

THEORY OF LAW ILW 102-5

1. Unit 1: What is law?

1.1. Types of laws:

- 1.1.1. Prohibitive laws say what we can't do
- 1.1.2. Imperative laws say what we must do
- 1.1.3. Regulative laws say what we can do, but need not
- 1.1.4. Procedural laws say what will happen if law is not obeyed

1.2. State: has a philosophy of its law, for example democracy, and is not only ruled by its own laws (also ruled by international laws)

1.3. **Law is a set of rules, based on certain basic ideas, that regulates the conduct of citizens of the state.**

1.3.1. More than rules:

- 1.3.1.1. General standards to act reasonably, in good faith and like a reasonable person
- 1.3.1.2. Meaning of laws also subject to interpretation

1.3.2. Other aspects also regulate conduct - individual morality, community morality, religious and other convictions also regulate

1.3.3. Rule of law

- 1.3.3.1. Law also governs the state
- 1.3.3.2. State organs and public officials must also act reasonably

1.3.4. Laws are not necessarily just

1.4. Just vs. Unjust

1.4.1. Formal justice

- 1.4.1.1. Formal law governs how we act in courts, types of evidence allowed and other procedural aspects
- 1.4.1.2. Formal justice is achieved by:
 - 1.4.1.2.1. Explicit rules for specific cases
 - 1.4.1.2.2. Rules must be applied generally, to all in the same circumstances
 - 1.4.1.2.3. Rules must be applied impartially

1.4.2. Substantive Justice

- 1.4.2.1. Concerns the content of the rule and not just how it is applied (a matter of material law or substantive law) – the part of the law determining the content and meaning of the rules
- 1.4.2.2. Whether substantive justice is done is a matter of whether the content of the rule is just and fair

2. Unit 2: Law and Theory

- 2.1. Natural Law Theory – began with Greek philosophers, dominant in Roman law through Middle Ages until 18th century
 - 2.1.1. Acknowledge a law higher than ordinary law against which ordinary law must be measured (higher law is natural law), but differ in whether:
 - 2.1.1.1. it is gravity, or god, or anything else universal
 - 2.1.1.2. it is what can be known by human reason
 - 2.1.1.3. It is a set of moral or ethical rules
 - 2.1.2. Also disagree on what happens when natural and state laws conflict
 - 2.1.2.1. Invalid – natural law determines the validity of human laws
 - 2.1.2.2. Bad law – unjust
- 2.2. Positivism – resulting from natural science advances in 19th century
 - 2.2.1. Law as a science – natural law insufficiently scientific because there is no verifiable system
 - 2.2.2. Unconcerned with what law should be – rather focus on what it is
 - 2.2.3. Validity determined by the internal rules of community (law and morality unrelated)
- 2.3. Pre-modern – philosophies of Greeks, Romans and Christian philosophers of early Middle Ages (natural law approach)
 - 2.3.1. Shaped by transition from city-states to larger and more cosmopolitan states with conflicting interests. Also by feudal structure and struggle between church and state.
 - 2.3.2. Lesser role for judges – more important role played by priests. Canon law often created and enforced by church. Slavery universally accepted with few rights for women.
 - 2.3.3. Period characterized by:
 - 2.3.3.1. Metaphysical view: more to reality than physically observable.
 - 2.3.3.2. Natural order: based on metaphysical view, there was a natural harmony between people and things (including slaves).
 - 2.3.3.3. This led to the natural-law approach.

