AN INTRODUCTION TO THE CONCEPT OF LAW
Why media law?
Law regulates every aspect of our lives so it is important that journalists, advertisers and PR Practitioners and all other persons working in the field of media and communication have and understanding of the legal framework
Why?
- To avoid the pitfalls facing journos or media practitioners
- To make wise and informed decisions in performing tasks
- To complete everyday work in a manner which pays heed to privacy, defamation and access to information laws (within a constitutional framework)
- To add value to and advance the democratic principle of freedom of expression
- To inform and educate the public in a responsible and legal manner
- To develop critical and independent thinking on subjects of ethics and morality
- Cultivate thinking that is systematic, ordered and logical
Media law embraces all legal rules affecting the dissemination of information, ideas and opinions in society.

There are specific statutes which deal with Communication and Access to Information:
- Broadcasting Act
- Broadcasting Amendment Act
- Electronic Communications Act
- Electronic Communications and Transactions Act
- National Film and Video Foundation Act
- Promotion of Access to Information Act
- Telecommunications Act
- Publications and Entertainment Act
- Independent Communications Authority of South Africa Act

REMEMBER!!! All law and legislation is subject to the Constitution of the Republic of South Africa.
THE CONCEPT OF LAW

The law is a set of rules which we should obey

Def. “the law is a body of rules which govern human conduct, is recognised by people and enforced by the State”

Set of rules – so we must obey the law
It regulates behaviour of legal subjects: persons (natural and juridical)

Law is enforced by the State – sanctions exist (punitive action or penalties) which are attached to the law and are warranted when the law is broken and are then enforced by the State

“legal right” = an interest conferred and protected by the law, entitling one person to claim that another person give something, perform an act or refrain from performing an act
The law regulates society and is influenced by natural, social and moral rules of conduct so any changes in society should be reflected by the law.

The law and morality are however not the same thing.

Eg. killing someone is both immoral and illegal. Here, the law is in accordance with morals, there is a convergence between the two.

On the flip side:
Adultery is immoral but it is not illegal. Here the law is not a complete mirror of morals, so there is no convergence.

A legal subject is a human being (natural person) or a legal person (legal entity) to whom the law applies and for whose benefit the law exists.
South African Law can be broadly divided into Private Law and Public Law

1. **Public Law** controls the relationship between the State and its citizens, the State and its organs and with other States
   Eg. Criminal Law and Constitutional Law

1. **Private Law** governs the relationships between private citizens in their dealings with each other
   Eg. The Law of Persons, Family Law and the Law of Property
ORIGINS AND SOURCES OF SA LAW

ORIGINS — WHERE THE LAW CAME FROM

SOURCES — WHERE TO FIND OUR LAW
SA law can be traced back to Roman Law, Roman-Dutch Law and English Law. An abbreviated history of our law looks like this:

1. Roman Law (753 BC to 568 AD) – from this we still have the Corpus Iuris Civilis (a codification of Roman Law) as an authoritative source of RL in SA courts today.
2. When the Roman Empire fell (476 AD). RL was preserved because 1) every citizen of the Roman Empire was judged by RL and 2) the church was the supreme power of the time and Canon Law was strongly based on RL.
3. There was a revival of RL by a group of scholars in Bologna in Italy around 1070 AD.
4. During the 15th and 16th centuries Roman Law was received into the Netherlands and became mixed with Dutch Customary Law.
5. In 1652, Jan Van Riebeeck brought Roman-Dutch Law to the Cape.
6. In 1814, the Cape was formally ceded to Great Britain, which contributed to the reception of English Law.

From the above, we can deduce that the origins of South African Law are broadly speaking:
- Roman Law;
- Roman-Dutch Law;
- English Law.

SA has hybrid system of law
Sources

SA law has various sources, some are authoritative [in other words they bind our courts; our courts are obliged or bound to follow them] and others are persuasive [in other words they have persuasive value only and our courts are not bound by them].
Legislation (statutory law)

- Legislation = most important source of our law
- Laws that are made by competent authorities – the legislature
- An authoritative source of law
- Found in statutes, proclamations, regulations and by-laws.
- The Constitution is the most important law in SA. It is the supreme law of the Republic and so any law or conduct that is inconsistent with it is of no force or effect (invalid)

[Chapter 2 of the C consists of a Bill of Rights (BoR) which entrenches basic human rights like equality, freedom of trade and freedom of expression. These rights may only be limited, ito S 36 – the “Limitations Clause” – in the interests of another competing right based on what is “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”]
Customary Law

A custom is the usual way of behaving or doing something.

Customs develop by being carried down from generation to generation.

An authoritative source of law.

A customary rule can become a legal rule in certain instances:
- The rule must be reasonable;
- It must have existed for a long time;
- It must be generally recognised and observed by the community;
- The rule must be certain and clear.

