vroeë resepsie** (laat 13de - middel 15de eeu) en die **eintlike resepsie** (2de helfte van 15de - einde 16de eeu). Gedurende die eerste fase het die ***officiales*/ kerklike regters** en ***legistae*/juriste**, wat in Bologna of Orléans opgelei is, 'n belangrike rol in die resepsieproses gespeel.

(16) In the Netherlands, the reception proper of Roman law took place as a result of **political, economic** and **cultural** factors.

(17) The leading political factor in the reception proper of Roman law in the Netherlands was Burgundian rule, in particular their policy of **centralisation.** This policy resulted in various provincial high courts being created. The jurists who sat on their benches were **Romanist-oriented**. The Burgundians also strove for a uniform legal system and in the 16th century, statutes stated expressly that where the statute was silent **Roman law** should be referred to.

(18) Economic factors in the reception proper of Roman law in the Netherlands included the need for **systematised** and **uniform** laws to govern a rapidly developing commercial economy. Local items of legislation (*keuren*) were drafted by persons schooled in **Roman law**. **Roman law** was used to fill the gaps in the local laws and use was made of the commentaries of **Bartolus** and **Baldus**.

(19) The most important cultural factor in the reception proper of Roman law in the Netherlands was the University of **Louvain**. This university contributed to the reception of Roman law through its **students** and its **professors**. It has to be kept in mind that the **church** played an important role in the establishment of this university. Therefore students could obtain a doctorate of laws in both **Roman** and **canon** law.

(20) During the reception proper of Roman law in the Netherlands, the Burgandian rulers instructed that local customs be put into writing and be submitted for confirmation. This process was known as the **homologation** of customs.

(21) The reception of the actual rules of Roman law is called the **practical** reception while the reception of concepts and principles within the system is called the **scientific** reception of Roman law.

STUDY UNIT 7

(1) **Roman-Dutch law** developed when Roman law, as glossed by the **glossators** and commented upon by the **commentators**, was received into the customary laws of **the province of Holland.**

(2) Roman-Dutch law was not brought to the Cape in the form of a book, but rather became applicable in the Cape through **custom**.

(3) Each of the seven provinces of the Netherlands had its own legal system, but it was the law of the province of **Holland** which was the leading law of the Netherlands.

(16) Die eintlike resepsie van die Romeinse reg in die Nederlande het as gevolg van **politieke, ekonomiese** en **kulturele** faktore plaasgevind.

(17) Die belangrikste politieke faktor wat betref die eintlike resepsie van die Romeinse reg in die Nederlande was die Boergondiese regering, en spesifiek hul beleid van **sentralisasie**. Deur hierdie beleid is verskillende provinsiale hoë howe ingestel. Die juriste wat posisies beklee het in hierdie howe was **Romanisties georiënteerd**. Boergondië het ook gepoog om 'n eenvormige regstelsel in te voer en in die 16de eeu, is wette uitgevaardig wat uitdruklik bepaal het dat daar na die **Romeinse reg** verwys moet word waar die wet swyg.

(18) Ekonomiese faktore wat 'n rol gespeel het by die eintlike resepsie van die Romeinse reg in die Nederlande sluit in die behoefte aan **gesistematiseerde** en **eenvormige** wetgewing om die snel ontwikkelende kommersiële ekonomie te hanteer. Lokale wetgewing (*keuren*) is opgestel deur persone wat in **die Romeinse reg** geskool was. Die **Romeinse reg** is verder gebruik om leemtes in die lokale reg aan te vul en die kommentare van **Bartolus** en **Baldus** is gebruik.

(19) Die belangrikste kulturele faktor wat betref die eintlike resepsie van die Romeinse reg in die Nederlande was die **Universiteit van Leuven**. Leuven het bygedra tot die resepsie van die Romeinse reg in die Nederlande deur haar **studente** en **professore**. Daar moet in gedagte gehou word dat die **kerk** 'n belangrike rol by die stigting van die Universiteit gespeel het en dat studente derhalwe 'n doktorsgraad in beide **Romeinse** en **kanonieke** reg kon behaal.

(20) Gedurende die eintlike resepsie van Romeinse reg in die Nederlande het die Boergondiërs opdrag gegee dat die plaaslike gewoontes op skrif gestel word en vir goedkeuring voorgelê word. Hierdie proses het as **homologasie** van gewoontes bekendgestaan.

(21) Die resepsie van die werklike reëls van die Romeinse reg word 'n **praktiese resepsie** genoem, terwyl die resepsie van die begrippe en beginsels die **wetenskaplike resepsie** van die Romeinse reg genoem word.

