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Introduction

‘The art of practising law is not to know all the answers, but to know where to find the answers. In order to find the answers, the practitioner must know what to look for. In order to know what to look for the practitioner must be able to sift the facts at hand and to define the problem he or she is dealing with’ (V Tunkel & A de W Horak xi). Academic study should teach one the requisite skills to ‘sift the facts at hand’. However, one is still left with the problem of finding the authority that one needs to substantiate one’s case or finding the written law that will back up whatever case one is making. The information lies in all the physical (both print and electronic) sources of our law – the common law; the legislation; the law reports; the books and the encyclopedias. The aim of this booklet is to enable you to fully understand these sources and how to use them in order to find the necessary information.
Finding legal information is so much easier if you have a picture in your mind of the various sources of information; what the hierarchy is; how they relate to one another; where to find them and how to use them. To assist one to have this picture in your mind the following is given:

Research in law requires one to use a great many information sources. To begin with one needs to be aware of the many categories of sources in law. Broadly speaking the primary sources are common law, legislation (national and regional; statutes and regulations) and law reports. The secondary sources are encyclopedias, books and journal articles. In addition one deals with information from different countries and jurisdictions. Government Gazettes and policy documents may also be used.

Primary sources are so named because they contain the law, whereas secondary sources are opinions or discussions on the law. The primary sources are therefore the authority that you use to substantiate your case. At all times up-to-date information is essential.
2 Start with books

2.1 A basic approach

Textbooks, monographs or books are a very good source for starting research on any topic and should be seen as your first port-of-call. Do take care to use the latest editions where possible. Within a library environment books on the same subject are found together on the shelves. Once you have found books on your topic browse the shelves for more on the same topic.

The reason why one should start with the books is because they will give both a broad overview of the subject as well as some detail on specifics. Usually the author(s) or editor(s) will have done considerable research on a topic for the book. It is recommended that you follow up the footnotes to legislation, regulations, case law, books and other material.

Arguably the best set of books with which to start research in South African law is the legal encyclopaedia known as The Law of South Africa or LAWSA published by LexisNexis Butterworths. It is authored by well-known experts in each field. It is also comprehensive, very well indexed and is kept up-to-date with the Cumulative Supplements, as well as monthly publications known as Current Law.

Loose-leaf books are very widely used as a publication format in law. They are useful and popular because they can be kept up-to-date with update pages. Theoretically the publication can always be current and, indeed, this is often the case. Almost every field of law contains one or more loose-leaf publications. They are increasingly also available in online format (usually compact disks or CDs). Mostly they are comprehensive and detailed, and are highly recommended for research.

Legal dictionaries provide definitions of legal words and phrases. There are some that are specifically for South African law and these will give meanings in English, Afrikaans and Latin.
2.2 More information

2.2.1 Textbooks, monographs or books

Books are well known to legal professionals because they are extensively used during academic studies. As stated above they are always recommended as a starting point. Take care to use the most recent edition of a book. At the same time bear in mind that no book is fully up-to-date, because the law is constantly changing as a result of amendments in the legislation and new precedents from the courts.

The importance of textbooks in law is that they create order out of the plethora of information contained in common law, legislation and court precedents. Through analysis and discussion, they bring it all together into a more manageable and understandable whole. Of course, they do not have authority as such, but they are respected by the courts, as can be seen by the many citations made in court judgments to sections within books.

It is difficult to evaluate books unless you are personally very knowledgeable in that area of law. What one needs are the major respected works. However, there are a few points worth mentioning. What counts is the reputation of the author and the publisher. One may also be guided by the fact that the book is beyond its first edition. A book which is in its third, fourth, etc. edition is a book that is much in demand and the publishers thereof have therefore requested the authors to update the book because it is selling well. If it sells well it probably has a good reputation.

Foreign books are very useful when there is either nothing or little published in South Africa on a specific topic. This is often the case in a new area of law. Once again be guided by the same recommendations as for local books. New editions, good publishers, reputable authors and so on. As a quick guide the following publishers of law books are respected amongst law librarians:

- Oxford University Press
- Cambridge University Press
- Sweet & Maxwell
- Thomson
- Foundation Press
- Ashgate
- Martinus Nijhoff
Increasingly authors or editors are including tables and lists in their textbooks which provide very useful additional information. Look, for example, in the book titled *Foundational Principles of South African Medical Law* by PA Carstens and D Pearmain, Durban: LexisNexis (2007) and you will find that the book is composed of the following sections:

- Contents
- The chapters
- Bibliography
  - Table of abbreviations
  - Books and articles cited
  - Various other citations
- Table of statutes
  - An alphabetical list of statutes which refers to the page(s) in the book on which the Act is mentioned or discussed.
  - Not only the Acts but specific sections of the Act are also given, for example, section 27(2) of the Constitution is mentioned on pages 12, 13, 37, 39, 44, etc.
- Table of cases (South African and foreign)
  - Alphabetical list of cases and the pages on which they are mentioned or discussed.
- Index

The South African Law Reform Commission issues published reports on its projects. They undertake investigations into a variety of areas of law and then make recommendations as to changes in the law. This usually takes the form of a proposed or draft bill. See website http://www.doj.gov.za/salrc/index.htm.

### 2.2.2 How to find books

Suggestions on how to find books on law in South Africa:
The two most active legal publishing firms in South Africa are Juta’s http://www.jutalaw.co.za/ and LexisNexis Butterworths http://ebiz.lexisnexis.co.za/bws/. Both supply lists of publications or catalogues on their websites. Browse these lists for books on specific topics.

Less known but still worthwhile legal publishers in South Africa are: PULP http://www.pulp.up.ac.za; The Law Society of South Africa; Ampersand Press; SAGA Legal Publications; ProPlus Publishers; and Siber Ink.

Book stores that supply university student books should carry all the latest student textbooks, both the prescribed and recommended books.


South African university library catalogues are, on the whole, free on the web. One may consult them for a list of South African books on a topic. It is suggest that one uses:

- the Constitutional Court Library catalogue http://www.constitutionalcourt.org.za/text/library/main.html,
- the main law schools library catalogues, for example, the Universities of Pretoria http://explore.up.ac.za/screens/mainmenu.html,
- Witwatersrand http://innopac.wits.ac.za/,
- Rhodes http://opac.seals.ac.za/search-S2,
- Stellenbosch http://alephprod.calico.ac.za/F/?func=file&file_name=find-b&local_base=sun01pub,
- Johannesburg http://ujlink.uj.ac.za/ and so on.

Suggestions on how to find books on law from foreign jurisdictions:

- South African university library catalogues are, on the whole, free on the web. One may consult them for a list of foreign books on a legal topic (see above). The same applies for law school libraries overseas.
- Worldwide the two largest library collections are, probably, the:
  § Library of Congress http://catalog.loc.gov/ and
  § the British Library http://searchbeta.bl.uk/primo_library/libweb/action/search.do.
- To find any books in their catalogues one would do a keyword search: for example for books on the tort law in Scotland one could use as keywords ‘torts’ or ‘delict’ and ‘Scotland’.
- See also the list of reputable legal publishers above. Consult the catalogues on their websites.
- Google Scholar may provide results on specialised topics (or, it may be like looking for a needle in haystack!)
2.2.3 Encyclopaedias (general)

2.2.3.1 The Law of South Africa (LAWSA) is a very good encyclopaedia of our current law. The set of many volumes is arranged alphabetically by subjects and each chapter covers a separate topic in law. The chapters have numbered paragraphs. As stated above the authors for each area of law are well-known experts in their fields. Other reasons why it is recommended is because the set, which is currently made up of 34+ volumes, is both comprehensive and very well indexed. The set has a Consolidated index; an Index of Cases, Cumulative Supplements and is kept up-to-date with monthly publications known as Current Law. Current Law notes the changes since the publication of the last annual Cumulative Supplement, and is therefore a good way to keep up-to-date on a topic in law.

