

## **COURSE OUTLINE : CRIMINAL PROCEDURE B 2014**

### **LECTURER**

Ms Sarah Macqueen

email: [s.macqueen@ru.ac.za](mailto:s.macqueen@ru.ac.za)

I am indebted to the previous lecturers of this course, Adv McConnachie and Adv Roberts for the content and structure of this course.

### **OVERVIEW**

#### **PURPOSE OF THE COURSE:**

For the student to acquire a deeper knowledge of certain aspects of criminal procedure not covered in detail in Criminal Procedure A. It presupposes that the student has already passed Criminal Procedure A.

Together with Course A, this course should cover all the main aspects of criminal procedure encountered in practice.

#### **HOW THIS FITS INTO THE OVERALL DEGREE STRUCTURE**

As a procedural (adjectival) law subject, this course equips the student to apply the substantive criminal law in courts in South Africa. It also has close ties with the law of evidence.

#### **CREDIT VALUE: 10**

This works out as follows:

18 hours	24 lectures @ 45 mins each
.75 hours	1 written test
2 hours	1 written examination
79.25 hours	Individual learning (pre- and post-lecture reading, preparation of written assignment, test and examination preparation)

**Total: 100 hours work**

#### **ASSUMPTIONS OF PRIOR LEARNING**

- General exposure to the idea of legal principles (legal theory, constitutional law, interpretation of statutes, elementary criminal procedure, criminal law).
- Ability to read and interpret statute law, read and interpret decided cases in law reports, apply the doctrine of precedent.
- Ability to analyse a set of facts; identify the legal problem contained therein, apply the appropriate law to derive a solution.

## **OUTCOMES**

### **CRITICAL CROSS-FIELD OUTCOMES (CCFOs)**

This course should contribute to the following critical outcomes:

- a) identify and solve problems
- b) collect, analyse and evaluate information
- c) communicate effectively
- d) recognise problem solving contexts
- e) reflect on and explore effective learning strategies
- f) critique existing legal rules
- g) work with a detailed major statute governing most of the law on a single subject

## SPECIFIC INTENDED OUTCOMES

<b>OUTCOME</b> <b>Students will be able to:</b>	<b>LINKED CRITICAL OUTCOME</b>	<b>ASSESSMENT CRITERIA</b> <b>(Note: references to relevant authority should be given in each instance)</b>	<b>ASSESSMENT TASKS</b>
<p>1. Describe</p> <ul style="list-style-type: none"> <li>• the system of criminal prosecution in South Africa: who prosecutes; when a private person is permitted to prosecute;</li> <li>• when a prosecution can be withdrawn or stopped;</li> <li>• effect of withdrawal or stopping of prosecution;</li> <li>• right to speedy trial</li> <li>• prescription in criminal law</li> </ul> <p>Identify from factual scenario whether private prosecution possible, whether right to speedy trial violated, whether a crime has prescribed</p>	<p>a, b, c, d, e, f, g</p>	<p>States that:</p> <ul style="list-style-type: none"> <li>• Prosecution system State-driven, centrally controlled.</li> <li>• Private prosecution only permitted when State refuses to prosecute, and when private prosecutor has peculiar and substantial interest in case; lists the rules relating to private prosecution</li> <li>• Prosecution can be withdrawn before plea, and later re-instituted; after plea can be stopped, in which case acquittal follows and no re-institution possible</li> <li>• Constitution guarantees right to speedy trial; shows when right has been violated, what remedy available</li> <li>• Prescription prevents the prosecution of most crimes after 20 years; points out which crimes not affected by prescription</li> </ul> <p>Correctly identifies problem and solution from scenario</p>	<ul style="list-style-type: none"> <li>• Class discussions: examining examples (formative)</li> <li>• Written test (summative): paragraph style description <u>or</u> factual problem requiring solution</li> <li>• Final examination (summative): paragraph style description <u>or</u> factual problem requiring solution</li> </ul>