STUDIE-EENHEID 7

(1) Die **Romeins-Hollandse reg** het ontwikkel toe die Romeinse reg, geglosseer deur die **glossatore** en kommentaar op gelewer deur die **kommentatore**, geresipieer is in die gewoontereg van **die provinsie Holland**.

(2) Die Romeins-Hollandse reg is nie in boekvorm na die Kaap gebring nie, maar het eerder deur **gewoonte** in die Kaap inslag gevind.

(3) Elkeen van die sewe provinsies van die Nederlande het sy eie regstelsel gehad, maar die reg van die provinsie **Holland** was die leidende reg van die Nederlande.

(4) The main sources of Roman-Dutch law are **old writers, statute law/legislation, collections of decisions, collections of opinions** and **custom**.

(5) The old writers or old authorities are jurists who wrote about the law of the **provinces of the Netherlands** prior to **codification** of the law in the Netherlands.

(6) In a narrow sense, Roman-Dutch law refers to the **civil/Roman law** as amended by the *Placaeten* or customary law of the province of Holland.

(7) In a broad sense, Roman-Dutch law refers to the **civil/Roman law** as amended by the *Placaeten* or customary law of the province of Holland and as influenced by **canon law, natural law** and the **Western European common law**.

(8) The authoritative writers on our common law are, in the first place, those writers who wrote on the law of the province of **Holland**.

(9) The writers who did not write specifically about the law of Holland are of importance in so far as they bear witness to the **reception** phenomenon in Western Europe.

(10) The most important factors that should be taken in account when the old writers or authorities are considered include the **period in which the writer lived**, the **type of work written by the author** and the **influence of the writer on South African legal practice**.

(11) **Hugo de Groot/Grotius** was the first jurist to see the law of Holland as an independent system and describe it as such.

(12) The *Inleidinge* and *De Jure Belli ac Pacis* are the two best-known works of **Grotius**.

(13) The *Inleidinge* of **Grotius** was the first treatise on **Roman-Dutch law** and was written in Dutch.

(14) The *Inleidinge* of **Grotius** was translated into Latin by **Johannes van der Linden**.

(15) The *De Jure Belli ac Pacis* of **Grotius** was the first comprehensive treatise published on **international law**.

(16) **Groenewegen** wrote the *Tractatus*, in which he took the *Institutes*, the *Digest*, the *Codex*, the *Novellae*, and the *Libri Feudorum* text by text and showed which propositions were still valid and which were no longer in use.

(17) **Leeuwen** was the first writer to refer to the existing Dutch law as Roman-Dutch law.

(18) Important 17th century writers on the law of Holland are **Grotius**, **Groenewegen**, **Leeuwen**, and **Johannes Voet**.

(4) Die hoofbronne van die Romeins-Hollandse reg is **die ou skrywers**, **statutêre reg/wetgewing, versamelings van beslissings, versamelings van opinies** en **gewoonte**.

(5) Die ou skrywers is juriste wat oor die reg van die **Nederlandse provinsies** voor die **kodifikasie** van die reg in die Nederlande geskryf het.

(6) In 'n eng sin verwys die Romeins-Hollandse reg na die **civil law/siviele/Romeinse reg** soos gewysig deur die *placaeten* of gewoontereg van die provinsie van Holland.

(7) In 'n breë sin verwys die Romeins-Hollandse reg na die **civil law/siviele/Romeinse reg** soos gewysig deur die *placaeten* of gewoontereg van die provinsie van Holland en beïnvloed deur **kanonieke reg**, **natuurreg** en die **Wes-Europese gemenereg**.

(8) Die gesaghebbende skrywers oor ons gemenereg is in die eerste plek die skrywers wat oor die reg van die provinsie **Holland** geskryf het.

(9) Die skrywers wat nie spesifiek oor die Hollandse reg geskryf het nie, is belangrik in soverre hulle getuig van die **resepsie**verskynsel in Wes-Europa.

(10) Die belangrikste faktore wat in ag geneem moet word wanneer ons die ou skrywers bestudeer, sluit in die **tydperk waartydens die skrywers geleef het,** die **soort werk wat deur die skrywer geskryf is**, en die **invloed van die skrywer op die Suid-Afrikaanse regspraktyk.**

11) **Hugo de Groot/Grotius** was die eerste juris wat die reg van die provinsie Holland as 'n onafhanklike stelsel beskou het en dit aldus beskryf het.

(12) **De Groot** se twee bekendste werke is die *Inleidinge* en die *De Iure Belli ac Pacis*.

(13) **De Groot** se *Inleidinge* was die eerste verhandeling oor **die Romeins-Hollandse reg** en is in Nederlands geskryf.