- 2.4. Modern – moving away from metaphysical thinking to positivism, 17th to 19th centuries
 - 2.4.1. Society in flux –
 - 2.4.1.1. education, development of production processes and industry and limitation of church power.
 - 2.4.1.2. a time of great social revolutions – English, French and US.
 - 2.4.1.3. outdated feudal relations – city-state and feudal kingdoms absorbed.
 - 2.4.2. Period characterized by:
 - 2.4.2.1. Rationalist approach: general optimism about possibilities of science led to rejection of metaphysical view and movement towards positivism.
 - 2.4.2.2. Social Contract Theory: changes lead to legal philosophy based on theory that individuals contract with each other and state for state to respect and protect citizens.
 - 2.4.2.3. Liberalism: even more important development – lack of natural order led to focus on individualism, and community was no longer primary focus. Individual and rights became most important.
- 2.5. Post-modern – 20th century approach started in US
 - 2.5.1. Disillusioned society –
 - 2.5.1.1. Horror at misuse of science.
 - 2.5.1.2. Increasingly diverse society, undermining traditions and beliefs.
 - 2.5.2. Developments of modern period are taken further. Socialism has led to softening of capitalism and rise of social welfare states.
 - 2.5.3. Period characterized by critical approach:
 - 2.5.3.1. Critical Legal Studies (CLS): rationalist and positivist assumption of liberalism (neutral and objective law) rejected. Law and politics closely interwoven – interpretation is not objective.
 - 2.5.3.2. Feminists: great revolutions didn't help women – liberalism doesn't guarantee women equality.

- 2.5.3.3. Communitarians: people are always part of a community, so we shouldn't only act in our individual interests.

3. Unit 3: Families of law or legal cultures

3.1. Criteria for classifying legal systems:

- 3.1.1. Style and technique: sources of law and importance or weight of each.
- 3.1.2. Ideology: philosophy or ideology on which based (i.e. individual in west, community in Africa).
- 3.1.3. Economic elements: socialist or capitalist.

3.2. Most important families:

3.2.1. Romano-Germanic or civil-law family:

- 3.2.1.1. Roman legal science as basis for systems.
- 3.2.1.2. French, German and Dutch systems.

3.2.2. Anglo-American or common-law family:

- 3.2.2.1. Case law is most important characteristic.
- 3.2.2.2. England, US, Australia, New Zealand systems.

3.2.3. Socialist family:

- 3.2.3.1. Laws must serve social and economic policies, Marxism.
- 3.2.3.2. Former USSR, Chinese systems.

3.2.4. Religious family: Islamic, Hindu and Jewish systems.

3.2.5. Indigenous family: African unwritten customary laws focusing on community.

3.2.6. Hybrid or mixed family:

- 3.2.6.1. South African, Sri Lankan, Scottish systems.
- 3.2.6.2. South African:
 - 3.2.6.2.1. Roman-law basis (damages for injury, servitudes)
 - 3.2.6.2.2. English law (civil and criminal procedure)

3.2.6.2.3. Indigenous law (ubuntu)

4. **Unit 4: Divisions of Law**

- 4.1. Fields and branches of law – divided to make law easier to understand.
- 4.2. Public law: regulates relationships concerned with public interests and relationship between state and citizen.
 - 4.2.1. Public International law: relations between states
 - 4.2.2. Constitutional: institution and organization of state.
 - 4.2.3. Administrative: exercise of powers by governmental bodies, in particular relationships with citizens. Goal is to be fair and not arbitrary.
 - 4.2.4. Procedure:
 - 4.2.4.1. civil: rules by which private-law disputes brought to courts.
 - 4.2.4.2. criminal: prosecution and trial of suspected criminals.
 - 4.2.4.3. evidence: how evidence presented to courts.
- 4.3. Private law: regulates interests of individual and relationships between citizens.
 - 4.3.1. Persons: how legal subject begins, legal subject's status and end.
 - 4.3.2. Family: relationships between spouses, parents and children, and guardians.
 - 4.3.3. Personality: body, reputation and dignity.
 - 4.3.4. Patrimony: persons and their means
 - 4.3.4.1. Things/property, whether movable/immovable.
 - 4.3.4.2. Succession: inheritance and intestate succession.
 - 4.3.4.3. Obligations: legal relationship between 2 parties, where 1 has a right against another for performance and other has a duty to perform.
 - 4.3.4.3.1. Contract (*ex contractu*)
 - 4.3.4.3.2. Delict (*ex delicto*)
 - 4.3.4.3.3. Unjustified enrichment