<b>OUTCOME</b> Students will be able to:	<b>LINKED CRITICAL OUTCOME</b>	<b>ASSESSMENT CRITERIA</b>	<b>ASSESSMENT TASKS</b>
2. Describe <ul style="list-style-type: none"> <li>The legal rules relating to search and seizure under the Criminal Procedure Act</li> <li>The constitutionality of search and seizure provisions</li> </ul> Apply such rules in a factual scenario	a, b, c, d, e, f, g	Sets out which articles can be searched for and seized Explains that search/seizure can be with or without warrant; sets out requirements for issuing search warrant; explains when search/seizure permitted without warrant; explains what happens to articles after seizure Correctly identifies problem and solution from scenario	Ditto
3. Describe principles applicable to the right to legal representation in South African criminal trials Apply such principles in a factual scenario	a, b, c, d, e, f, g	Sets out principles relating to right to legal representation; from what stage of the proceedings; when accused will be entitled to legal representation at State expense; what effect of denial of such rights is Correctly identifies problem and solution from scenario	Ditto
4. Describe <ul style="list-style-type: none"> <li>historical development of principles applicable to duty of prosecution to disclose docket and other materials to defence in criminal trial in South African</li> </ul>	a, b, c, d, e, f, g	Sets out development of duty of prosecutor to disclose in South Africa; explains influence of Canadian law; sets out present legal position under Constitution; sets out similar development	Ditto

<p>context and principles currently applicable;</p> <ul style="list-style-type: none"> <li>historical development of principles relating to right of accused/defence to interview State witnesses and principles currently applicable</li> </ul> <p>In a factual scenario</p> <ul style="list-style-type: none"> <li>identify whether the prosecutor is obliged to make disclosure, and apply appropriate rules</li> <li>identify whether accused is entitled to interview a State witness, and apply appropriate rules</li> </ul>		<p>of entitlement of accused to interview State witnesses</p> <p>Correctly identifies problem and solution from scenario</p>	
<p>5. Describe rules applicable to drafting of indictments for criminal trials in High Court</p>	<p>b, c, e, f, g</p>	<p>Sets out what an indictment should contain; what summary of substantial facts should contain; what legal effect of summary of substantial facts</p>	<ul style="list-style-type: none"> <li>Class discussions: examining examples (formative)</li> <li>Written test (summative): paragraph style description</li> </ul> <p>Final examination (summative): paragraph style description</p>

<b>OUTCOME</b> <b>Students will be able to:</b>	<b>LINKED CRITICAL OUTCOME</b>	<b>ASSESSMENT CRITERIA</b>	<b>ASSESSMENT TASKS</b>
<p>6. Describe</p> <ul style="list-style-type: none"> <li>the principles applicable to certain offences in which some matters do not need to be alleged or disproved by the State, but which the accused can raise and prove by way of defence</li> <li>the principles relating to particular cases in which the State does have to allege certain facts, but in which the State is assisted by the existence of a presumption which the accused has to discharge to escape liability</li> <li>the similarities and differences between these concepts</li> </ul> <p>Identify in a factual scenario which of these two concepts applies, and correctly apply the relevant rules to the facts.</p>	<p>a, b, c, d, e, f, g</p>	<p>Sets out what an exemption, exception, proviso, excuse or qualification is; explains that State does not need to allege absence of such in charge, or prove absence of such in evidence; if accused seeking to rely on such he/she has to prove existence of on balance of probabilities; sets out constitutional implications of s 90 of Criminal Procedure Act</p> <p>Sets out effect of s 250 of Criminal Procedure Act: where absence of licence or permission an element of the offence State has to allege same in charge, but is assisted in proving such element by legal presumption</p> <p>Sets out similarities and differences between these two principles</p> <p>Correctly identifies problem and solution from scenario</p>	<ul style="list-style-type: none"> <li>Class discussions: examining examples (formative)</li> <li>Written test (summative): paragraph style description <u>or</u> factual problem requiring solution</li> </ul> <p>Final examination (summative): paragraph style description <u>or</u> factual problem requiring solution</p>
<p>7. Describe</p> <ul style="list-style-type: none"> <li>the rules relating to charging the accused with several offences arising out of a single</li> </ul>	<p>a, b, c, d, e, f, g</p>	<p>Sets out principles relating to so-called 'splitting of charges', pointing out that correct terminology and principle is legal</p>	<p>Ditto</p>