14) **De Groot** se *Inleidinge* is deur **Johannes van der Linden** in Latyn vertaal.

(15) Die *De Iure Belli ac Pacis* van **De Groot** was die eerste omvattende verhandeling wat oor die **volkereg** gepubliseer is.

16) **Groenewegen** se belangrikste werk is die *Tractatus*. In hierdie omvattende werk het hy die *Institute*, die *Digesta*, die *Codex*, die *Novellae* en die *Libri Feodorum* teks vir teks ontleed en aangetoon watter stellings steeds geldig was en watter nie langer ter sake was nie.

17) **Van Leeuwen** was die eerste skrywer wat na die bestaande Hollandse reg verwys het as "Romeinse-Hollandse reg".

(18) Belangrike 17de-eeuse skrywers oor Hollandse reg is **De Groot, Groenewegen, Van Leeuwen** en **Johannes Voet**.

(19) **Bynkershoek** wrote the *Observationes* which was a collection of decisions given by the Supreme Council during his term of office.

(20) The *Theses Selectae* of **Van der Keessel** consisted of short notes on the *Inleidinge* of Grotius and it was the last outstanding work in the field of Roman-Dutch law before **South Africa was separated from the Nederlande.**

(21) The fact that it was written in Dutch was an important consideration for choosing the Koopmans Handboek, written by **Van der Linden,** as official "code" of the ZAR (Zuid-Afrikaansche Republiek).

(22) The 17th century Dutch jurist, **Groenewegen**, supplemented the *Inleidinge* of Grotius and wrote the important work the *Tractatus*. This work became an important authority on Roman-Dutch law.

(23) *De Statutis*, an important work on private international law/conflict of laws, was written by **Paulus Voet**.

(24) **Matthaeus II** wrote *De Criminibus,* an important work on criminal law.

☺ **In summary (questions 11 - 24):**

17th Century

Holland	–	De Groot (Grotius)
	–	Groenewegen
	–	Leeuwen
	–	Johannes Voet
Friesland	–	Huber
Utrecht	–	Matthaeus II
	–	Paulus Voet
18th Century	–	Bynkershoek
	–	Van der Keessel
	–	Van der Linden

(25) The *Groot Placaet Boeck* (*GPB*) is a collection of the **statutory law/legislation** of the Netherlands.

(26) The 17th and 18th century Dutch courts did not apply the principle of ***stare decisis*** and therefore previous decisions had **persuasive** authority only.

(27) The collections of opinions of Roman-Dutch jurists were not binding on the Dutch courts but enjoyed great **persuasive** authority.

(19) **Van Bynkershoek** se *Observationes* was 'n versameling van uitsprake van die *Hooge Raad* gedurende sy ampstermyn.

(20) **Van der Keessel** se *Theses Selectae* bestaan uit kort notas oor die *Inleidinge* van De Groot, en dit was die laaste uitstaande werk op die gebied van die Romeins-Hollandse reg voordat **Suid-Afrika losgemaak is van die Nederlande.**

(21) Die feit dat **Van der Linden** se *Koopmans Handboek* in Nederlands geskryf is, was 'n belangrike rede waarom hierdie werk as die amptelike "kode" van die ZAR (Zuid-Afrikaansche Republiek) gekies is.

(22) Die 17de-eeuse Nederlandse juris, **Groenewegen**, het De Groot se *Inleidinge* aangevul en 'n belangrike werk, die *Tractatus*, geskryf. Hierdie werk is 'n belangrike bron van die Romeins-Hollandse reg.

(23) *De Statutis*, 'n belangrike werk oor konfliktereg/internasionale privaatreg is deur **Paulus Voet** geskryf.

(24) **Matthaeus II** het *De Criminibus,* 'n belangrike werk oor die strafreg, geskryf.

☺ **Kortliks (vrae 11 - 24):**

17de eeu

Holland	–	De Groot (Grotius)
	–	Van Groenewegen
	–	Van Leeuwen
	–	Johannes Voet
Friesland	–	Huber
Utrecht	–	Matthaeus II
	–	Paulus Voet
18de eeu	–	Van Bynkershoek
	–	Van der Keessel
	–	Van der Linden

25) Die *Groot-Placaet-Boek (GPB)* is 'n versameling van Nederlandse **statutêre reg/wette**.

(26) Die 17de- en 18de-eeuse Nederlandse howe het nie die beginsel van ***stare decisis*** toegepas nie en vroeëre uitsprake het dus slegs **oorredende** gesag gehad.

(27) Die versamelings van opinies van Romeins-Hollandse juriste het nie die howe gebind nie, maar het sterk **oorredende** gesag gehad.