- 4.4. Mercantile law: mix of public and private (company law, insolvency, negotiable instruments, tax, etc.)
 - 4.5. Labour law: all relationships between employer and employee.
 - 4.6. Conflict of laws: which private law system governs if more than one is involved?
5. **Unit 5A and 5B: Status and the law of persons, Juristic Person**
- 5.1. Law of persons stipulates how legal personality begins and ends.
 - 5.1.1. Each human being (or natural person) is a legal person or *persona iuris* with legal capacity (has rights and duties).
 - 5.1.2. Wasn't always this way – slaves were things, criminals were beasts.
 - 5.2. Unborn
 - 5.2.1. *Nasciturus* fiction:
 - 5.2.1.1. Usually *nasciturus* is born and becomes a legal subject, thus law protects future interests of *nasciturus*.
 - 5.2.1.2. The fiction allows unborn foetus' interest to be dealt with as if already born. Position of unborn is suspended, or kept "on hold" until birth.
 - 5.2.1.3. Often seen in law of succession and in law of delict.
 - 5.3. Death
 - 5.3.1. Determined by medical experts, legal personality terminates.
 - 5.3.2. When impossible to certify death (destruction of corpse, missing persons, etc) an order can be obtained from court presuming person has died. Order is based on reasonable evidence, and is valid until proven otherwise (a rebuttable presumption).
 - 5.3.3. Inquest (Inquests Act 58 of 1959): in, for example, an air crash, the Dir. of Public Prosecutions can submit a record of inquest to the High Court for review. If High Court confirms finding, the confirmation will have same effect as above order.
 - 5.3.4. Because presumption of death is rebuttable, courts deal with overturned presumptions:
 - 5.3.4.1. Succession: security must be provided;
 - 5.3.4.2. Marriage: Dissolution of Marriage on Presumption of Death Act 23 of 1979 allows for an order dissolving marriage regardless of whether deceased

returns. If a death is found to have been on a particular date, marriage dissolution occurs as at that date.

5.4. Status

5.4.1. Legal subjects have different attributes and characteristics. Status comes from Latin *stare* (to stand): position a person holds, imposed by law, determined by those attributes he has or the situation in which he finds himself and to which legal consequences are attached.

5.4.2. Can be influenced by age, mental condition, marriage, solvency and criminal record.

5.4.3. Capacity to act and litigate:

5.4.3.1. Capacity to perform valid juristic acts (acts to which law attaches consequences) is limited until age 21 (majority). Assistance of guardian is usually necessary.

5.4.3.1.1. Exceptions: have bank accounts, make wills >16.

5.4.3.1.2. Married woman is no longer a minor.

5.4.3.1.3. Declaration of majority in terms of Age of Majority Act 57 of 1972.

5.4.3.2. Children below 7 and legally mentally ill have no capacity to act.

5.4.3.3. Capacity to litigate (appear in court as a party to a lawsuit) is like capacity to act. (*locus standi in iudicio*)

5.4.3.4. For full capacity to act, person must be able to express intention and put it into effect. Law requires person to be able to work out consequences of her actions and act in accordance with this knowledge.

5.5. Juristic person: not a natural person, but an entity. Has legal capacity and is bearer of rights and duties like a natural person.