<p>incident</p> <ul style="list-style-type: none"> <li>the rules relating to charging an accused person with an offence of which he or she has previously been convicted or acquitted</li> <li>the similarities and differences between these two principles</li> </ul> <p>Identify in a factual scenario whether either of these principles operates, and apply the relevant rules to the facts</p>		<p>rule not against splitting of charges, but against improper duplication of convictions; describes the two traditional tests to determine whether there is an improper duplication of convictions; gives some examples by way of reference to case law;</p> <p>Sets out principles relating to rule against double jeopardy; gives the requirements for the operation of the rule; in particular deals with what is meant by 'substantial identity', court of competent jurisdiction and acquittal on merits.</p> <p>Correctly identifies problem and solution from scenario</p>	
<p>8. Describe the rules relating to the right of the accused to require further particulars to a charge and the duty of the prosecutor to furnish further particulars</p> <p>Apply such rules in a factual scenario</p>	<p>a, b, c, d, e, f, g</p>	<p>Sets out what further particulars accused may apply for for, at what stage, what particulars prosecutor obliged to furnish, what effect of supplied particulars is</p> <p>Correctly identifies problem and solution from scenario</p>	<p>Ditto</p>
<p>9. Describe the rules relating to plea and sentence agreements between the State and the accused</p> <p>Apply such rules in a factual scenario</p>	<p>a, b, c, d, e, f, g</p>	<p>Sets out nature of plea bargaining; pros/cons; what informal plea bargaining involves; the detailed rules applicable to plea and sentence agreements under the new s 105A of Criminal Procedure Act;</p>	<p>Ditto</p>

		shows how s Correctly identifies problem and solution from scenario 105A addresses some of the problems that arose previously Correctly identifies problem and solution from scenario	
10. Describe the rules relating to the criminal liability of corporate bodies for criminal acts committed by its directors, staff or agents and the procedural requirements for prosecuting a corporate body Apply such rules in a factual scenario	a, b, c, d, e, f, g	Sets out principle for establishing criminal liability on part of corporate body (s 332 of Criminal Procedure Act); procedural rules for establishing such criminal liability Correctly identifies problem and solution from scenario	Ditto
11. Describe the rules relating to appeals to higher courts in criminal cases Apply such rules in a factual scenario	a, b, c, d, e, f, g	Sets out the rules governing who can appeal; when; against what; to which court; how; requirement of leave to appeal; tests applied by appeal courts when dealing with appeals on facts, appeals against sentence; power of court of appeal to increase sentence; special types of appeal such as special entry on irregularity and reservation of question of law; powers of appeal courts generally Correctly identifies problem and solution from scenario	Ditto



<b>OUTCOME</b> Students will be able to:	<b>LINKED CRITICAL OUTCOME</b>	<b>ASSESSMENT CRITERIA</b>	<b>ASSESSMENT TASKS</b>
12. Describe the nature of and rules applicable to certain quasi-criminal proceedings: inquests, asset forfeiture, criminal proceedings involving the Child Justice Act Apply such rules in a factual scenario	a, b, c, d, e, f, g	Sets out what purpose of inquest is; when inquest must be held; procedure relating to institution and holding of inquest; findings to be made; effect of findings; referral to Director of Public Prosecutions and powers of DPP; special provisions when body not recovered Sets out purpose and nature of asset forfeiture under Prevention of Crime Act; explains principles/procedure of Ch 5 of Act (criminal forfeiture); principles/procedure of Ch 6 of Act (civil forfeiture) Examination of the provisions of the Child Justice Act 75 of 2008, which makes radical alterations to the criminal justice procedure where the accused is a child.	Ditto

## TEACHING METHODS

- Lectures (mainly with the aid of PowerPoint slides)
- Reading list
- Class discussion
- Assignment

## RESOURCES

**TEXT BOOK:** **Criminal Procedure Act 51 of 1977** (up to date version)

**Other recommended reading:** Du Toit et al: *Commentary on the Criminal Procedure Act*

There are also other works on various aspects of criminal procedure available in the library. See for example P M Bekker *et al: Criminal Procedure Handbook* (9<sup>th</sup> ed).

## MARK ALLOCATION

Examination	70 marks
Class test	15 marks
Class assignment	15 marks
<b>Total</b>	<b>100 marks</b>

## COURSE CONTENT

### TOPIC 1 – Prosecution of crime

- Who prosecutes
- Investigation of crime prior to decision whether to prosecute
- Withdrawal/stopping of prosecution.
- Prosecution to be brought within a reasonable time.
- Prescription.