STUDY UNIT 8

(1) During the period 1652-1795 the four formal sources of law at the Cape were **legislation**, **the old authorities, judicial decisions** and **custom.**

(2) Four agencies which had the power to legislate or issue edicts at the Cape from 1652 - 1795 were the **States-General,** the **Governor-General-in-Council at Batavia,** the **Governor-in-Council at the Cape** and the **Directorate of XVII (Here XVII)**.

(3) Before 1652 the Governor-General in Batavia had already issued a mass of *placaeten*. These were codified and became known as the **Statutes of India**.

(4) The **States of Holland** had no authority to issue *placaeten* which would have force in the Cape.

(5) Who promulgated the First Charter of Justice in 1827? This Charter was implemented in 1828. **Lord Charles Somerset**.

(6) Where an earlier judgment is regarded as binding authority we say that the doctrine of ***stare decisis*** is being applied. Did the Dutch courts apply this doctrine? **No**. Did the English courts apply this doctrine? **Yes**.

(7) The Charters of Justice brought about important changes in the formal law, that is in the law of **evidence** and **procedure** and in the **court** structure. With the implementation of the First Charter of Justice in 1828 came a new system of legal administration.

(8) The Charters of Justice instituted appeals to the **Privy Council** in London.

(9) The Charters of Justice determined that judges had to be recruited from the advocates of **England, Ireland** and **Scotland**.

(10) The Charters of Justice laid down that the old colonial law, namely **Roman-Dutch law**, should be applied by the courts. Viscount Goderich indicated that there should be a gradual assimilation of **English law** into the law of the Colony.

(11) The fact that the Cape received the whole of the English Companies Act, the English law of negotiable instruments and their law dealing with parliamentary conventions, indicates that in some areas of the law both a **scientific** and **practical** reception of English law had taken place.

STUDIE-EENHEID 8

1) Gedurende die tydperk 1652 - 1795 was die vier formele regsbronne aan die Kaap **wetgewing**, **die ou skrywers**, **hofbeslissings** en **gewoonte.**

2) Vier instansies wat vanaf 1652 - 1795 bevoeg was om wette of edikte vir die Kaap uit te vaardig, was die **State-Generaal**, die **Goewerneur-Generaal-in-Rade in Batavië**, die **Goewerneur-in-Rade aan die Kaap** en die **Here XVII**.

3) Voor 1652 is 'n massa *placaeten* reeds deur die Goewerneur-Generaal in Batavië uitgevaardig. Hulle is gekodifiseer en hierdie kodifikasie het bekend gestaan as die **Statute van Indië**.

4) Die **State van Holland** het geen bevoegdheid gehad om *placaeten* uit te vaardig wat aan die Kaap sou geld nie.

5) Wie het in 1827 die eerste *Charter of Justice* wat in 1828 geïmplimenteer is, uitgevaardig? **Lord Charles Somerset**.

6) Waar 'n vorige uitspraak van bindende krag is, word die ***stare decisis***-reël nagevolg. Het die Nederlandse howe hierdie reël nagevolg? **Nee**. Het die Engelse howe hierdie reël nagevolg? **Ja**.

7) Die *Charters of Justice* het belangrike veranderinge in die formele reg teweeggebring, te wete in die **proses**reg en **bewys**reg en in die **howe** se struktuur. Met die implementering van die eerste *Charter of Justice* in 1828 is 'n nuwe stelsel van regspleging ingevoer.

(8) Die *Charters of Justice* het appèlle na die **Geheime Raad (*Privy Council*)** in Londen ingestel.

(9) Die *Charters of Justice* het bepaal dat regters moes kom uit die geledere van die advokate van **Engeland, Ierland** en **Skotland**.

(10) Die *Charters of Justice* het bepaal dat die ou reg van die Kolonie, te wete die **Romeins-Hollandse reg**, deur die howe toegepas moes word. Burggraaf Goderich het egter aangedui dat daar 'n geleidelike assimilasie van die **Engelse reg** in die reg van die Kolonie moet wees.

(11) Die feit dat die Engelse Maatskappyewet in sy geheel die Engelse reg met betrekking tot verhandelbare dokumente en Engelse reg met betrekking tot parlementêre konvensies in die Kaap geresipieer is, toon aan dat daar beide 'n **wetenskaplike** en 'n **praktiese** resepsie van die Engelse reg in sommige gebiede van die reg plaasgevind het.

(12) In 1838, the Voortrekkers in Natal declared that the **Hollandsche Rechtspleging/Roman-Dutch law** would be the basis for the administration of justice. However, after the British occupation of Natal the legal system resembled that of the **Cape Colony**.