In addition there are new volumes published regularly. Used altogether they are very helpful with regard to new developments in law. Locate any topic by using the index and then use the ‘Key’ to find the latest cases, legislation and literature on a specific topic. From the index one is referred to a volume, and then, to paragraph numbers (rather than pages). It is useful to follow up all footnotes. The ‘key’, in both the supplements and monthly updates, is arranged by the volumes and paragraph numbers of the main set.

2.2.3.2 Halsbury’s Laws of England. LAWSA is modelled on the United Kingdom publication known as Halsbury’s Laws of England, which is published by Butterworths (now LexisNexis) in the UK. Halsbury’s is basically arranged in the same way as LAWSA. It is kept current with a monthly publication called ‘Current Service’. It is very comprehensive and a good starting point for any aspect of UK law.

It was first published in 1907 under the general editorship of the Earl of Halsbury, who was also the Lord High Chancellor of Great Britain. I quote from the introduction to the latest edition: As Lord Halsbury explained: ... the work ‘is not a mere encyclopedia, it is not a mere collection of cases, but a number of treatises composed by learned lawyers, supported by the decisions of the great judges who have from time to time adorned the English bench; and it is hoped that when finished the work will furnish a complete statement of the laws of England.

It is now in its fifth edition, the set of volumes is arranged alphabetically by subjects. As an example, volume 1 covers the subjects Agency; Agricultural Land; Agricultural Production and Marketing.

The editors advise the following with regard to how to use Halsbury’s Laws of England:

- ‘First, by using the tables of contents.
- Secondly, by using tables of statutes, statutory instruments [which are similar to South Africa’s regulations], cases or other materials.
Thirdly, by using the indexes.

The text volumes should be used in conjunction with the annual *Cumulative Supplement* and the monthly *Noter-up in Current Service*.

### 2.2.3.3 Corpus Juris Secundum CJS

(C published by West Publishing Co.) is the encyclopaedia that covers the law of the USA. The subtitle is ‘A contemporary statement of American Law as derived from reported cases and legislation’. Currently it consists of over 100 volumes. It is very comprehensive, contains many footnote references to case law and is an excellent place to start with research on the law of the USA. As stated on the front page it is ‘Kept to date by Cumulative Annual Pocket Parts’. The annual pocket parts contain relevant new cases and statutory changes. As with LAWSA and Halsbury’s (see above) the volumes are arranged alphabetically by subject. Volume 3, for example, of CJS deals with the subjects: *Agency; Agriculture; Aliens*.

The publisher states in the preface: The basic object of C.J.S. has been to present in concise form the result of the steady stream of precedents which have replaced, modified, or supplemented older doctrines, while at the same time preserving those principles and statements of law that have withstood the test of time and are firmly embedded in our jurisprudence. In carrying out this objective, the publisher has followed a planned program of replacement volumes for diverse areas where there have occurred substantial changes and developments in the law that can no longer be adequately dealt with in the pocket parts.

*CJS* has the following indexes:

- individual indexes for most volumes;
- the *Table of Statutes, Rules and Regulations cited*;
- *Table of Cases*; and
- the *General Index*.

The fulltext of *CJS* is included in the *Westlaw* database and is, as such, fully searchable.

### 2.2.3.4 International Encyclopedia of Laws

- published by Kluwer Law International. It is described by the publishers as ‘Your country-by-country library of national and international law’. The encyclopaedia is a very large series of many volumes. It is in loose-leaf format and, as such, is updated. It comprises 21 different titles, each of which has numerous volumes. Each title (for example, Sports Law) covers that aspect of law on a country-by-country basis. These country sections ‘describe how each national legal system governs the relevant field’. Take note that by no means every country in the world receives coverage. Where applicable they will also cover the international law, supranational organisations and case law from the international courts.
The 21 titles (which may be purchased separately) are:

- Civil Procedure
- Commercial and Economic Law
- Constitutional Law
- Contracts
- Corporations and partnerships
- Criminal Law
- Cyber law
- Energy law
- Environmental law
- Family and Succession law
- Insurance law
- Intellectual property
- Intergovernmental Organizations
- Labour law and Industrial Relations
- Medical law
- Private international law
- Property and Trust law
- Social Security law
- Sports law
- Tort law
- Transport law

It is an expensive series, but fortunately one can purchase the various subject fields or titles separately.

2.2.3.5 The Digest is an encyclopaedia of case law. It is published by Butterworths LexisNexis and is a set of 80+ volumes of annotated British, Commonwealth and European cases. Publication started in 1919 (then The English and Empire Digest) under the direction of the Earl of Halsbury (see also Halsbury’s Laws of England above). The set is now in its reissue edition known as the ‘Green Band’ edition, the publishing of which was started in 1971. The ‘Green Band’ is found on the spine. Every year a number of volumes are reissued. The volumes are arranged
alphabetically by title (subject). The titles correspond as far as possible to those in *Halsbury’s Laws of England*. The volumes contain a great number of items which each consist of a summary (digest), and all the citations, of a particular case. Each volume starts with a table of cases for that volume.

The introduction states:

*The Digest* provides, in digested form, the whole case law of England and Wales, together with a considerable body of cases from the courts of Scotland, Ireland, Canada, Australia, New Zealand and other countries of the Commonwealth. Cases dealing with the law of the European Communities are also included. The case digests are printed with annotations listing the subsequent cases in which judicial opinions have been expressed in the English courts. *The Digest* additionally serves as a comprehensive guide and index to reported cases. It supplies a concise statement of the effect of each case and enables the user to know where to look and what to expect to find when the report itself is examined in full. *The Digest* contains summaries of over 500,000 cases drawn from over a thousand different series of law reports.

It is kept up-to-date by means of the *Annual Cumulative Supplement*. The entire set also has an *Index* (when you know the subject area of your research); a *Consolidated Table of Cases* and *Quarterly Surveys*.

*The Digest* includes cases from South Africa from 1828 to date.

### 2.2.4 Loose-leaf books

Instead of being bound these books have loose pages as in a file or binder. This format allows for them to be kept up-to-date regularly. They are updated by means of replacement pages, so that the updated book may correctly reflect the new legal situation. This is very helpful in a field where the subject matter is constantly being adjusted by new legislation and regulations or case law. In general, therefore, the loose-leaf books on any topic are likely to more current than the bound books on the same topic. In South Africa there are a great many of these books published by *Jutas* and *LexisNexis Butterworths* and they cover many different subject areas. In general they are quite comprehensive in their coverage of the topic. Other jurisdictions also make use of this format for publishing law books.

In order to demonstrate the range of subjects covered, here is a sample of some of the titles, published in South Africa, that one can purchase in loose-leaf format:

- *Administration of Estates* by NJ Wiechers and I Vorster, Durban: LexisNexis, 1996-
- *Bill of Rights Compendium*. Durban: LexisNexis Butterworths, 1996-
• **Civil Procedure in the Superior Courts** by LTC Harms, Durban: LexisNexis Butterworths, 2003-
• **Commentary on the Children’s Act** edited by CJ Davel and AM Skelton, Cape Town: Juta, 2007-
• **Commentary on the Criminal Procedure Act** by E du Toit, Cape Town: Juta, 1987-
• **Constitutional Law of South Africa** by Stu Woolman, *et al* Cape Town: Juta, 2002-
• **Cooper’s Motor Law. Criminal Liability Administration Adjudication & Medico-legal aspects.** by SV Hoctor, Cape Town: Juta, 2008-
• **Guide to the National Credit Act** by JW Scholtz *et al* Durban: LexisNexis, 2008-
• **Handbook of South African Copyright Law** by OH Dean, Cape Town: Juta, 1987-
• **Henochsberg on the Companies Act** by PM Meskin, Durban: LexisNexis Butterworths, 1994-
• **Hiemstra’s Criminal Procedure** by A Kruger, Durban: LexisNexis, 2008-
• **Jones and Buckle The Civil Practice of the Magistrates Court of South Africa.** Cape Town: Juta. 1996-
• **Local Government Law of South Africa** by N Steytler and J de Visser, Durban: LexisNexis, 2007-
• **Mineral and Petroleum Law of South Africa** by PJ Badenhorst and H Mostert, Cape Town: Juta, 2004-
• **Practice in the Labour Courts** by AA Landman *et al* Cape Town: Juta, 1998-
• **Principles and Practice of Labour Law** by SR van Jaarsveld *et al*, Durban: LexisNexis, 2001-
• **South African Mineral and Petroleum Law** by MO Dale *et al*, Durban: LexisNexis, 2005-
• **Superior Practice** by HJ Erasmus, Cape Town: Juta, 1994-
• **The quantum of damages in bodily and fatal injury cases** by MM Corbett and JL Buchanan, Cape Town: Juta, 1985-
• **Webster and Page South African law of Trade Marks** by CE Webster and GE Morley, Durban: LexisNexis, 1997-

### 2.2.5 Dictionaries - legal

The South African legal dictionaries are highly recommended as they contain a wealth of useful legal information.

