NOTES ON ADVANCED CRIMINAL LAW (LCR480-6)

STUDY UNIT 2 - PRINCIPLE OF LEGALITY

2.1. DEVELOPMENT OF THE PRINCIPLE OF LEGALITY IN SA

Chapter 2 (Bill of Rights) in the Constitution

s35(3) Every accused (A) has the right to a fair trial

s35(3)(l)

this right includes the right not to be convicted of an act / omission that was not an offence under either national or international law at the time it was committed or omitted.

Incorporates the IUS PRAEVIUM PRINCIPLE and by implication also the IUS ACCEPTUM PRINCIPLE:

if a court is not entitled to convict an accused of a crime if, at the time when the accused committed the relevant act, the law did not recognise such an act as a crime (IUS PRAEVIUM), it follows by necessary implication that a court is not entitled to create a crime (IUS ACCEPTUM)

s35(3)(n)

this right includes the right to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing.

Relates to the NULLA POENA SINE LEGE PRINCIPLE (principle of legality in punishment)

NO EXPRESS provisions retaling to IUS CERTUM or IUS STRICTUM PRINCIPLES

but it is possible that the Constitution will interpret the provisions of this section in a way that they cover these aspects as well.

NOTE: Criminal LAw is mostly uncodified (ie: common law and not contained in legislation) the principle of legality is uphelp by the authoritative decisions (precendent system) which lay down the requirements for each common law crime & general principles of liability.