(13) In the Transvaal, the *Hollandsche Wet* formed the basis of their law. This referred to **Van der Linden's *Koopmans Handboek***.

(14) The constitution of the Orange Free State determined that **Roman-Dutch law** would be the basic law of the state.

(15) In the years after 1910 a considerable amount of legislation covering a wide variety of subjects was promulgated by Parliament. Many argue that the direct incorporation of entire sections of **English law** hampered the healthy development of South African law.

(16) Since 1910 the **Appellate Division** played a very significant role in legal development in South Africa.

(17) During the 1960's a debate arose as to whether Roman-Dutch or English law should take preference. The so-called **purists** insisted that Roman-Dutch law should be applied in its pure form without any English-law influence. The **pollutionists** said that English law should be applied where Roman-Dutch law was silent. The **pragmatists** held a moderate view between these two extremes.

(18) The Appellate Division's role in legal development may be said to be limited in that it did not have the power to question the **content/substance** of legislation. It, therefore, often had to apply unjust and oppressive laws.

STUDY UNIT 9

(1) In 1993, a new era or beginning in South Africa's legal history was ushered in by the promulgation of the **(interim) Constitution**.

(2) The principle of **constitutionalism** is based on the idea that the power of the state should be controlled.

(3) The concept of **human rights** is an inseparable part of the principle of constitutionalism.
(4) In the strict sense, constitutionalism simply means that the government of a country is obliged to rule in accordance with the prescriptions or limitations laid down in a **constitution**.

(5) The mechanisms that may be contained in a constitution to control the power of the state include the following: procedures for the making of **laws,** a **Bill of Rights,** the separation of power between the **legislative, executive** and **judicial** authorities, an independent **judiciary**, and a division of power between the **national** and **provincial** levels of government.

(12) Die Voortrekkers in die provinsie Natal het in 1838 verklaar dat die **Hollandsche Rechtspleging/Romeins-Hollandse reg** as grondslag vir hulle regspleging sou dien. Ná die Britse besetting van Natal het die regsisteem egter dieselfde patroon as dié van die **Kaapkolonie** gevolg.

(13) In Transvaal is bepaal dat die *Hollandsche Wet* die grondslag van die reg sou vorm. Dit het na **Van der Linden se *Koopmans Handboek*** verwys.

(14) Die grondwet van die Oranje-Vrystaat het bepaal dat die **Romeins-Hollandse reg** die basiese reg van die staat sou wees.

(15) Sedert 1910 is 'n groot hoeveelheid wetgewing rakende 'n menigte uiteenlopende onderwerpe deur die Parlement uitgevaardig. Baie glo dat die heelhuidse invoering van **Engelse reg** gesonde Suid-Afrikaanse regsontwikkeling gedwarsboom het.

(16) Sedert 1910 het die **Appèlafdeling** 'n baie belangrike rol gespeel in die regsontwikkeling in Suid-Afrika.

(17) Gedurende die 1960's het 'n debat ontstaan oor die vraag of Romeins-Hollandse of Engelse reg voorkeur moet geniet. Die **puriste** het geëis dat die Romeins-Hollandse reg in 'n suiwer vorm toegepas word, vry van Engelsregtelike invloed. Die **pollusioniste** was van mening dat die oplossings van die Engelse reg aanvaar moes word waar die Roemins-Hollandse reg geswyg het. Die **pragmatiste** het 'n middeweg tussen hierdie twee standpunte gevolg.

(18) Die Appèlafdeling se rol in regsontwikkeling was beperk omdat dit nie die gesag gehad het om die **inhoud van wetgewing** te bevraagteken nie. Dit moes dus dikwels blatante onregverdige en diskriminerende wetgewing toepas.

STUDIE-EENHEID 9

(1) In 1993 is ‘n nuwe era in die Suid-Afrikaanse regsgeskiedenis betree toe die **(tussentydse) Grondwet** uitgevaardig is.

(2) Die beginsel van **konstitusionalisme** is gebaseer op die idee dat die mag van die staat beheer moet word.

(3) Die konsep van **menseregte** is ‘n onlosmaaklike deel van die beginsel van konstitusionalisme.

(4) Strenggesproke beteken konstitusionalisme bloot dat die regering van ’n land volgens die voorskrifte neergelê in ‘n **grondwet** moet regeer.

(5) Die meganismes vervat in ‘n grondwet om die magte van die staat te beperk sluit die volgende in: prosedures vir die maak van **wette**, ‘n **Handves van Menseregte**, verdeling van magte tussen die **wetgewende**, **uitvoerende** en **regsprekende** gesag,’n onafhanklike **regbank** en die verdeling van magte tussen die **nasionale** en **provinsiale** vlakke van regering.