**South Africa:**

• **Dictionary of legal words and phrases** by RD Claassen, LexisNexis: Butterworths, loose-leaf book, regularly updated. 4 Volumes. Example of an entry: ‘Cost-Plus-Type of building contract was considered in *Gantry Head Investments (Pty) Ltd v Murray & Stewart (Cape Town)(Pty) Ltd* 1974 2 SA 386 (C); cf *Cardoza v Fletcher* 1943 WLD 94.’

• *The South African judicial dictionary.* J JL Sisson, Durban: Butterworths.

**Foreign:**

Some suggestions follow (always use the newest edition available)

• *Black’s Law Dictionary.* BA Garner (ed), St Paul: Thomson West.
• *Webster’s New World Law dictionary.* SE Wild, Hoboken: Wiley.
• *Law Dictionary.* SH Gifis, Hauppauge: Barron’s.
• *Dictionary of Environmental Law.* A Gilpin, Cheltenham: Edward Elgar.
• *Dictionary of International and Comparative law.* JR Fox, Dobb’s Ferry: Oceana.
• *Bieber’s Dictionary of Legal Citations* MM Prince, Buffalo: William S Hein. (includes *The Bluebook A uniform system of citation.*)
• *The legal dictionary for bad spellers.* J Krevisky and J L Linfield, New York: Wiley (must surely be entertaining too!).
3 Legislation (South African)

3.1 A basic approach

The words ‘acts’ ‘statutes’ and ‘legislation’ refer to the law that comes to us from parliament. Bills are put before parliament and if, or when, they are passed they become Acts and are then in-force law as from their respective commencement dates. Bills will be further discussed under 4.2.5. Being able to find up-to-date legislation is essential in any research. Whether it is for a legal opinion, for a case one is working on, an assignment at undergraduate level or for postgraduate research, the relevant legislation is fundamental. The legislation passed by parliament represents a very large body of information. Possessing the necessary skill to be able to find what one needs is most important.

National legislation, which is comprised of all the acts and their amendments that are passed by parliament, is originally published in the Government Gazettes. The Government Printer in Pretoria publishes the gazettes weekly in hardcopy form (but does not yet publish them online). However, although these printed gazettes are the recognised authority for the statutes, they are not generally used for the purposes of consulting or finding legislation.

There is now a free, but unofficial, website with the recent Gazettes. See http://www.greengazette.co.za/. They describe themselves as ‘Online Publishers of Official Government Newspapers, Gazettes, Legal Notices, & Tenders of South Africa’ and the material covered is from 2006.

If possible, it is recommended that one uses the commercial publications of the ‘in-force’ legislation. In particular, the hardcopy and online versions of the legislation from the publishers Juta’s and LexisNexis Butterworths should be used. These are updated regularly and include the changes from the amendments. In addition to these, there is also the online database Netlaw from Sabinet, which is a very up-to-date source of the acts.

The acts that appear on the Government websites, at this stage, do not include the amendments. You can therefore use them if it is a brand new act you are after, but, if not, it may well be an outdated version of the act. To find an act in its original form, that is, before any changes were effected, one would need to go to the Government Gazette in which it was originally published. Some library collections bind all the acts for each year.

Commercially available online versions of the Government and Provincial Gazettes can be obtained from Juta’s; LexisNexis Butterworths and Sabinet. There is a website http://www.gics.co.za/ which provides a subscription service to the Government and Provincial Gazettes.
Provincial or regional legislation is originally published in the Provincial Gazettes. It is also available in electronic form from some of the commercial publishers.

3.2 More information

3.2.1 The Government Gazettes and indexes

The Government Gazettes are published in print format by the Government Printers in Bosman St, Pretoria. They contain their own contents pages. In order to find material in the printed copies there are the following indexes:

- The Windex: an accumulative reference index to acts, proclamations, government notices, provincial ordinances and provincial notices. This was a loose-leaf publication covering the period from 1910 to 1989 and published by Prentice Hall in Durban.
- Juta’s Index to the South African Government and Provincial Gazettes. Windex was continued by this publication from 1990. The Index is published quarterly. The contents are as follows:
  - Guidelines
  - Abbreviations
  - Alphabetical subject index
  - Numerical index (Board Notices; General Notices; Government Gazettes; Government Notices; Proclamations; Regulation Gazettes)
  - Appendices (Acts - Alphabetical list; Acts - Serial list; Bills - Alphabetical subject index; Bills - Serial list; Draft bills - Alphabetical list; Legal advertisements; Regulations made in terms of Acts - Alphabetical subject index).

3.2.2 Legislation in printed format

As stated above it is not advisable, in general, to use the Government Gazettes (or the Government website versions) for legislation because one would not be using the updated or amended acts. For a very new act though, these sources would be the best place to start your search.

In general however, it is recommended that one uses the Butterworths (LexisNexis) or Jutas printed publications. Juta’s and LexisNexis Butterworths add additional information to each act before publishing them. If one uses their publications to find an act, one will find the following, for each act, in this order:
• Title. An act always has a short title, a number and a year, eg Skills Development Act No 97 of 1998. The numbering system begins afresh each year, so you will find Act 1 of 2000, Act 1 of 2001 and so on.
• Below the title is the commencement date.
• A list of the amendments that have been incorporated into the act.
• If there are regulations that apply, then a list of these follow the amendments.
• Below this is the long title of the act. It is in bold and follows the word ‘ACT’.
• The acts are divided into sections starting with the definitions, and, if applicable, ending with Schedules and a list of the acts that have been repealed by the act in question.

Butterworths (LexisNexis) publish the set known as the Statutes of the Republic of South Africa. Classified and Annotated from 1910. Wette van die Republiek van Suid-Afrika. Geklassifiseer en Geannoteer van 1910 af. The set consists of about 70 volumes and contains all the ‘in-force’ legislation in English and, where applicable, also in Afrikaans. The volumes are in loose-leaf format and are updated 2-3 times per year with update pages in order to keep them as current as possible. For example, the update pages received in April 2009 ‘bring the main work up to date by incorporating all the acts promulgated up to 8 January, 2009’.

The Publisher’s Note states that

the Statutes are published by LexisNexis on behalf of the Government and the format of the work and the size of the loose-leaf binders are in accordance with specifications as laid down by the Government Printer. The Government has approved of the method of presentation as hereinafter detailed.

The volumes are arranged according to titles or subject fields (about 100 titles), which bring related statutes ‘together under suitable titles. Within titles, the Principal Acts are presented in chronological order’.

• The first volume is known as the Index to Titles and Tables of Statutes. It consists of:
  • An alphabetical Index to Titles (refers one from the keywords of the short titles of each act to the relevant title).
  • A chronological table of statutes from 1910 to date (repealed acts are also listed with the repealing act number and year).
  • An alphabetical table of statutes from 1910.
  • A table of repealed statutes.

• Each volume contains the following:
  • The table of contents for each title. All the acts for that title arranged chronologically.
  • Subject matter index for each title
• References to decided cases for each act *
• References to regulations for each act **

* This list assists one to find the cases that pertain to a particular act or section of an act. However, it is advisable to do further checking in all the law reports series as well as using these citations.

** Refers you to the Government Gazettes and, in particular, the Regulation Gazette number, government notice number and date.