5.5.1. Is an independent entity, separate from its members (*persona iuris*).

5.5.2. Can come into being in terms of statutory provisions, or by common law.

5.5.3. Typically ends by court application.

6. **Unit 6: Marriage**

- 6.1. Marriage is a legal institution: parties involved must have capacity, and formalities must be observed. Consequences of marriage are determined by law.
- 6.2. Typical is civil/Christian/western/monogamous marriage.
- 6.3. Other religious:
 - 6.3.1. Jewish marriages recognized only on compliance with Marriage Act 25 of 1961 formalities and if registered as valid marriage.
 - 6.3.2. Any priest of Indian religion can be marriage officer to solemnise marriages, which are recognised if they comply with Marriage Act and are monogamous (and registered as valid marriage).
 - 6.3.3. Because Koran allows for polygamy (polygynous marriage), Muslim marriage only recognised if requirements of Marriage Act complied with.
 - 6.3.4. African customary marriages, and *ilobolo* are recognised under Recognition of Customary Marriages Act 120 of 1998.
- 6.4. No common law marriage based on length of cohabitation.
- 6.5. Book says no gay marriage, but of course this has changed.
- 6.6. Requirements for valid marriage:
 - 6.6.1. Capacity (can't be mentally ill, too young). Under 21 need parental consent, for boys under 18 also needs Minister of Home Affairs consent, for girls under 15. Blood relationships prohibit marriage.
 - 6.6.2. Agreement
 - 6.6.3. For African Customary Marriages, must comply with negotiations in customary law. Under 18 requires parental consent, but Minister of Home Affairs can consent if parents refuse.
 - 6.6.4. Engagement:
 - 6.6.4.1. Not required, but customary.
 - 6.6.4.2. If broken, there can be legal consequences to breaking "promise to marry"
 - 6.6.4.3. Same requirements apply to engagement as to marriage.

6.6.5. Formalities:

6.6.5.1. Christian/Civil: Marriage officer appointed by the state, declaration of husband and wife, marriage must be solemnised, both parties presence as well as 2 witnesses, in church, religious building, public office or house with open doors. Signing registered not required.

6.6.5.2. African Customary: determined by customary law, but still must be registered. Can also conclude civil marriage if they choose, provided not married to any other partner in customary marriage.

6.7. Consequences of Civil/Christian Marriage:

6.7.1. Marriage creates a "consortium" of consorts/partners/companions.

6.7.2. Invariable: Obligation of conjugal fidelity.

6.7.3. Invariable: Mutual obligation of financial support.

6.7.4. Matrimonial Property Regimes:

6.7.4.1. In community of property of property and of profit and loss: Each is owner of an undivided half-share in the estate (divided only on death/divorce). Consent may be necessary to sell house or get mortgage bond.

6.7.4.1.1. Automatic

6.7.4.1.2. Economic equality and legal equality provided in Matrimonial Property Act 88 of 1984.

6.7.4.2. In marriage out of community of property and of profit and loss, by antenuptial contract, each spouse has own estate and can control it separately. Legal equality is created.

6.7.4.3. Out of community can be with or without accrual. With accrual is the default by Matrimonial Property Act 88 of 1984. In marriage parties do not share their property, but on dissolution the parties share in the gains of the marriage. Certain exemptions (donations, inheritance are not counted in accrual).

6.8. Consequences of customary marriage: same as civil marriage after Nov 15 2000. Prior, according to custom.

6.9. Dissolution: Death or divorce (by court order).

6.9.1. Divorce grounds: broken down irretrievably, mental illness or continuous unconsciousness.

6.9.2. For customary marriage, only irretrievable breakdown.

7. **Unit 7: NONE**

8. **Unit 8: Property**

8.1. 8A

8.1.1. Limitations on ownership

8.1.1.1. Sometimes said to be most basic right and most complete right, but this doesn't mean it is absolute

8.1.1.2. Public law limits by such rules as sanitary regulations, building restrictions, traffic rules

8.1.1.3. Private law limits by rights of other individuals (elasticity of ownership)

8.1.2. Law of things: body of legal rules governing relationship between persons and corporeal things (real rights)

8.1.3. Type of entitlement a person has over a thing depends on the type of real right the person has

8.1.4. Acquisition of ownership

8.1.4.1. With cooperation of previous owner (derivative method):

8.1.4.1.1. delivery (*traditio*)

8.1.4.1.1.1. actual/physical delivery – hand to hand delivery: Ownership is obtained by means of *traditio* when a thing is physically delivered and the intention is to transfer and receive ownership of the thing.

8.1.4.1.1.2. constructive delivery – Ownership of movables may be acquired by constructive delivery, provided intention to transfer and receive ownership is present.