[Van Breda v Jacobs 1921 AD 330]
Case Law

- Our courts are divided into Superior Courts and Lower Courts.
- Judgements of our Superior Courts provide an important and authoritative source of law.
- They are reported in law reports.
- Eg. The South African Law Reports (SALR)
Old Authorities
- The works of the Old Authorities – the Roman, Roman-Dutch and English Jurists (Legal Writers) form the basis of our Law and the works of the Old Roman-Dutch Jurists are still authoritative in our courts today.

Foreign Law
- Foreign Law has persuasive value in our courts and is an important source of guidance where nothing can be found in the other sources.
- Textbooks and Law Journals
- The works of South African lawyers, legal Academics, advocates, attorneys and judges may have persuasive value in our courts.
Textbooks and Law Journals

- The written work of SA lawyers, legal academics, advocates, attorneys and judges
- Persuasive power
Our Courts

The function of the courts is to apply the law, not make the law...
BUT judicial decisions (judgements) can influence legal principles

The doctrine of *Stare decisis* means that the judiciary is bound to follow established decisions which set precedents

This means that judicial officers (judges and magistrates) have to follow legal rulings given by courts of superior standing in previous judicial decisions
SA courts are divided into 2 groups:

I. **Superior Courts**
   - The Constitutional Court
   - The Supreme Court of Appeal
   - Provincial and local divisions of the High Court

2. **Lower Courts**
   - Magistrates’ Courts
   - Small Claims Courts
   - Specialist Courts
   - Community Courts: Courts of Tribal Chiefs and Headmen

[lower courts are bound to the decisions of superior courts]
The Constitutional Court
- The Constitutional Court is the highest court in SA and has jurisdiction as the court of final instance over all matters concerning constitutional matters
- The CC sits in Johannesburg.

[the High Courts may also decide on constitutional matters BUT the CC remains the highest authority]

The Supreme Court of Appeal
- This is the highest court in SA for matters that are not of a constitutional nature
- Unlimited jurisdiction
- “Jurisdiction” is the ability (authority, power or standing) of a court to hear a particular matter. Jurisdiction may be defined or limited by geography as well as subject matter
- The SCA is essentially an appeal court for the High Courts – it only hears appeals in matters that were originally heard in one of the High Courts
High Courts

- The HCourt consists of a number of provincial divisions with at least one division in each of the 9 provinces.
- The HCourts have original jurisdiction and can hear any matter which arises within their geographical area of jurisdiction.
- They are the only courts with jurisdiction in:
  - Divorce proceedings;
  - Matters surrounding the status of a person in respect of mental capacity;
  - Applications for the sequestration (declaration of Insolvency) of a person’s estate or the liquidation of a company;
  - The validity or interpretation of a will.

Magistrates’ Courts

- Lower status than HCourts and have jurisdiction in both criminal and civil cases.
- Limited jurisdiction in comparison with the jurisdiction of the superior courts.
- Divided into Regional Courts and District Courts:
  - Regional Courts have jurisdiction in all matters except treason.
  - District Courts can hear all cases except treason, murder and rape.

Small Claims Courts

- Instituted in 1985 to assist the parties involved in a dispute to resolve and put an end to their dispute quickly and inexpensively.
- These courts have jurisdiction to hear any civil matter not exceeding R12 000 (S16 of the Small Claims Court Act).
The Doctrine of Stare Decisis

- In accordance with the doctrine of Stare Decisis the decisions of superior courts bind all courts of equal or lower standing.
- THUS judicial officers presiding over matters are bound to follow previous decisions of their own court or superior courts.
- Although it is essentially the task of the judge to only apply the law, the effect of their decision may be to interpret law, extend or adapt an existing common law principle and even to create law.
- A court is bound by its own decisions unless and until they are overruled by a superior court. Eg. The Natal Provincial Division is bound to follow its own decisions BUT if there is a SCA judgement on the matter it is bound to follow that decision.

- Leads to a measure of legal certainty.
- Strict adherence to it may however be at the expense of fairness so a court may depart from a decision (or decline to follow it) if it would be fair.
- A court will not lightly depart from a previous decision of itself or a superior court.
- A court may depart from a binding decision either where:
  - the facts of the case before it are substantially different from the facts of the binding decision ("distinguishable")
  - where it can be shown that the binding decision was clearly wrong.
# The Difference between Civil and Criminal Cases

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<tr>
<th><strong>Criminal Cases</strong></th>
<th><strong>Civil Cases</strong></th>
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<td>takes place when a person commits a crime and thus damages the interests of the community.</td>
<td>1. The state does not play any role in bringing any of the parties before the court.</td>
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<td>The state acts as the champion of the general public and has to prosecute criminals and obtain their punishment.</td>
<td>2. It is the task of the aggrieved party (plaintiff) to bring his/her opponent (defendant) before such court.</td>
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<td>(State/prosecution) “beyond a reasonable doubt”</td>
<td>3. (plaintiff) “on a balance of probability” (if the probabilities favour the plaintiff’s version of events then judgment will be given in his/her favour).</td>
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Make mind maps of each of the different courts OR of each of the different sources of law. Cover all the aspects which were discussed in class.