As stated previously the statutes are in loose-leaf format and are updated with ‘service issues’ several times per year. A ‘Noter-up’ is published for each service issue and contains in note form ‘all material which will be incorporated in detail in the replacement pages issued in the supplementary service issue as well as the main work’.

Juta’s have published a set of acts annually since 1992. They are known as the Juta’s Statutes of South Africa and are in English only. In the preface they say that the set ‘comprises all the extant South African acts of parliament, including legislation gazetted up to 31 December’ of the previous year. They are usually available in about June each year. (This implies that they are, in fact, about 5-6 months out of date when they become available for purchase and about 17-18 months out of date at the time just before the next issue is made available). In the preface, it is stated that the acts are classified into ‘18 groups which are further divided into 100 subgroups according to related subject matter’.

They consist of the following 8 volumes (2008/9):

• Index volume - with the following:
  • Statutes: Index and tables
    § Alphabetical index to groups and subgroups
    § Chronological table of statutes (including repealed acts)
    § Alphabetical table of statutes
    § Table of acts of parliament assigned to provinces
    § Table of provincial acts/laws
  • Legislation judicially considered *
  • Index to regulations
    § Index to regulations published in the Government Gazettes (arranged by alphabetical subject index)
    § Index to regulations published in the Provincial Gazettes
• Volume 1. Communications; criminal and procedural law; security
• Volume 2. Commercial law; trade and industry.
• Volume 3. Revenue
• Volume 4. Labour; transport
• Volume 5. Constitutional law; health
• Volume 6. Agriculture, fisheries, forests and water; electricity, energy & mining; property.
• Volume 7. Education; estates and succession; pensions and welfare; persons and the family; professions.

* The ‘legislation judicially considered’ section contains lists of all the national and provincial acts that have been referred to in the SA Law Reports (they include both the old and the new provinces). For example, there is a reference to Companies Act 61 of 1973, section 145 – referred to in the case in 2005 (2) SA 506 (SCA). This is a very useful way of finding the case law for any part of the legislation that one may be dealing with. There are also ‘judicially considered’ lists for the Magistrates’ Court Rules; the Constitutional Court Rules; the Supreme Court Rules and many other rules of lesser courts.

3.2.3 Legislation in electronic format

Free material is available on the Government website. For example, http://www.gov.za, will give one access to the Acts from ‘Documents’. These are PDF copies of the act as it appears in the Government Gazette. It follows therefore that there are no amendments added to it or any other additional information for that act. Its usefulness is therefore limited. The same applies to the legislation on http://www.polity.org.za. - see under Legislation and policy for acts, bills, etc.

The commercially published statutes are made available by Juta’s; LexisNexis Butterworths and Sabinet - Netlaw. These are discussed below.

3.2.3.1 Juta’s Statutes - electronic

Juta’s produce an electronic version that is available on CDs and through the Internet. Folio Views software is used for the CDs. It is well-structured and quite easy to use. It is a good idea though, to have some training in order to be able to make optimal use of the database.
The contents of the CD database give the following:

- Acts
- Prelex (repealed and amended wording)
- Regulations and rules
- Tables of statutes and index
- Tables of provincial legislation
- Legislation judicially considered
- Index to regulations - 1990 to date
- Index to provincial regulations
- Updating services
- What’s new?
- Alphabetical lists of acts and regulations made in terms thereof
- Selected memoranda on the objects of bills.

The database is structured in such a way that one can look for a statute by means of the following:

- General full-text search by means of ‘Query’ or ‘Advanced query’
- Search for act by number and year (eg 34 of 1996)
- Search for act by title (eg Upgrading of Land Tenure Rights Amendment Act)
- Phrase/word search within an act
- Phrase/word search within prelex
- Search for a section within an act
- Search of a section within a proclamation
- Find acts containing a query string
- Search for an act within the alphabetical table of statutes only
It is quite straightforward to save or print the material on these CDs. One is given options to print or save whole acts or sections within the acts.

3.2.3.2 **LexisNexis Butterworths Statutes - electronic**

The **LexisNexis** electronic material appears in various formats:

1. Internet access
2. CDs: where FolioViews software is used - as with the same product from **Jutas**
3. CDs: where other software is used and the look and functionality is different.

(1 and 3, which look the same, are discussed below):

**Legislation - National** contains:

- Indexes (alphabetical table of statutes; chronological table of statutes; **Government Gazette** index; quick guide)
- Acts and regulations
- Repealed acts and regulations

It is worth noting that full acts can only be viewed and printed in ‘custom view’ (see between print and e-mail).
Publication specific Focus Searches limit the search to certain fields within the data, thereby returning exact results.

Your following publications have Focus Searches:

- **Corporate and Commercial**
  - Companies on the Close Corporations Act
  - Memoranda on the Companies Act

- **Government Gazettes**
  - Gazette Online

- **Law Reports**
  - Law Reports
  - Judgments Online
  - Tax Cases Reports

- **Legislation**
  - National Legislation
  - Provincial Legislation
  - Regional Legislation

- **Major Reference Works, Indexes, Dictionaries and Diaries**
  - Index and Table-of the South African Law Reports
3.2.3.3 *Netlaw from Sabinet*

*Netlaw* is only available on subscription and in electronic format through the Internet. It is kept current by means of the *Government Gazettes* every week. It is a very up-to-date source and is recommended for use for South African legislation at this stage. From the screen shot below one sees that one can search as follows:

- All content
- Act title
- Regulation title
- Act title phrase
- Act number (eg 1 1999)
- Category
- Date modified (eg 20050107 or 200501 or 2005)
- Regulation (full-text) and
- Acts (full-text)
Netlaw: SA Legislation

Contains all updated Principal Acts, Rules and Regulations from 1910 to the present.

Find exact phrase: [Search] [Clear]

Search words in: Netlaw SA Legislation [Search] [Clear]

Search for: [Search] [Clear]

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Netlaw combines the acts with all the relevant documents, like the regulations and amendments, that are associated with that act. This allows one to see everything in one place and also allows one to email the entire document with attachments. See to the right:
3.2.4 Additional material to be found in the electronic legislation products

When using these electronic products it is good to bear in mind that added to these statute databases, there is other legal information that is very useful for researchers.

3.2.4.1 Juta’s SA Statutes database

- **CASES**: Many of the acts contain lists of ‘CASES’ where sections of acts have been considered in the courts. These cross-references are very useful for research.
- **RULES OF COURT**: contains the Magistrates’ Courts Rules of Court and the High Court Rules of Court. They are found under ‘Regulations and Rules’.
- **PRELEX**: Repealed and amended wording.
  - For example for 2009 - there are the following entries under 1910-1959:
    - General Law Amendment Act 46 of 1935 (prior to amendment by Act 66 of 2008);
    - Estate Duty Act 45 of 1955 (prior to amendment by Act 60 of 2008);
    - Estate Duty Act 45 of 1955 (prior to amendment by Act 61 of 2008); and
    - Pension Funds Act 24 of 1956 (prior to amendment by Act 60 of 2008)
- **MEMORANDA**: Selected memoranda on the objects of bills. These are explanatory and therefore give the rationale behind the bill.
- **FORMS**: These are forms used in court papers. Find these under High Court Rules of Court and then Uniform Rules of Court, and then First Schedule and Second Schedule. To illustrate this here is a screen shot of part of this very useful information.
3.2.4.2 **LexisNexis Butterworths Statutes database**

- **CASES.** For references to case law associated with the Statutes go to the Butterworths Reference Works, Indexes, Dictionaries and Diaries, then to Index and Noter-up to the All South African and South African Law Reports.

- **REPEALED ACTS.** For repealed acts go to Legislation - South Africa - National, and then to Repealed Acts and Regulations.

- **RULES OF COURT.** Go to Civil Procedure, then Civil Procedure in the Supreme Court (High Court - Uniform Rules) and Civil Procedure in the Magistrate’s Court.