Du Toit *et al Commentary in the Criminal Procedure Act: Ch 1*

Constitution: s179(2), 35(3)(d)

National Prosecuting Authority Act 32 of 1998 (NPAA): s2, 15, 16, 20(1), 20(5), 32

Extension of Security of Tenure Act 62 of 1997 (ESTA): s23(5)

Mattaues: *De Criminibus* 48, 19, 4, 1

Roberts 'Section 18 of the Criminal Procedure Act: the balance between hope and dread' 121 (2004) SALJ 46

\**R v Stinchcombe* [1991] 3 S.C.R. 326 (Supreme Court of Canada: case may be accessed on the internet via [www.canlii.org/ca/cas/scc/1991/1991scc91.html](http://www.canlii.org/ca/cas/scc/1991/1991scc91.html))

\**Singh v Minister of Justice* 2009 (1) SACR 87 (N)

\**S v Magayela* 2004 (1) SACR 3 (T)

\**Sanderson v Attorney-General, Eastern Cape* 1998 (1) SACR 227 (CC)

*Crookes v Sibisi* 2011 (1) SACR 23 (KZP)

*S v Zuma* 2006 (2) SACR 257 (W)

*NDPP v Zuma* 2009 (1) SACR 361 (SCA)

*Shabalala & Others v Attorney-General of Transvaal & Another* 1995 (2) SACR 761 (CC)

*Phato v Attorney-General, Eastern Cape & Another; Commissioner of the South African Police Services v Attorney-General, Eastern Cape & Others* 1995 (1) SA 799 (E)

*S v Yengeni* 2006 (1) SACR 405 (T)

*Rozani v DPP, Western Cape* 2009 (1) SACR 540 (C)

*R v Heilbron* 1922 TPD 99

*S v Gouws* 2008 (2) SACR 640 (T)

*S v De Freitas* 1997 (1) SACR 180 (C)

*Wild v Hoffert* 1998 (2) SACR 1 (CC)

*Bothma v Els* 2010 (1) SACR 184 (CC)

*Broome v Director of Public Prosecutions, Western Cape* 2008 (1) SACR 178 (C)

*S v Van der Vyver* 2007 (1) SACR 69 (C)

*McCarthy v Additional Magistrate, Johannesburg* 2000 (2) SACR 542 (SCA)

## TOPIC 2 - Search and Seizure

Constitution: s14

CPA: Ch 2 (s 19 – 36)

South African Police Services Act 68 of 1995

*\*Mistry v Interim National Medical and Dental Council of South Africa & Others* 1998 (4) SA 1127 (CC)

*\*Investigating Directorate: Serious Economic Offences & Others v Hyundai Motor Distributors (Pty) Ltd & Others* 2001 (1) SA 545 (CC)

*S v Dos Santos* 2010 (2) SACR 382 (SCA)

*Mnyungula v Minister of Safety & Security* 2004 (1) SACR 219 (TkH)

*Beheermaatscjappij Helling I NV v Magistrate, Cape Town* 2007 (1) SACR 99 (C)

*Minister of Safety & Security v Van der Merwe* (556/09) [2010] ZASCA 101 (7 Sept 2010)

*Extra Dimension & Others v Kruger NO & Others* 2004 (2) SACR 493 (T)

*Young v Minister of Safety & Security* 2005 (2) SACR 437 (SEC)

*Polonyfis v Provincial Commissioner, SAPS* 2010 (1) SACR 586 (NCK)

*Minister of Safety & Security v Xaba* 2004 (1) SACR 149 (D)

*Toich v Magistrate, Riversdale* 2007 (2) SACR 235 (C)

*Nel v Deputy Commissioner of Police, Grahamstown* 1953 (1) SA 487 (EDL)

*Lachman v S* 2010 (2) SACR 52 (SCA)

*Magobodi v Minister of Safety & Security* 2009 (1) SACR 355 (Tk)

*Magajane v Chairperson, North West Gambling Board* 2006 (2) SACR 447 (CC)

*Thint (Pty) Ltd v NDPP* 2008 (2) SACR 421 (CC)

*Minister of Safety & Security v Bennett* 2009 (2) SACR 17 (SCA)

## TOPIC 3 - Legal Representation

Constitution: s35(2)(b) and (c)

s35(3)(f) and (g)

s35(5)

CPA: s73

*\*Hlantlala & Others v Dyanti NO & Another* 1999 (2) SACR 541 (SCA)

*\*S v Vermaas; S v Du Plessis* 1995 (2) SACR 125 (CC)

*\*S v Halgryn* 2002 (2) SACR 211 (SCA)

*\*S v Swanepoel* 2000 (1) SACR 384 (O), 2000 (7) BCLR 818 (O)

*\*S v Melani & Others* 1996 (1) SACR 335 (E)

*\*S v Chabedi* 2004 (1) SACR 477 (W)

*\*S v Tandwa* 2008 (1) SACR 613 (SCA)

*S v Owies* 2009 (2) SACR 107 (C)