(6) The principle of constitutionalism is sometimes referred to as **limited government**.

(7) In the history of South African law, there are three different perspectives on the principle of constitutionalism, namely, **complete denial, partial recognition** and **full recognition** of constitusionalism.

(8) The view that the will of the majority in a democracy may not be limited by the rules and procedure of a constitution constitutes a **complete denial** of constitutionalism.

(9) **Complete denial** of constitutionalism prevailed in the Zuid-Afrikaansche Republiek at the end of the 19th century.

(10) Where the principle of constitutionalism enjoys **partial recognition**, state power may only be exercised in terms of clearly defined rules of law.

(11) Where the principles of constitutionalism enjoys partial recognition, parliament remains **sovereign** and can make whatever laws it deems fit, as long as the procedure for the adoption of those laws is followed.

(12) Where the principle of constitutionalism enjoys partial recognition, courts may only declare laws invalid if the prescribed **procedure** was not followed, and not because the laws are **unjust/unreasonable)**.

(13) Under the 1910 Union of South Africa Constitution and the 1961 and 1983 Republic of South Africa Constitutions, courts lacked the power to declare laws invalid if they were **unjust/unreasonable**.

(14) Where the principle of constitutionalism enjoys **full recognition**, the restrictions on state power must include a **Bill of Rights** which can be used to test the content of the law and legislation.

(15) Where the principle of constitutionalism enjoys full recognition, the **Constitution** is considered to be sovereign.

(16) Where the principle of constitutionalism enjoys full recognition, the Constitution is regarded as the **highest law/supreme law** of the land against which all other laws and actions may be tested.

(17) In section 7 of the 1996 Constitution the Bill of Rights is described as the cornerstone of **democracy** in South Africa.

(18) The origin of the idea of human rights in South Africa is traceable to the **natural law** tradition of the Western component of our law and the African philosophy of ***ubuntu***.

(19) The South African Bill of Rights was first put to test in the constitutional court case of ***S v Makwanyane.***

(6) Die beginsel van konstitusionalisme word soms **beperkte regering** genoem.

(7) In die Suid-Afrikaanse regsgeskiedenis is daar drie verskillende sienings van die beginsel van konstitusionalisme, naamlik, **algehele ontkenning**, **gedeeltelike erkenning** en **volle erkenning** van konstitusionalisme.

(8) Die standpunt dat die wil van die meerderheid in 'n demokrasie nie deur die reëls en prosedure van 'n grondwet beperk mag word nie, kom neer op **algehele ontkenning** van konstitusionalisme.

(9) **Algehele ontkenning** van konstitusionalisme is teen die einde van die 19de eeu in die Zuid-Afrikaansche Republiek aangetref.

(10) Waar die beginsel van konstitusionalisme **gedeeltelike erkenning** geniet, mag staatsmag slegs aan die hand van duidelik omskrewe regsreëls uitgeoefen word.

(11) Waar die beginsel van konstitusionalisme gedeeltelike erkenning geniet, bly die parlement **soewerein** en kan dit enige wette maak, solank die prosedure vir die maak van die wette nagevolg is.

(12) Waar die beginsel van konstitusionalisme gedeeltelike erkenning geniet, kan die howe slegs wette ongeldig verklaar indien die voorgeskrewe **prosedure** nie nagevolg is nie, en nie omdat die wette **onredelik/onregverdig** is nie.

(13) Kragtens die Grondwet van die Unie van Suid-Afrika van 1910, en die 1961- en 1983-Grondwette van die Republiek van Suid-Afrika het die howe nie die mag gehad om wette wat **onredelik/onregverdig** was ongeldig te verklaar nie.

(14) Waar die beginsel van konstitusionalisme **volle erkenning** geniet, moet die beperkings op staatsmag 'n **Handves van Regte** insluit aan die hand waarvan die inhoud van die reg en wetgewing getoets kan word.

(15) Waar die beginsel van konstitusionalisme volle erkenning geniet, word die **Grondwet** as soewerein beskou.

(16) Waar die beginsel van konstitusionalisme volle erkenning geniet, word die Grondwet as die **hoogste reg/oppermagtig** beskou aan die hand waarvan alle ander reg getoets kan word.

(17) Die Handves van Regte word in artikel 7 van die Grondwet van 1996 as die hoeksteen van **demokrasie** in Suid-Afrika beskryf.

(18) Die oorsprong van menseregte in Suid-Afrika kan teruggevoer word na die **natuurregtradisie** van die Westerse komponent van die reg en na die Afrika-filosofie van ***ubuntu***.