- 8.1.4.1.2. registration – transfer of ownership of immovable (land and fixtures) by registering in the Deeds Office (but *nemo plus iuris in alium transferre potest quam ipse habet* – no one can transfer more rights than he has himself)
- 8.1.4.2. Without cooperation of previous owner (original method): appropriation (*occupatio*)
 - 8.1.4.2.1. if it is something belonging to nobody (*res nullius*) and taker has intention to own, he acquires ownership by *occupatio*.
 - 8.1.4.2.2. if it belongs to somebody but they have intention to give away, taker can acquire by *occupatio*, but if no intention to give away (just lost), taker can't acquire.
- 8.1.5. Protection of ownership
 - 8.1.5.1. Private law protection
 - 8.1.5.1.1. claiming back wrongfully removed property (even from *bona fide*) *rei vindicatio*
 - 8.1.5.1.2. prohibition on disturbing entitlements of owner – prohibitory interdict
 - 8.1.5.2. Constitutional protection (section 25)
 - 8.1.5.2.1. deprivation – no one may be deprived of property except by a law of common application (for which no compensation)
 - 8.1.5.2.2. expropriation – property can be expropriated by law of common application or in public interest (land reform), for which compensation paid
- 8.1.6. Customary land law rights – preference for communal rights and interest of family
- 8.1.7. Statutory land reform – Restitution of Land Rights Act
- 8.2. 8B – Limited real rights - *iura in re aliena* – rights to the thing of another
 - 8.2.1. Mortgage bond –

- 8.2.1.1. limited real right to an immovable thing of another, serving as security to ensure payment
- 8.2.1.2. doesn't give mortgagee use or enjoyment of property
- 8.2.1.3. property may be sold in execution by bank to recover debt
- 8.2.1.4. limits ownership right because if sold, some of proceeds go to bondholder to repay debt
- 8.2.1.5. bond holder has limited right to property
- 8.2.2. Pledge –
 - 8.2.2.1. only applies to movables, because can be delivered to creditor
 - 8.2.2.2. limited real right to movable thing of another, serving as security to ensure payment
 - 8.2.2.3. doesn't give pledgee use and enjoyment of thing
- 8.2.3. Servitude – a limited real right over thing of another giving specific entitlements to use and enjoy the thing in a particular way (servitude of right of way, servitude of drawing water, of grazing)
 - 8.2.3.1. Real (land) servitude: holder of servitude is the dominant tenement, other is servient tenement
 - 8.2.3.1.1. Rural – grazing, right to cut and gather wood, to draw water
 - 8.2.3.1.2. Urban – window-right (dominant tenement has right to a window or opening in wall on servient's boundary/servient can't interfere with light reaching dominant)
 - 8.2.3.1.3. Acquisition –
 - 8.2.3.1.3.1. usually by agreement
 - 8.2.3.1.3.2. unless registered, new owners not bound unless they were aware
 - 8.2.3.1.3.3. can be acquired by registration

8.2.3.1.3.4. by prescription (30 years without interruption, without permission and openly)

8.2.3.1.3.5. court order – for example proper access to own land over another's

8.2.3.2. Personal – usufruct is where person given limited right to remain, for example, on farm and farm land until their death. Servitude registered against the land. (like life interest)

8.2.3.2.1.1. Can't chop down trees unless replaces

8.2.3.2.1.2. If usufruct on money, can invest money but only use interest

9. **Unit 9: Disposal of property after death (Law of succession)**

9.1. Linked to property, family law and law of obligations

9.2. Roman-Dutch with English influence, particularly in testate succession (freedom of testation is upheld) – very different from indigenous emphasis on group

9.3. with will, estate “devolves” by rules of testate succession

9.4. What will might contain:

9.4.1. name and address of testator (date not required but recommended)

9.4.2. revocation clause not required

9.4.3. legatees inherit specific assets or particular sums

9.4.4. residue clause goes to heir (not legatee)

9.4.5. legatees and heirs are beneficiaries

9.4.6. if married in community of property, own one half of joint estate and this is what is bequeathed