*Ehrlich v CEO, Legal Aid Board* 2006 (1) SACR 346 (E)

*S v Dangatye* 1994 (2) SACR 1 (A)

*S v Cordier* 2004 (2) SACR 481 (T)

*S v Morrison* 1988 (4) SA 164 (T)

*S v Nkondo* 2000 (1) SACR 358 (W)

*S v Ndlovu; S v Sibisi* 2005 (2) SACR 645 (W)  
*S v Sikhapha* 2006 (2) SACR 439 (SCA) at para. [10]  
*S v Mvelase* 2004 (2) SACR 531 (W)

#### **TOPIC 4 - Disclosure by prosecution**

*Du Toit et al Commentary in the Criminal Procedure Act: Commentary on s201*

Constitution: s32, s35(3)

Promotion of Access to Information Act 2 of 2000 (PAIA): s39

CPA: s60(14)

\**R v Steyn* 1954 (1) SA 324 (A)

\**R v Stinchcombe* [1991] 3 S.C.R. 326 (Supreme Court of Canada: case may be accessed on the internet via [www.canlii.org/ca/cas/scc/1991/1991scc91.html](http://www.canlii.org/ca/cas/scc/1991/1991scc91.html))

\**Phato v Attorney-General, Eastern Cape & Another; Commissioner of the South African Police Services v Attorney-General, Eastern Cape & Others* 1995 (1) SA 799 (E)

\**Shabalala & Others v Attorney-General, Transvaal & Another* 1995 (2) SACR 761 (CC); 1996 (1) SA 725 (CC)

*S v Shiburi* 2004 (2) SACR 314 (W)

*Du Toit & Others v DPP Transvaal* 2004 (2) SACR 584 (T)

*S v Dlamini; S v Dladla & Others; S v Joubert; S v Schietekat* 1999 (2) SACR 51 (CC); 1999 (4) SA 623(CC)

*S v Crossberg* 2008 (2) SACR 317 (SCA)

*S v Rowand* 2009 (2) SACR 450 (W)

#### **TOPIC 5 - Indictments in High Court**

- Effect of s75(2) CPA
- Effect of s119 CPA

CPA: s144, 75, 119, 120, 121, 122

\**S v Mpetha & Others (1)* 1981 (3) SA 803 (C)

*S v Van Vuuren* 1983 (1) SA 12 (A)

*S v Mlonyeni & Others* 1994 (2) SACR 255 (E)

*S v Hendrix* 1979 (3) SA 816 (D)

#### **TOPIC 6 - Exemptions, exceptions, provisos**

Constitution: s35(3)(h)

CPA: s 90, s250

Firearms Control Act 60 of 2000: s3, 98

\**S v Manamela & Others* 2000 (3) SA 1 (CC)

\**R v Von Wielligh & Another* 1959 (4) SA 352 (C)

*S v Baloyi* 2000 (2) SACR 425 (CC)

*S v Dormehl* 1965 (1) SA 333 (T)  
*S v Everson* 1980 (2) SA 913 (NC)  
*S v Fransman* 2000 (1) SACR 99 (W)  
*S v Zuma* 1995 (1) SACR 568 (CC) at [41]  
*S v Singo* 2002 (4) SA 858 (CC)

### **TOPIC 7 – Rule against duplication of convictions**

Du Toit *et al Commentary in the Criminal Procedure Act*: pp 14-6f  
CPA: s83, 336

\**S v Grobler en 'n ander* 1966 (1) SA 507 (A)  
\**S v Prins en 'n ander* 1977 (3) SA 807 (A)  
\**S v Moloto* 1982 (1) SA 844 (A)  
\**S v Longdistance (Natal) (Pty) Ltd & Others* 1990 (2) SA 277 (A)  
\**S v Benjamin en 'n ander* 1980 (1) SA 950 (A)  
\**R v Khan & Others* 1949 (4) SA 868 (N)  
\**S v Naidoo* 2003 (1) SACR 431 (SCA)  
*S v Pakane* 2008 (1) SACR 518 (SCA)  
*S v Mampa* 1985 (4) SA 633 (C)  
*S v Whitehead* 2008 (1) SACR 431 (SCA)