- **FORMS AND PRECEDEMENTS.** These are not the court forms (Jutas - see above) but rather contracts, cessions, company forms, wills, power of attorney and other such forms, covering many topics. See screen shot to the right:
3.2.5 Regulations

Regulations are a form of secondary legislation. They are issued in terms of an enabling section of an Act and are law. For example:

RULES REGULATING MATTERS IN RESPECT OF SMALL CLAIMS COURTS
Published under
GN R1893 in GG 9909 of 30 August 1985
as amended by
GN R851 in GG 13178 of 19 April 1991
The Minister of Justice has under and by virtue of the powers vested in him by section 25(1) of the Small Claims Courts Act, 1984 (Act 61 of 1984), made the rules contained in the Annexure hereto regulating matters in respect of Small Claims Courts, with effect from 1 October 1985.

3.2.5.1 Finding regulations

- Regulations are published in the Government Gazettes. Again, this is not the preferred source for everyday use as the material is very scattered and difficult to find.
- The paper format of the Butterworths Statutes contains only the ‘References to regulations, etc. published in Government Gazettes’. It does not include the full text of the regulations.
- The paper format of the Jutas Statutes has a list ‘Index to regulations’. The full text of the regulations is not included.
- The electronic version of Butterworths Legislation includes the full text of the regulations with the acts and regulations.
- Juta publishes the electronic version of the regulations as a separate CD known as Juta's regulations of South Africa.
- Sabinet - Netlaw. As mentioned under 4.2.2.3. above the acts and regulations are together in the database.
- Many of the subject-specific loose-leaf books do have the relevant regulations included in them.

3.2.6 Bills and draft bills

Draft bills are mostly generated as a result of an instruction from Cabinet to the government departments. Generally they are drawn up by state legal advisors. It is possible that they may also come from private members. The Bill, once passed by parliament, becomes an Act. In the process of developing new laws there may be Green papers and White papers. These are usually government policy documents. Since 2005
there have been no Green papers or White papers, but they may still be used in future. From these may come draft bills, which in turn go through various processes until the last version of the bill is taken to parliament.

- Bills and draft bills are mostly published in Government Gazettes.
- Bills, Green papers and White papers are obtainable free from the following websites:
  - http://www.gov.za/ (under ‘Information’ go to ‘Documents’ - then ‘Bills’ and so on)
- An Internet search should also provide access to bills, for example, http://www.greengazette.co.za/.
- Probably the most convenient source is still a commercial database such as Sabinet - under ‘All Legal Products’ - ‘Bill Tracker’ and ‘Policy Documents’. The latter contains draft bills as well as government policy documents. If you do not have access to these then it is suggested that you use the free material from the internet.

3.2.7 Memoranda of the bills

Memoranda of the objects of the bills are obtainable from the bills themselves or from the online Juta’s Statutes. The memorandum is given at the end of the bill and will explain the reasoning behind the bill, the purpose and objects of the bill.

For example The Child Justice Bill begins with:

CHILD JUSTICE BILL, 2002
1 PURPOSE OF THE BILL

3.2.8 Regional or provincial legislation

Subordinate legislation from the provinces includes proclamations and regulations. By-laws emanate from the local government level, such as town and metro councils, or municipalities. Ordinances were enacted by the former provincial councils. Statutory bodies may also publish regulations. (Hosten 482-483). The provincial legislation is published originally in the Provincial Gazettes. However, for ease of use it is recommended that one uses the commercially published versions. Some suggestions follow:
See under 3.2.1 Government Gazettes and indexes for the indexes that also cover provincial material, namely, The Windex and the Juta’s Index to the South African Government and Provincial Gazettes.

Over time numerous publications have gathered the ordinances together for ease of use. An old publication The consolidated ordinances and regulations for the provinces, from Lex Patria publishers, is useful for the older material which may still be required.

Butterworths regional legislative service - Provincial and local government. A loose-leaf publication.

Juta’s provincial legislation of South Africa. Available in loose-leaf and CD format.

See LexisNexis Butterworths CDs for provincial acts, proclamations and regulations. Screen shot to the right:
• *Sabinet* offers an Internet online product under ‘All legal products’ - ‘Provincial Gazettes’
4 Case law (South African)

4.1 A basic approach

In practice it is most important to find the latest case law on a particular point. For academic research it may be necessary to find much more than just the latest case law. As mentioned before you may use an up-to-date textbook on the subject as a guide to the case law on a topic, and then search the law reports for further relevant judgments. Bear in mind that authors of textbooks may leave out important case law.

Be aware of free case law obtainable from the internet. These websites are especially useful:

- Supreme Court of Appeal (UOFS) - http://www.ufs.ac.za/apps/law/appeal/
- Constitutional Court http://www.constitutionalcourt.org.za/site/home.htm
- Cape High Court Judgments - http://law.sun.ac.za/portal/page/portal/law/index.english/judgement
- Competition Tribunal - http://www.comptrib.co.za/
- High Court, Free State. - http://www.ufs.ac.za/apps/law/highcourt/

There are many law report series in South Africa. Juta’s and LexisNexis Butterworths are once again your most important sources. The subscription-based law reports are published in paper and electronic formats. They differ from the free case law in the value-added information that one receives with them. These include the flynote (keywords), headnote (summary) or Editors summary, annotations or noter-ups, and many useful indexes including the legislation judicially considered. This information is invaluable to practitioners and researchers. These law reports series are listed below together with examples of citations of judgments from those series. (Remember that there is considerable duplication between the 2 publishers. It may be as much as 90%).

Juta’s publish:

- SA Law Reports (from 1828 to date), for example
  § Hardaker v Phillips 2005 (4) SA 515 (SCA)
- SA Criminal Law Reports (Vol 1, 1990 to date)
  § S v Balfour 2009 (1) SACR 399 (SCA)
• **Industrial Law Journal, including the Industrial Law Reports** (1980 to date)  
  §  *Dallyn v Woolworths (Pty) Ltd* (1995) 16 ILJ 696 (IC)
• **Jutas Daily Law Reports** (1997 to date) online only: http://www.jutalaw.co.za/ (not a free site).  
  §  *C-Max Investments 292 (Pty) Ltd v Fourie* 2005 JDR 0329 (T)

**LexisNexis Butterworths** publish:

• **All South African Law Reports 1828-1946**  
  §  various citations
• **All South African Law Reports** (1996 to date)  
  §  *Botha v Fick* [1995] 2 All SA 78 (A)
• **Arbitration Law Reports** (1998 to date)  
  §  *Mbele / Woolworths (Pty) Ltd* [2008] 10 BALR 980 (CCMA)
• **Competition Law Reports** (1999 to date)  
  §  *Media24 Ltd / Uppercase Media (Pty) Ltd* [2008] 2 CPLR 262 (CT)
• **Constitutional Law Reports** (1994 to date)  
  §  *Pillay v KwaZulu-Natal MEC of Education and Others* 2006 (10) BCLR 1237 (N)
• **Judgments Online** (1997 to date - only online)  
  §  *Gallant v Honourable Minister of Correctional Services* [2006] JOL 16454 (SE)
• **Labour Law Reports** (1994 to date)  
  §  *Amazwi Power Products (Pty) Ltd v Turnbull* [2008] 9 BLLR 817 (LAC)
• **Pension Law Reports** (1999 to date)  
  §  *Pillay v Illovo Sugar Provident Fund* [2003] 11 BPLR 5320 (PFA)
• **Tax Cases Reports** (1921 to date)  
  §  *Commissioner for South African Revenue Service v SA Silicone Products (Pty) Ltd* 66 SATC 131

There are a number of other less well-known Law Report series which are either specialised or no longer published. Note the abbreviations. They are:

• Burrell’s Patent Law Reports (from Juta) - BP
• Burrell’s Intellectual Property Law Reports (from Juta) - BIP
4.2 More information

In order to find all the relevant case law for a topic one needs to know the various law report series, and how to find them and use them effectively.

Decisions of the higher courts are a further primary source of law. The first South African law reports date from 1828, and these early series of law reports from the Cape bear names of the judges who compiled them (eg Menzies, Searle, Buchanan, Watermeyer, Roscoe, Foord etc.) Juta published High Court cases and there were also Supreme Court cases in the 1800s. Later after the Union in 1910, each division of the Supreme Court had its own law report series, named by province as they were at that time. Prior to Union in 1910, law reports were published for each of the Supreme and High Courts in the Cape Colony; and for the Natal, Free State and Transvaal High Courts. From 1910 onwards, decisions of the Appellate Division were also reported. (For a useful table of older law reports series see page 1362 of the book by Hosten, WJ et al.)