9.4.7. executor who draws up distribution account to pay debts and show how assets to be distributed

9.4.8. attestation clause not necessary

9.5. will must:

9.5.1. be in writing

- 9.5.2. signed by testator (on each page if more than 1), may sign with initials, signature or a mark or someone can sign on testator's behalf in presence of testator with 2 witnesses (where by mark or another signs also need commissioner of oaths) – commissioner must sign each page
- 9.5.3. in presence of witnesses
- 9.5.4. two witness signatures, simultaneously present (witnesses can't sign by mark) on last page
- 9.6. court can accept will that doesn't comply with formalities if court is convinced testator intended document to be her will
- 9.7. intestate succession:
 - 9.7.1. generally to closing living blood relations and spouse and adoptive child/parent
 - 9.7.2. intestate succession act
 - 9.7.2.1. to spouse, if no children
 - 9.7.2.2. R125k to spouse if children
 - 9.7.2.3. if no spouse, among children (children of a deceased child share deceased child's share equally) (nothing to children of living child)
 - 9.7.2.4. if no spouse, no children, to mother and father equally
 - 9.7.2.5. if no parents, to brothers and sisters equally

10. **Unit 10: Law of Obligations**

- 10.1. 10A contracts
 - 10.1.1. Obligation is a legal bond, with a right to performance and a duty to perform. The right to performance is a personal right.
 - 10.1.2. Contracts entered into with intention of creating legal obligation.
 - 10.1.3. Requirements:
 - 10.1.3.1. consensus
 - 10.1.3.1.1. who are the parties
 - 10.1.3.1.2. performance to which parties are bound

- 10.1.3.1.3. contract is void for lack of consensus, but to resile mistake must be reasonable (*iustus error*)
- 10.1.3.1.4. mistake must be material and exclude consensus (must not only influence decision to contract)
- 10.1.3.1.5. misrepresentation or duress results in a voidable contract
- 10.1.3.1.6. consensus reached on offer/acceptance (but remember advertisement is not an offer)
- 10.1.3.1.7. courts have held that offer by post is accepted when acceptance is put into the post
- 10.1.3.2. both parties have capacity to act
- 10.1.3.3. performance required possible at time of contract
- 10.1.3.4. conclusion, performance and object of contract must be lawful
- 10.1.3.5. formalities complied with where required by law
- 10.1.4. Breach – no satisfactory performance
- 10.1.5. Remedies
 - 10.1.5.1. specific performance for innocent party
 - 10.1.5.2. cancellation releasing innocent party or, where innocent party has performed, innocent can recover performance
 - 10.1.5.3. innocent party entitled to damages, whether performance or cancellation is claimed (for amount that puts innocent party in position would have been in if contract had been performed) (penalty clause can be enforced if court agrees not too much)
- 10.2. 10B – Delict
 - 10.2.1. Damage rests where it falls, unless there exists a ground for compensation that is recognised by law (insurance contract, undertaking to compensate or delict)
 - 10.2.2. Elements of a delict
 - 10.2.2.1. act – must be voluntary, human act – or omission (but only if there was a legal duty to act)

- 10.2.2.2. wrongfulness –
 - 10.2.2.2.1. must violate or infringe upon another's right; and
 - 10.2.2.2.2. have no grounds of justification
 - 10.2.2.2.2.1. defence (requires direct or threatened attack, and defence absolutely necessary and not more drastic than necessary)
 - 10.2.2.2.2.2. necessity (interests not of wrongdoer but innocent bystander are infringed upon)
 - 10.2.2.2.2.3. consent, unless *contra bonos mores* or not freely given
 - 10.2.2.3. fault –
 - 10.2.2.3.1. must reach a level of mental development to distinguish right and wrong
 - 10.2.2.3.1.1. children under 7 and insane people don't have requisite state of mind
 - 10.2.2.3.1.2. children under 14 assumed to not be blameworthy, unless presumption is rebutted
 - 10.2.2.3.1.3. over 14 until majority assumed blameworthy unless presumption is rebutted
 - 10.2.2.3.2. intent (intentional and aware of wrongfulness) or negligence (failed to take care that a reasonable person would? Would reasonable person have foreseen or prevented?)
 - 10.2.2.4. damage or loss (patrimonial, reputation, pain)
 - 10.2.2.5. causal connection
- 10.2.3. remedies