### **TOPIC 8 - Further particulars to charge**

CPA: s87

\**S v Cooper & Others* 1976 (2) SA 875 (T)  
\**S v Sadeke* 1964 (2) SA 674 (T)  
\**R v Verity-Amm* 1934 TPD 416  
\**R v Adams & Others* 1959 (1) SA 646 (Spec Crim Ct)  
\**S v Mpetha & Others (1)* 1981 (3) SA 803 (C)  
*Du Toit & Others v DPP Transvaal* 2004 (2) SACR 584 (T)  
*S v Levenstein* Unreported judgment WLD case 317/2004  
*S v Alexander & Others* 1964 (1) SA 249 (C)  
*Behrman v Regional Magistrate, Southern Transvaal & Another* 1956 (1) SA 318 (T)  
*S v Suliman* 1968 (1) SA 560 (T)  
*S v Western Areas Ltd & Others* 2005 (1) SACR 441 (SCA)

### **TOPIC 9 - The Pleas of *Autrefois Acquit* and *Convict***

CPA: s106(1)(c) and (d)  
s106(3)  
s313  
s322  
s324

\*S v Ndou 1971 (1) SA 668 (A)  
 \*S v McIntyre en andere 1997 (2) SACR 333 (T)  
 \*R v Constance 1960 (4) SA 629 (A)  
 \*S v Moodie 1962 (1) SA 587 (A)  
 \*S v Naidoo 1962 (4) SA 348 (A)  
 \*S v Mthetwa 1970 (2) SA 310 (N)  
 S v Nkosi 1990 (1) SACR 653 (T)  
 S v Nyati 1972 (4) SA 11 (T)  
 S v Gabriel 1971 (1) SA 646 (RA)  
 R v Ntoyaba (1886) 4 SC 249  
 S v Pokela 1968 (4) SA 702 (E)  
 DPP, KZN v Regional Magistrate, Vryheid 2009 (2) SACR 117 (KZP)  
 R v Dunlop [2006] EWCA Crim 1354

### **TOPIC 10 - Plea and sentence agreements: sec 105A of Criminal Procedure Act**

CPA: s105A

Esther Steyn 'Plea-bargaining in South Africa: current concerns and future prospects' (2007) 20 SACJ 206

\*S v Blank 1995 (1) SACR 62 (A)  
 \*North Western Dense Concrete CC & Another v Director of Public Prosecutions, Western Cape 1999 (2) SACR 669 (C)  
 \*S v Esterhuizen 2005 (1) SACR 490 (T)  
 \*S v Sassin & Others [2003] 4 All SA 506 (NC)  
 Van Eeden v Director of Public Prosecutions (Cape) 2005 (2) SACR 22 (C)  
 S v Solomons 2005 (2) SACR 432 (C)  
 S v Yengeni 2006 (1) SACR 405 (T) at [23] – [25]

### **TOPIC 11 - Prosecution of corporations, etc.**

CPA: s332

Louise Jordaan 'New perspectives on the criminal liability of corporate bodies' 2003 *Acta Juridica* 48 [Available on HeinOnline]

\*R v Bennett & Co (Pty) Ltd & Another 1941 TPD 194  
 \*Ex parte Minister van Justisie: In re Suid-Afrikaanse Uitsaaikorporasie 1992 (4) SA 804 (A)  
 \*R v Meer & Others 1958 (2) SA 175 (N)  
 \*S v Klopper 1975 (4) SA 773 (A)  
 \*S v Coetzee 1997 (3) SA 527 (CC)  
 Herold NO v Johannesburg City Council 1947 (2) SA 1257 (A)  
 S v Western Areas Ltd 2005 (1) SACR 441 (SCA)  
 S v SA Metal & Machinery Co (Pty) Ltd 2010 (2) SACR 413 (SCA)

### **TOPIC 12 - Appeals from convictions/sentence in High Court**

- Who may appeal
- To which court

- Leave to appeal: test
- Condonation

Constitution: s35(3)(o)  
CPA: s315, 316

\**R v Tremearne* 1917 NPD 117  
\**S v Isaacs* 1968 (2) SACR 184 (A)  
\**S v Hlatswayo* 1982 (4) SA 744 (A)  
\**Stopforth v Minister of Justice; Veenendaal v Minister of Justice* 1999 (2) SACR 529 (SCA)  
\**S v Rens* 1996 (1) SACR 105 (CC)  
\**S v Mohlathe* 2000 (2) SACR 530 (SCA)  
\**R v Ngubane & Others* 1945 AD 185  
\**R v Kuzwayo* 1949 (3) SA 761 (A)  
*S v Majola* 1982 (1) SA 125 (A)  
*S v Monyane* 2008 (1) SACR 543 (SCA) at [28]  
*Maphahlele v First National Bank of South Africa Ltd* 1999 (1) SACR 373 (CC)  
*S v Ackerman en 'n ander* 1973 (1) SA 765 (A)  
*S v Shabalala* 1966 (2) SA 297 (A)  
*S v Swanepoel* 1978 (2) SA 410 (A)  
*S v Zantsi* 2004 (2) SACR 542 (E)