The South African Law Reports (cited as SA)

The South African Law Reports (SA) is our most important collection of case law. This series began publication in 1947. These reports include noteworthy judgments from all the South African higher courts, thus doing away with separate sets of reports for the different divisions (as was the case before 1947). They are published monthly and are bound into volumes. (1947-2001, 4 volumes per year. 2002 onwards, 6 volumes per year.) Most judgments are reported in English, but a few were recorded in Afrikaans only. Translations from Afrikaans into English exist for the period 1969-1980. The reports are available from the publishers, Juta, in printed and in electronic format.

The South African Criminal Law Reports (SACR)

The South African Law Reports reported civil and criminal cases up to 1990. In 1990 Juta Law launched the South African Criminal Law Reports in order to provide more in-depth coverage of criminal law and criminal procedure cases. The most important criminal law cases are also duplicated in the South African Law Reports. (Published by Juta in printed and electronic format.)
All South African Law Reports (All SA)

This series of reports began in 1996 and is modelled on the All England Law Reports. It reports noteworthy judgments from all the South African higher courts and replaces the Prentice Hall Weekly Law Reports which were published until 1995. (Published by LexisNexis Butterworths in printed and electronic format.)

See under 4.1 A basic approach for a full list of the all the free and the best-known commercially produced law reports published in South Africa.

4.2.1 What to look for

4.2.1.1 Judges

Take note of how the judgments refer to judges’ names:

- In ‘Broome J’ in the case below - ‘J’ refers to ‘judge’. Other abbreviations are:
  - P - President of the Constitutional Court
  - DP/AP - Deputy President of the Constitutional court / Adjunk-president
  - CJ/HR - Chief Justice / Hoofregter
  - JA/AR - Judge of Appeal / Appelregter
  - J / R - Judge / Regter - in the Constitutional Court and the high court
  - JP / RP - Judge President / Regter-president
  - DJP/ ARP - Deputy JP / Adjunk RP
  - AJ / WnR - Acting judge / waarnemende regter
4.2.1.2 Parts of the reported case: *Ebrahim v Evans* NO 1990 (4) SA 424 (D)

<table>
<thead>
<tr>
<th>Case name</th>
<th><em>Ebrahim v Evans NO</em></th>
</tr>
</thead>
<tbody>
<tr>
<td>Court deciding the case</td>
<td>Durban and Coast local division</td>
</tr>
<tr>
<td>Judge - can be more than one</td>
<td>Broome J (the ‘J’ always stands for ‘Judge’)</td>
</tr>
<tr>
<td>All the dates of court sittings</td>
<td>1989 September 27; 1990 June 27</td>
</tr>
<tr>
<td>Annotations</td>
<td>‘Links to case annotations’ Clicking here will give a list of the subsequent cases in which this case was cited</td>
</tr>
<tr>
<td>Catch phrases or Flynote</td>
<td>Company - winding up - dissolution of company in terms of s 419 of the Companies Act 61 of 1973</td>
</tr>
<tr>
<td>Headnote (summary)</td>
<td>The applicant was the defendant in an action which had been brought against him by a company, F I (Pty)Ltd etc.</td>
</tr>
<tr>
<td>Date of the judgment</td>
<td>Postea (27 June 1990)</td>
</tr>
<tr>
<td>Case information</td>
<td>Attorneys’ and advocates’ names</td>
</tr>
<tr>
<td>The order</td>
<td>Near the end of the case - in this example it starts with ‘To sum up then, I uphold the applicant’s contention and make an order’ etc.</td>
</tr>
<tr>
<td>Order for costs</td>
<td>‘2. That the respondent is ordered to pay the costs of this application, including the costs’ etc.’</td>
</tr>
</tbody>
</table>

4.2.1.3 Indexes (printed)

In the printed version of the *South African Law Reports* the publisher offers an index, *Juta’s index and annotations to the South African law reports*, that contains the following:

- Table of cases
- Case annotations - South African and foreign cases
- Legislation considered - Statutes chronologically annotated
- Index of cases reported in the South African law reports
Likewise for the printed Butterworths law reports (see above under 4.1) the publisher offers an index, Butterworths index and noter-up to the All South African law reports and the South African law reports, that contains the following:

- Key to abbreviations
- Cases reported
- Table of statutes
- Rules of court
- Words and phrases
- Case history
- Noter-up
- Subject index

4.2.1.4 Printed ‘Noter-up’, ‘Annotations’ and ‘Fontes Juris’:

This information is invaluable for research. The list of citations refers one from a specific case to all the subsequent cases in which that case was cited. One uses these sources to establish whether or not a case is still applicable. From these sources you will be able to establish if a case has been applied, overturned or otherwise criticised. They are contained in the following:

- Butterworths index and noter-up to the All South African law reports and the South African law reports. Noter-up section: ‘The table below lists the cases which have been referred to or considered judicially in the judgments.’ Judgments may be applied, discussed, approved, distinguished, etc.
- Juta’s index and annotations to the South African law reports. The case annotations contain the same information as in the Noter-up.
- Fontes Juris. Being the sources of the law which were noted in South African Supreme Court judgments. These books contain lists that supplement the subject index of the law reports. It leads the reader from a case or source to further cases or sources. ‘Under each reported case is listed, in chronological order, the cases (if any) which noted that case.’ It is only current up to 2000, but the editors are working on a new edition. This reference tool consists basically of 3 long lists.

  Part 1: South African cases reported and noted
  ‘Under each reported case is listed, in chronological order, the cases (if any) which noted that case.’ (Cases arranged alphabetically.)
  Part 2: Foreign cases noted
  Part 3: Legal literature noted
‘This list gives, alphabetically under authors (including journals) all the cases which referred to them. If, in your research of a problem, you come across a reference to an author or a journal, the Legal Literature Noted List will give you, at a glance, the names and references to all cases which referred to that work/paragraph/page.’

4.2.1.5 New names for the High Courts

Citations for new case law will carry these new court names. The old cases will, of course, still have the old names of the courts in the citation.

<table>
<thead>
<tr>
<th>Seat of the High Court</th>
<th>Name of the High Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bhisho</td>
<td>Eastern Cape High Court, Bhisho</td>
</tr>
<tr>
<td>Bloemfontein</td>
<td>Free State High Court, Bloemfontein</td>
</tr>
<tr>
<td>Cape Town</td>
<td>Western Cape High Court, Cape Town</td>
</tr>
<tr>
<td>Durban</td>
<td>KwaZulu-Natal High Court, Durban</td>
</tr>
<tr>
<td>Grahamstown</td>
<td>Eastern Cape High Court, Grahamstown</td>
</tr>
<tr>
<td>Johannesburg</td>
<td>South Gauteng High Court, Johannesburg</td>
</tr>
<tr>
<td>Kimberley</td>
<td>Northern Cape High Court, Kimberley</td>
</tr>
<tr>
<td>Mafikeng</td>
<td>North West High Court, Mafikeng</td>
</tr>
<tr>
<td>Mthatha</td>
<td>Eastern Cape High Court, Mthatha</td>
</tr>
<tr>
<td>Pietermaritzburg</td>
<td>KwaZulu-Natal High Court, Pietermaritzburg</td>
</tr>
<tr>
<td>Port Elizabeth</td>
<td>Eastern Cape High Court, Port Elizabeth</td>
</tr>
<tr>
<td>Pretoria</td>
<td>Gauteng High Court, Pretoria</td>
</tr>
<tr>
<td>Thohoyandou</td>
<td>Limpopo High Court, Thohoyandou</td>
</tr>
</tbody>
</table>
4.2.2 Electronic databases

4.2.2.1 Juta’s SA Law reports 1828 to date

The screen shot of search choices is given on the right:

**Searching.** When using the ‘Query’ ‘Advanced Query’ or any other search options it is advisable to use quotation marks (" ") for a phrase. It keeps the words together. Note that you can search in the flynote or headnote only and it is advisable to use these when looking for a specific topic. Note also that you can find a case using ‘Year, Volume and Page Number’ only. It also offers the possibility of searching in case annotations.
Annotations. ‘Link to case annotations’ This screen shot to the right shows where these are located in the case.
If you follow this ‘Link to Case Annotations’ it will give you the information regarding whether or not the case has been considered judicially (compared, considered, applied, referred to, distinguished). See screen shot to the right:
4.2.2 LexisNexis Butterworths Law Reports 1828 to date

Many options are given for searching. See to the right:
Noter-up online material is available under ‘Reference works’. See the alphabetical list on the left of the screen.
4.2.2.3 Fontes Juris

It is worthwhile to note at this point that Fontes Juris, although not a full-text database of case law, does provide annotations for case law. It is available in printed format (see 4.2.1 above) and on CD. The CD includes case law up to 2001. In comparison to the printed format the CD has an additional list which is the Legislation list. The legislative records (acts, laws, statutes) are arranged chronologically from 1215 AD to date, and refer one to the relevant case law dealing with that specific piece of legislation. ‘Each law is classified under date-country-number-name-section-paragraph. Thereunder follows the cases in which it was noted.’ This screen shot illustrates the contents and the beginning of the introduction:
See the screenshot to the right, which illustrates an example of the list of South African Cases in *Fontes Juris*:
4.2.3 Unreported cases

In general these may be obtained from the clerk of the court in which the case was heard. But you may also find them in the JOL (Judgments Online from LexisNexis Butterworths), the Juta’s Daily Law Reports, or SAFLII. The first two are commercially available, but SAFLII is a free internet website - http://www.saflii.org.za/

4.2.4 Acts linked to the case law

Printed:

- In the printed version of the set of Juta’s index and annotations to the South African law reports there is a section: ‘legislation considered - statutes chronologically annotated’. This is a list of the acts considered in the case law, arranged by the year and number of the act. For example:
  - Act 51 of 1977, section 111 ... 2008 (4) SA 441 (C).
- The printed Butterworths index and noter-up to the All South African law reports and the South African law reports there is a table of statutes which is described as ‘The statutory provisions listed below were referred to or considered in the All South African Law Reports and the South African Law Reports from ... to ... ’. For example:
  - Act 61 of 1973, Companies Act, section 391...[2006] 4 All SA 11

Electronic:

- The South African Law Reports from Jutas has ‘Legislation judicially considered’, in which the acts and the relevant case law are linked.
- LexisNexis Butterworths has a list known as ‘Table of Statutes’ (found under the ‘Reference Works, Indexes, Dictionaries and Diaries’, and then Index and noter-up to the All South African and South African law reports). This list links the acts and relevant case law.
- Netlaw from Sabinet also gives references to the relevant case law, ‘Decided Cases’ from the statutes.
5 Journals (South African law journals)

5.1 In general

Journals contain articles and notes, and are considered secondary legal sources. The primary legal sources are common law, legislation and precedents from case law. Journal articles contain commentaries or discussions on the law and the case law. The topics discussed in journal articles are probably more current, or up to date, than the same material in textbooks. Many journal articles are cited in court judgments.

Most academic law journals are published by the law schools. There are about 27 academic-type law journal titles in South Africa and these are listed below. To obtain the printed versions of the journals one must subscribe to the titles. Some titles are also available in electronic format. The two commercial databases that hold South African law journals in full-text are SAePublications and HeinOnline. Commercially available electronic journals (individual titles) can be obtained from the publishers Jutas and LexisNexis Butterworths.

<table>
<thead>
<tr>
<th>Journal title</th>
<th>Institution</th>
<th>Publisher</th>
<th>Full-text found in SAePublications</th>
<th>Full-text found in HeinOnline</th>
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<tbody>
<tr>
<td>Acta Juridica</td>
<td>University of Cape Town</td>
<td>Juta</td>
<td>/</td>
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<tr>
<td>Acta Criminologica</td>
<td>Criminological Society of South Africa</td>
<td>-</td>
<td>/</td>
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</tr>
<tr>
<td>African Human Rights Law Journal</td>
<td>University of Pretoria</td>
<td>Juta</td>
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</tr>
<tr>
<td>Annual Survey of South African Law</td>
<td>Faculty of Law, University of the Witwatersrand</td>
<td>Juta</td>
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</tr>
<tr>
<td>Codicillus</td>
<td>UNISA</td>
<td>UNISA</td>
<td>/</td>
<td></td>
</tr>
<tr>
<td>Constitutional Court Review (new from PULP)</td>
<td>University of Pretoria</td>
<td>PULP</td>
<td>/</td>
<td></td>
</tr>
<tr>
<td>CILSA – Comparative and International Law Journal of South Africa</td>
<td>UNISA</td>
<td>UNISA</td>
<td>/</td>
<td></td>
</tr>
<tr>
<td>Title</td>
<td>University</td>
<td>Publisher</td>
<td>Online Access</td>
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<tr>
<td>De Jure</td>
<td>University of Pretoria</td>
<td>Lexis-Nexis Butterworths</td>
<td></td>
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<tr>
<td>Fundamina - a Journal of Legal History</td>
<td>UNISA</td>
<td>UNISA</td>
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<tr>
<td>Industrial Law Journal</td>
<td>University of the Witwatersrand</td>
<td>Juta</td>
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</tr>
<tr>
<td>Journal of Estate Planning Law</td>
<td>University of the Free State</td>
<td>UFS</td>
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<tr>
<td>Journal of Juridical Science (Tydskrif vir Regswetenskap)</td>
<td>University of the Free State</td>
<td>UFS</td>
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<tr>
<td>Law, Democracy and Development</td>
<td>University of the Western Cape</td>
<td>Lexis-Nexis Butterworths</td>
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<tr>
<td>Obiter</td>
<td>Nelson Mandela Metropolitan University</td>
<td>NMMU</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Potchefstroom Electronic Law Journal</td>
<td>University of the North West</td>
<td>UNW</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Responsa Meridiana</td>
<td>Student Law Societies of the Universities of Cape Town and Stellenbosch</td>
<td>UCT &amp; Stellenbosch</td>
<td></td>
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</tr>
<tr>
<td>South African Journal of Criminal Justice</td>
<td>University of Cape Town</td>
<td>Juta</td>
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<tr>
<td>South African Journal of Environmental Law &amp; Policy</td>
<td>University of Kwazulu Natal</td>
<td>UKZN</td>
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<tr>
<td>South African Journal on Human Rights</td>
<td>University of the Witwatersrand</td>
<td>Juta</td>
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<tr>
<td>South African Law Journal</td>
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<td>Juta</td>
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<tr>
<td>South African Mercantile Law Journal</td>
<td>UNISA</td>
<td>Juta</td>
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<tr>
<td>South African Public Law - SA Publiekreg</td>
<td>Verloren van Themaat Centre, UNISA</td>
<td>UNISA</td>
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<tr>
<td>South African Yearbook of International Law</td>
<td>Verloren van Themaat Centre, UNISA</td>
<td>UNISA</td>
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</tbody>
</table>
There are a number of other law periodicals which although very useful for practitioners, are not considered academic journals. Examples are *Without Prejudice* and *De Rebus*. *De Rebus*, the attorneys’ journal from the Law Society, is free on the web [http://www.derebus.org.za/](http://www.derebus.org.za/)

Open Access. At this stage there are two free online academic journals in this country - namely, *Potchefstroom Electronic Law Journal* at [http://www.puk.ac.za/fakulteite/regte/per/index.html](http://www.puk.ac.za/fakulteite/regte/per/index.html) and *Constitutional Court Review* at [http://www.pulp.up.ac.za/cat_2009_04.html](http://www.pulp.up.ac.za/cat_2009_04.html).

