

2.2 APPLICATION OF THE PRINCIPLE OF LEGALITY IN SA LAW (continued)...

The prohibition on extension by analogy (similarity):

The IUS STRICTUM PRINCIPLE implies further that a court is not authorised to extend a crime's field of application by means of analogy to the detriment of the (A).

This rule is applicable to CL crimes and STAT LAW crimes.

Private Law - extension of legal principles by analogy is permissible within certain limits.

Criminal Law - extension of criminal norms by analogy is NOT permitted.

EG: SMITH case - "photographic" material court refused to extend its meaning to include "photostatic" material

(This is now included by means of an Act of P)

Defences may be extended by means of analogy

THE PRINCIPLE OF LEGALITY IN PUNISHMENT:

NULLA POENA SINE LEGE PRINCIPLE

IUS ACCEPTUM PRINCIPLE

*Court cannot impose a punishment unless the punishment, in respect of both its nature and its extent, is recognised or prescribed by statutory or CL.

IUS PRAEVIUM PRINCIPLE

*If the punishment to be imposed for a certain crime is increased, it must not be applied to the detriment of an (A) who had committed the crime before the punishment was increased.

IUS CERTUM PRINCIPLE

*Legislature should not express itself vaguely or obscurely when creating and describing punishment.

IUS STRICTUM PRINCIPLE

*A provision in legislation which creates and prescribes punishment must be interpreted strictly if that punishment is ambiguous.