(19) In Suid-Afrika is die Handves van Regte vir die eerste keer getoets in die konstitusionele hofsaak van ***S v Makwanyane***.

(20) In *S v Makwanyane* 1995 (6) BCLR 665 (CC) the **Constitutional** Court pointed out that the Constitution and the Bill of Rights are not merely a Western import, but that they are also a reflection of **African** values.

(21) The value of *ubuntu* was mentioned in the postscript of the **interim Constitution** as being a source of the underlying values of the new legal order in South Africa.

(22) South Africa's Bill of Rights was born out of the country's long struggle against **colonial oppression/colonialism** and **apartheid**.

(23) *Ubuntu* implies a coexistence of human rights and freedoms and **collective duties**, because it emphasises the role of the individual as member of a community.

(24) The South African Bill of Rights has both **vertical** and **horizontal** application.

(25) The Bill of Rights applies **vertically** when it regulates the interaction between the state and its subjects.

(26) The Bill of Rights applies **horizontally** when it regulates the interaction between private persons.

(27) According to **Hugo de Groot/Grotius** the content of natural law is dictated by human reason.

(28) According to natural law theorists, there is a higher set of **eternal** and **universal** norms that has not been created by human beings but which exists in nature.

(29) The **Age of Enlightenment** was a time in the history of Western culture in which there was great emphasis on the rational nature of man and his ability to draw up rules applicable to all people at all times.

(30) The Age of Enlightenment in the history of Western culture is also known as the **Age of Reason**.

(31) The English philosopher **John Locke** was the first to suggest that natural law consisted of the inalienable human rights to **life**, **liberty** and **property**.

(32) According to John Locke's idea of a **social contract** between the state and its citizens, the state's only function is to protect the basic human rights of every citizen.

(33) The constitutional grounding of first generation rights can be linked to the 1789 **French Revolution** and the 1776 **American Declaration of Independence**.

(20) In *S v Makwanyane* 1995 (6) BCLR 665 (CC) het die **Grondwetlike** Hof aangetoon dat die Grondwet en die Handves van Regte nie uitsluitlik ‘n Westerse produk is nie, maar dat dit ook **Afrika-**waardes weerspieël.

(21) Die waarde van *ubuntu* is in die naskrif van die **tussentydse (interim) Grondwet** vermeld as ‘n bron van onderliggende waardes in ‘n nuwe Suid-Afrikaanse regsorde.

(22) Suid-Afrika se Handves van Regte is gebore uit die land se lang stryd teen **koloniale onderdrukking/kolonialisme** en **apartheid**.

(23) *Ubuntu* impliseer die saambestaan van menseregte en vryhede en **kollektiewe pligte**, omdat dit die rol van die individu as ‘n lid van ‘n gemeenskap beklemtoon.

(24) Die Suid-Afrikaanse Handves van Regte het beide **vertikale** en **horisontale** toepassing.

(25) Die Handves van Regte het **vertikale** toepassing wanneer dit die verhouding tussen die staat en sy onderdane reguleer.

(26) Die Handves van Regte het **horisontale** toepassing wanneer dit die verhouding tussen privaat individue onderling reguleer.

(27) Volgens **Hugo de Groot** word die inhoud van natuurreg deur die menslike rede gedikteer.

(28) Volgens die natuurregfilosowe is daar ‘n stel **ewige** en **universele** norme wat nie deur die mens geskep is nie, maar wat in die natuur bestaan.

(29) Die **Eeu van die Verligting** was ‘n tyd in die geskiedenis van die Westerse kultuur toe groot klem gelê is op die mens se rede en sy vermoë om reëls op te stel wat te alle tye op alle mense van toepassing sou wees.

(30) Die Eeu van die Verligting in die geskiedenis van die Westerse kultuur staan ook bekend as die **Eeu van die Rede**.

(31) Die Engelse filosoof **John Locke** was die eerste person wat gesê het dat die natuurreg uit die onvervreembare regte van die mens op **lewe, vryheid** en **eiendom** bestaan.

(32) Volgens John Lock se idee van ‘n **sosiale kontrak** tussen die staat en sy onderdane, is die enigste funksie van die staat om die individu se basiese menseregte te beskerm.

(33) Eerstegenerasieregte se grondwetlike beslag hang saam met die **Franse Rewolusie** van 1789 en die **Amerikaanse Onafhanklikheidsverklaring** van 1776.

(34) The 1948 Universal Declaration of Human Rights was an agreement which came about in an effort to give content to the idea of fundamental rights at an **international** level.