### TOPIC 13 - Appeals (continued)

- Approach of appeal court
- Appeals against conviction and sentence
- Decrease/increase of sentence
- Withdrawal of appeals
- Appeals by State

\**R v Dhlumayo & Another* 1948 (2) SA 677 (A)  
\**S v Frazenburg* 2004 (1) SACR 182 (E)  
\**S v Du Toit* 1979 (3) SA 846 (A)  
\**S v Anderson* 1964 (3) SA 494 (A)  
\**S v Salzwedel* 1999 (2) SACR 586 (SCA)  
\**S v Swart* 2004 (2) SACR 370 (SCA)  
\**S v Giannoulis* 1975 (4) SA 867 (A)  
\**R v Adams & Others* 1959 (3) SA 753 (A)  
\**S v Seekoei* 1982 (3) SA 97 (A)  
\**Magmoed v Janse van Rensburg & Others* 1993 (1) SACR 67 (A)  
*S v Hadebe & Others* 1997 (2) SACR 64 (SCA)  
*S v Bernadus* 1965 (3) SA 287 (A)  
*S v Shaik* 2007 (1) SACR 247 (SCA)  
*S v Monyane* 2008 (1) SACR 543 (SCA)  
*S v Scott-Crossley* 2008 (1) SACR 223 (SCA) at [10]  
*DPP, Kwa-Zulu Natal v P* 2006 (1) SACR 243 (SCA)  
*S v Wilken* 1971 (3) SA 488 (A)  
*S v Masala* 1968 (3) SA 212 (A)  
*S v Jimenez* 2003 (1) SACR 507 (SCA)  
*S v Barnard* 2004 (1) SACR 191 (SCA)  
*S v Ferreira* 2004 (2) SACR 454 (SCA)  
*S v Fraser* 2005 (1) SACR 455 (SCA)  
*S v Basson* 2003 (2) SACR 373 (SCA)



*S v Basson* 2004 (1) SACR 285 (CC)  
*S v Nzimande* 2010 (2) SACR 517 (SCA)  
*S v Petro Louise Enterprises (Pty) Ltd & Others* 1978 (1) SA 271 (T)  
*S v Mngoma* 2009 (2) SACR 447 (E)  
*S v Dlepu* [2007] SCA 81 (RSA)  
*S v Ramdeo* [2007] SCA 65 (RSA)

#### **TOPIC 14 - Powers of Courts of Appeal**

- Magistrate's court to Provincial Division
- High Court to Full Court or Supreme Court of Appeal
- Calling of evidence on appeal
- Remittal to Court *a quo*

CPA: s304, 309, 310, 310A, 311, 312, 313, 316, 321, 322, 324  
Supreme Court Act 59 of 1959: s21, 22

\**S v Steyn* 2001 (1) SACR 25 (CC)  
\**S v E* 1979 (3) SA 973 (A)  
\**S v Du Toit* 1966 (4) SA 627 (A)  
\**S v Moodie* 1962 (1) SA 587 (A)  
\**S v Naidoo* 1962 (4) SA 348 (A)  
\**S v De Jager* 1965 (2) SA 612 (A)  
\**S v H* 1998 (1) SACR 260 (SCA)  
*Shinga v S; S v O'Connell* 2007 (2) SACR 28 (CC)  
*S v Carter* 2007 (2) SACR 415 (SCA)  
*S v EB* 2010 (2) SACR 524 (SCA)  
*Botha v DPP* (736/2007) [2009] ZASCA 42 (31 March 2009)  
*S v Masinda en 'n ander* 1981 (3) SA 1157 (A)  
*S v Augustine* 1980 (1) SA 503 (A)  
*S v Tsawane & Another* 1989 (1) SA 268 (A)  
*S v Wilmot* 2002 (2) SACR 145 (SCA)  
*S v Toba* 2008 (1) SACR 415 (E)