10.2.3.1. prior to delict – interdict (a court order forbidding activity or stopping threat of prejudice, or forcing to do something... a mandatory interdict)

10.2.3.2. after delict –

10.2.3.2.1. compensation (negligently or intentionally) to put victim in same place as if no delict, where measurable in money

10.2.3.2.2. satisfaction *or solatium* (intentionally) money compensation for moral or sentimental damages

10.2.3.2.3. can have both

11. Unit 11: Criminal Law

11.1. transgression of a rule or norm as opposed to infringement of a right (though this can also be present)

11.2. protection of public interest, not interests of individuals

11.3. only where act has been classified as a crime by legislation or in common law

11.4. principle of legality – can't be accused of and punished for a crime that was not punishable at the time it was committed (entrenched in ch 2, 35(3) of Constitution)

11.5. crime is an unlawful, culpable act punishable by the state

11.5.1. act – voluntary act, whether commission or omission

11.5.2. within definition of the crime

11.5.3. unlawful, for which no justification (defence, necessity, consent)

11.5.4. fault – capable of a blameworthy state of mind (exceptions for youthfulness, mental illness, intoxication)

11.5.4.1. less than 7 yrs never criminally responsible

11.5.4.2. between 7 and 14 yrs rebuttable presumption not responsible

11.5.4.3. after 14 years rebuttable presumption is responsible

11.5.4.4. also need intent (directed act known unlawful) and/or negligence (failed to act as reasonable person)

12. Unit 12: Commercial Law

12.1. Cheques

- 12.1.1. drawer gives order to pay
- 12.1.2. drawee is bank
- 12.1.3. payee receives payment
- 12.1.4. cross out words "or bearer" (can make out Pay to Cash)
- 12.1.5. can say not negotiable or not transferable
- 12.1.6. if says "or his order", payee can transfer rights by endorsing
- 12.1.7. payable on demand means at any time, unconditionally

12.2. Insurance

- 12.2.1. Insured shifts risk of an event onto insurer who takes risk for a price (premium)
- 12.2.2. types
 - 12.2.2.1. indemnity (car against theft, house against fire) indemnifies against actual loss arising from an event
 - 12.2.2.2. non-indemnity (life, permanent disability) where no relation between actual loss and pay out
- 12.2.3. basic principles
 - 12.2.3.1. need insurable interest (must be worth insuring – can't insure another's life who has no relation to you)
 - 12.2.3.2. good faith – duty to disclose certain facts, answer questions truthfully. Insurer must know what he is insuring.
- 12.2.4. defined as contract of the utmost good faith in terms of which insurer agrees, on payment of premium, to make good financial loss suffered by insured or an agreed sum on happening of an event
- 12.2.5. requires agreement on – person or property insured, risk insured against, amount payable, premium, period

12.3. companies and partnerships

- 12.3.1. have legal personality, most have share capital
- 12.3.2. partnership is not a juristic person, but a relationship between two or more for making a profit
- 12.3.3. differences
 - 12.3.3.1. status as juristic person
 - 12.3.3.2. separation of assets of company
 - 12.3.3.3. in partnership all partners are joint bearers of rights and obligations, and each partner liable for debts
 - 12.3.3.4. company is liable for its own debts
 - 12.3.3.5. on liquidation, shareholders estates not sequestrated as with partnership
 - 12.3.3.6. sequestration of a shareholder's estate has no affect on company
 - 12.3.3.7. shareholder has no authority to act on behalf of a company
 - 12.3.3.8. partnerships must be for gain
 - 12.3.3.9. partnership can't have more than 20 partners
- 12.4. close corporations – max of 10 members, has juristic personality