

## 2.2 APPLICATION OF THE PRINCIPLE OF LEGALITY IN SA LAW

### THE IUS ACCEPTUM PRINCIPLE

("ACCEPT by Law = RECOGNISED by Law - court may not create crimes)  
Court may only find (A) guilty of a crime if the kind of act performed by him  
is RECOGNISED by the Law as a crime - IE: the court itself may not create a crime

#### COMMON LAW CRIMES (CL)

Not all transgressions are crimes, only when specific conduct is declared a crime, there is a possibility of criminal-law liability.

MARAIS case:

court found the (A), who had exposed himself in public, guilty of a crime called "public indecency" even though NO such crime existed in our CL or in any Legislation

The court assumed the role of a GUARDIAN of the MORALS (CUSTOS MORUM) (as the role used by the English Judges)

During this time there was still a lot of gaps in our criminal law - "the formative years"

NOW: the "list" of CL crimes has now been closed, new crimes can only be created via Legislation

2 cases where the courts refused to create new CL crimes:  
ROBINSON: court refused to find (A) guilty of "attempting to corrupt the chastity of maidens" - as no such crime existed  
M 1915: court stated that they do not possess the power to create offences upon the ground that in their opinion, they are contrary to good morals.

#### STATUTORY CRIMES

##### *Acts of Parliament (P)*

If (P) wishes to create a crime an Act creating such a crime will best comply with the principle of L if it EXPRESSLY declares:  
(1) that the particular type of conduct is a crime and  
(2) what punishment a court must impose if it finds the (A) guilty of the commission of such a crime.

Distinguish between:

1. LEGAL NORM in an Act is merely a rule of law, the infringement of which is not a crime
2. CRIMINAL NORM is a provision in an Act stating clearly that certain conduct constitutes a crime
3. CRIMINAL SANCTION is a provision in an Act prescribing what punishment a court must impose once a person is found guilty of the particular crime

If 2. is present but not 3. the court may decide what punishment to impose (the court has discretion)

If 3. but not 2. the court will probably decide that the legislature intended to create a crime.

##### *Subordinate Legislation*

Regulations or other promulgated by a subordinate legislature.

1. The ENABLING ACT (the Act authorising the subordinate body to create regulations) must invest the sub legisl body with the power to create crimes - EXPRESSLY
2. The subordinate body should indeed have created a crime
3. The provision should not be ULTRA VIRES (beyond the power extended to the subordinate body)

The correct approach to follow to ascertain whether a sub. prov is ULTRA VIRES in respect of the enabling Act was set out in GONCALVES case:  
\* meanings of the sub prov must 1st be determined (language, context and background)  
\* Empowering prov must be examined to determine the degree to which the above meanings fall within its ambit  
\* It is the court's duty to determine a sub prov to be valid rather than invalid - only applicable where there are 2 interps.

#### BLANKET PENALTY CLAUSE:

an Act containing a number of prescriptions and directions followed by a "blanket penalty clause" which reads that non-fulfilment of any of the provisions in the Act is a crime.

Problem: sometimes certain provs are

purely administrative instructions & could not have been the legislature's intention to make non-compl. with these provs punishable.

BETHLEHEM MUNICIPALITY case - duty on municipality to submit its books, accounts and docs to an auditor, while another section contained a "blanket penalty clause". In this case the municipality failed to submit the above to an auditor.

Q = did the municipality commit a crime?

The YARDSTICK applied by the court was to assume that the legislature had intended an omission on the part of an official to comply to result only in disciplinary action against the official, unless the legislature had declared in the most unambiguous language that such failure = a crime. "Blanket Penalty Clause" undermines the principle of L.