(35) According to the Truth and Reconciliation Commission (TRC) the inability of courts to make a stand against the onslaught of apartheid was mainly because of the doctrine of **parliamentary sovereignty (or legal positivism)**, which allowed judges only to administer justice and not create it.

Keep in mind:

Parliamentary sovereigntly means that parliament is supreme and that a judge may not question the content of legislation made by parliament.

Legal positivism means that law and morality must be separated. Judges must apply the law (legislation, common law, etc) even if it is unjust. They may not create law.

(36) The courts' capacity to formally test legislation means that the courts may enquire whether the **prescribed procedure has been followed** in the passing of legislation and whether the **legislature** was composed correctly and functioned correctly.

(37) In order to sufficiently protect the underlying principle of an open and free democracy, the principle of constitutionalism requires that not only a correct procedure be followed when law is made, but also that the **content of legislation** be tested against a Bill of Rights.

(38) **Certification** of the final Constitution by the Constitutional Court means that the Constitution complies with the constitutional principles that were laid down in the interim Constitution.

(39) According to the final Constitution, fundamental rights may be amended only if the amendment is supported by at least **two-thirds** of the members of the **National Assembly** and at least **six** of the nine provinces represented in the **National Council of Provinces**.

(40) Since the coming into operation of the interim Constitution, parliament is **subordinate/subject** to the Constitution and courts enjoy the capacity **to test all legislation against the Bill of Rights**.

(41) First generation rights are also known as **civil and political rights**. They prohibit the **state/authorities** from interfering in the affairs of the individual.

(42) Second generation rights are also known as **socio-economic rights**. These rights oblige the state to play an active role in providing certain basic amenities of life to the individual.

(34) Die universele Verklaring van Menseregte was ‘n internasionale verdrag wat tot stand gekom het in ‘n poging om inhoud aan die gedagte van fundamentele regte op **internasionale** vlak te gee.

(35) Volgens die Waarheids-en Versoeningskommissie was die howe se onvermoë om standpunt in te neem teen die aanslag van apartheidswetgewing, die gevolg van die beginsel van **parlementêre soewereiniteit (of regspositivisme)** wat regters slegs toegelaat het om die reg toe te pas en nie reg te skep nie.

☺ **Let wel:**

Parlementêre soewereiniteit beteken dat die parlement soewerein is en dat die inhoud van wetgewing wat deur die parlement gemaak is nie deur ‘n regter bevraagteken mag word nie.

Regspositivisme beteken dat reg en moraliteit geskei moet word. Regters moet die reg (wetgewing, gemenereg, ens) toepas al is dit onbillik. Hulle mag nie reg skep nie.

(36) Die howe se formele toetsbevoegdheid behels dat hulle mag navraag doen of die **voorgeskrewe prosedure gevolg is** by die aanneming van wetgewing en of die **wetgewer** korrek saamgestel is en korrek gefunksioneer het.

(37) Ten einde die onderliggende beginsels van ‘n oop en vrye demokrasie te beskerm, vereis die beginsel van konstitusionalisme dat nie slegs die korrekte prosedure by die aanname van wetgewing gevolg word nie, maar ook dat die **inhoud van wetgewing** aan die hand van die Handves van Regte getoets word.

(38) Die feit dat die finale Grondwet deur die Konstitusionele Hof **gesertifiseer** is, beteken dat die Grondwet voldoen aan die grondwetlike beginsels wat in die tussentydse Grondwet neergelê is.

(39) Ingevolge die finale Grondwet mag fundamentele regte slegs gewysig word met die steun van minstens **twee derdes** van die lede van die **Nasionale Vergadering** en van minstens **ses** van die nege provinsies in die **Nasionale Raad van Provinsies**.

(40) Sedert die inwerkingtreding van die tussentydse Grondwet is die parlement **ondergeskik** aan die Grondwet en het die howe die uitdruklike bevoegdheid om **wetgewing teen die Handves van Regte te toets**.

(41) Eerstegenerasieregte staan ook bekend as **siviele en politieke regte**. Hierde regte verbied die **staat/owerhede** se inmenging by die sake van die individu.

(42) Tweedegenerasieregte staan ook bekend as **sosio-ekonomiese regte**. Hulle verplig die staat om ‘n aktiewe rol te speel in die voldoening aan sekere basiese behoeftes in die lewe van die individu.

(43) Third generation rights in the final Constitution include the rights of **cultural, religious** and **linguistic** communities and the right to an **environment that is not harmful to the population's health or well-being**.

(43) Derdegenerasieregte in die finale Grondwet sluit die regte van **kultuur-, godsdiens-** en **taal**gemeenskappe in en die reg op ‘n omgewing **wat nie skadelik vir die gemeenskap se gesondheid is nie**.