#### **TOPIC 15 - Reservation of question of law & Irregularities in the proceedings: special entries**

CPA: s317, 318

\**Magmoed v Janse van Resnberg* 1993 (1) SACR 67 (A)  
\**R v Adams & Others* 1959 (3) SA 744 (A)  
\**S v Seekoei* 1982 (3) SA 97 (A)  
\**S v Mushimba* 1977 (2) SA 829 (A)  
\**S v Tshabalala* 1999 (1) SACR 412 (C)  
\**S v Felthun* 1999 (1) SACR 481 (C)  
\**Sefatsa & Others v Attorney-General, Transvaal & Another* 1989 (1) SA 821 (A)  
\**S v Naidoo & Others* 1974 (3) SA 706 (A)  
*S v Basson* 2004 (1) SACR 285 (CC) at [42] – [53]

*S v Nzimande* 2010 (2) SACR 517 (SCA)  
*S v Khoza* 2010 (2) SACR 207 (SCA)  
*S v Nkata & Others* 1990 (4) SA 250 (A)  
*S v Moodie* 1962 (1) SA 752 (A)  
*S v Jaipal* 2005 (1) SACR 215 (CC)  
*DPP, Western Cape v Killian* 2008 (1) SACR 247 (SCA)  
*S v Le Grange* 2009 (1) SACR 125 (SCA)  
*S v Dlamini* 2008 (1) SACR 501 (N)  
*S v Botha* 2006 (1) SACR 105 (SCA)  
*S v Kroon* 1997 (1) SACR 525 (SCA)  
*Bezuidenhout v DPP* 2008 (2) SACR 579 (SCA)

### **TOPIC 16 - Taking of evidence in terms of section 205 of CPA**

CPA: s205  
s189, 203, 204

\**Nel v Le Roux NO & Others* 1996 (1) SACR 572 (CC)  
\**S v Mahlangu* 2000 (1) SACR 565 (W)  
*Attorney-General, Transvaal v Kader* 1991 (4) SA 727 (A)  
*S v Cornelissen; Cornelissen v Zeelie NO en andere* 1994 (2) SACR 41 (W)  
*S v Waite* 1978 (3) SA 896 (O)

### **TOPIC 17 – Inquests**

Inquests Act 58 of 1959

*Marais NO v Tiley* 1990 (2) SA 899 (A)  
*Claasens en 'n Ander v Landdros, Bloemfontien en 'n Ander* 1964 (4) SA 4 (O)  
*Timol v Magistrate, Johannesburg* 1972 (2) SA 281  
*Van Heerden v Joubert* 1994 (2) SACR 597 (A)  
*In re Ohlson* 2008 (1) SACR 360 (E)  
*Magmoed v Janse van Rensburg* 1991 (1) SACR 185 (C)  
*In re Goniwe* 1994 (2) SACR 425 (SE)  
*Padi v Botha* 1995 (2) SACR 663 (W)

### **TOPIC 18 - Asset forfeiture**

Prevention of Organised Crime Act 121 of 1998 (POCA)

\**National Director of Public Prosecutions v Mohamed* (1) 2002 (4) SA 843 (CC)  
\**National Director of Public Prosecutions v Rebuzzi* 2002 (2) SA 1 (SCA)  
\**National Director of Public Prosecutions v Basson* 2002 (1) SA 419 (SCA)  
\**National Director of Public Prosecutions v Kyriacou* 2004 (1) SA 379 (SCA)  
\**Phillips & Others v National Director of Public Prosecutions* 2003 (6) SA 447 (SCA)  
\**Prophet v NDPP* 2006 (2) SCAR 525 (CC)

*\*National Director of Public Prosecutions v Mohamed* (2) 2003 (4) SA 1 (CC)  
*\*National Director of Public Prosecutions v R O Cook Properties & Others*  
2004 (2) SACR 208 (SCA)  
*\*Prophet v National Director of Public Prosecutions* 2005 (2) SACR 670 (SCA)  
*\*National Director of Public Prosecutions: In re appeal* 2005 (2) SACR 610 (N)  
*S v Schaik* 2008 (2) SACR 165 (CC)  
*NDPP v Mohunram* 2006 (1) SACR 554 (SCA)  
*NDPP v Parker* 2006 (1) SACR 284 (SCA)  
*Mohunram v NDPP* 2007 (2) SACR 145 (CC)  
*NDPP v Geysler* 2008 (2) SACR 103 (SCA)  
*NDPP v Braun* 2009 (2) SACR 390 (WCC)  
*Singh v NDPP* 2007 (2) SACR 326 (SCA)

## **TOPIC 19**

Child Justice Act 75 of 2008