<table>
<thead>
<tr>
<th>Speculum Juris</th>
<th>University of Fort Hare</th>
<th>Lexis-Nexis Butterworths</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stellenbosch Law Review - Stellenbosse Regstydskrif</td>
<td>University of Stellenbosch</td>
<td>Juta</td>
</tr>
<tr>
<td>Tydskrif vir die Suid-Afrikaanse Reg - Journal of South African Law</td>
<td>University of Johannesburg</td>
<td>Juta</td>
</tr>
</tbody>
</table>
Potchefstroom Electronic Law Journal:
Constitutional Court Review:

**Catalogue of 2009 publications**

**Title:** Constitutional Court Review (2009)

**Editors:** Siti Woolman, Theonie Roux & Danie Brand

**ISSN:** 2073-4215

**Pages:** 376

**Cover:** Soft

**Date:** 2009

**About the publication:**

The Constitutional Court Review is a once-a-year journal dedicated to the analysis of the Constitutional Court's decisions of the previous year. Its purpose is to provide a platform for high-level academic engagement with the jurisprudence of the South African Constitutional Court.

To this end, each issue of the Review contains two lead essays outlining broad themes arising from a given year's jurisprudence (each ≤ 5,000 words), each with its own impromptu (≤ 500 words); a number of shorter subject-specific articles (each ≤ 1,000 words), and several case comments that engage more narrowly with a given decision of the Constitutional Court (≤ 1,500 words).

The Review is published by the Centre for Human Rights, Faculty of Law, University of Pretoria, Pretoria 0002.

Tel: +27 12 420 4948
Fax: +27 12 302 5925
Email: southernbooks@up.ac.za
5.2 Finding articles in South African journals

Reference indexes. There are two indexes to Southern African journals. These indexes give only references to articles (not full-text access). One can search by author, title, keywords, journal title, etc.

- The most widely used and comprehensive index is the ISAP - Index to South African Periodicals (a Sabinet database). This should be the first place one searches for articles. ISAP requires a subscription.
- The other is a free index on the Constitutional Court Library website and is called iSALPi, South African Legal Periodicals Index www.constitutionalcourt.org.za. Go to the library and then iSALPi.

Full-text. For full-text coverage one can use the print copies of the journals as well as the following databases. These databases hold some (see list above under 5.1) of our law journals in full-text:

- SA ePublications is a local subscription Sabinet database with full-text access to many South African journals. It covers journals from 2001 onwards.
- HeinOnline is an American subscription database but does contain some South African journals. The coverage is retrospective and usually covers the journal from volume 1 up to a year or two ago. It does not usually have the latest year or two of a journal.
See screen shot of *SA ePublications* below:
HeinOnline:
5.3 Citing journal articles

Reference styles vary from journal to journal, but it is important to always include the author, article title, journal title, year, volume, issue or number and pages, in any citation to a journal article. Example:

Many academic libraries (and private individuals) in South Africa possess collections of law books known as the ‘old authorities’. These are books containing Roman and Roman-Dutch law and are still authoritative. Some of these books are rather old and some were printed as early as the 1500s. There are also translations of the important old sources. For postgraduate research in particular these sources are in demand. Consult the law librarians to assist you to locate the old authorities in the collection as they may be stored in locked rooms if they are, in fact, old books. The old authorities are still cited regularly in our courts. For example, the name ‘Grotius’ is cited 251 times in the SA Law Reports from 1977 to June 2009. To the right see the screen shot from the law reports, as an illustration of this:
University library catalogues should contain records of these books. For example, one may look in the University of Pretoria’s catalogue http://explore.up.ac.za/screens/mainmenu.html for old authorities titles. An example of an old authorities record from that catalogue is given to the right:
Roman law

The Roman emperor Justinian, who died in 565AD, had the Roman law codified. Justinian’s code consists of four parts and is known as the *corpus iuris civilis*. This code was the vehicle for carrying the Roman law to the rest of Western Europe and is still used today. The four parts are the:

- **Codex**
- **Digesta or Pandectae**
- **Institutiones**
- **Novellae**

These books have been translated into English. These books are sometimes referred to, in footnotes or bibliographies, simply as ‘D’ for Digest, or ‘C’ for Codex, together with chapter and section numbers. For example: D.43.26.6.1 means Digest, book 43, title 26, paragraph 6, line 1.

Roman-Dutch Law

Roman-Dutch law is a synthesis of Roman law, Germanic customary law, feudal law, canon law and so on. There are a number of old writers who are considered authorities on classical Roman-Dutch law. Their works appeared from about 1550 to 1800. Researchers should be aware of the following names in this regard:

- **Merula** wrote *Manier van procederen* on civil procedure.
- **Hugo de Groot** (Grotius) wrote *Inleidinge tot de Hollandsche rechtsgeleerdheid* and *De jure belli ac pacis, libri tres*. His *Introduction*, a treatise on Roman-Dutch law, is a very important work.
- **Antonius Matthaeus**
- **Simon Groenewegen van der Made**
- **Simon van Leeuwen** was the first writer to use the term Roman-Dutch law
- **Johannes Voet**, his best known works are *Compendium iuris* which follows the sequence of the *Digest* or *Pandects* and *Commentarius ad Pandectas*.
- **Cornelis van Bynkershoek**
- **DG Van der Keessel**
- **Johannes van der Linden** is known as the author of *Rechtsgeleerd, Practicaal en Koopmans Handboek*
7 Legislation (other jurisdictions)

7.1 In general

For free access to legislation, statutes, acts, and codes, one of the options is WorldLII http://www.worldlii.org/. The acronym stands for World Legal Information Institute. The aim of the Legal Information Institute movement worldwide is to provide free access to the law. Open the website and select ‘All Countries’. It contains some law reports and legislation for many countries. In some cases there is a great deal of information, but for others there may be very little. Apart from this site a general search by means of an internet search engine will produce results for some jurisdictions. For WorldLII see to the right:
7.2 North America

The USA and Canada.

7.2.1 Free on the Web

The USA has federal law and laws of the various states. The Federal law is known as the US Code. The code is arranged by titles and then chapters. There are also popular names, such as the infamous USA Patriot Act. This concept is explained below under the LII.

A list of United States of America websites to try for free material, such as the US Code and other legal information follows:

1. **LII or Legal Information Institute** (housed by Cornell University) http://www.law.cornell.edu/. Go to ‘Constitutions and Codes’. The website contains a list of all titles (broken down to chapters, subchapters, sections):

   **Table of Contents (by-Title listing)**
   - Title 1 General Provisions
   - Title 2 The Congress
   - Title 3 The President
   - Title 4 Flag and Seal, Seat Of Government, and the States
   - Title 5 Government Organization and Employees
   - Appendix to Title 5
   - Title 6 Domestic Security
   - Title 7 Agriculture
   - Title 8 Aliens and Nationality
   - Title 9 Arbitration
   - Title 10 Armed Forces
   - Appendix to Title 10 (Rules of Court of Appeals for the Armed Forces)
   - Title 11 Bankruptcy
   - Appendix to Title 11
   - Title 12 Banks and Banking
• Title 13 Census [Search]
• Title 14 Coast Guard [Search]
• Title 15 Commerce and Trade [Search]
• Title 16 Conservation [Search]
• Title 17 Copyrights [Search]
• Title 18 Crimes and Criminal Procedure [Search]
• Appendix to Title 18
• Title 19 Customs Duties [Search]
• Title 20 Education [Search]
• Title 21 Food and Drugs [Search]
• Title 22 Foreign Relations and Intercourse [Search]
• Title 23 Highways [Search]
• Title 24 Hospitals and Asylums [Search]
• Title 25 Indians [Search]
• Title 26 Internal Revenue Code [Search]
• Appendix to Title 26
• Title 27 Intoxicating Liquors [Search]
• Title 28 Judiciary and Judicial Procedure [Search]
• Appendix to Title 28
• Title 29 Labor [Search]
• Title 30 Mineral Lands and Mining [Search]
• Title 31 Money and Finance [Search]
• Title 32 National Guard [Search]
• Title 33 Navigation and Navigable Waters [Search]
• Title 34 Navy (repealed) [Search]
• Title 35 Patents [Search]
• Title 36 Patriotic Societies and Observances [Search]
• Title 37 Pay and Allowances Of the Uniformed Services [Search]
• Title 38 Veterans' Benefits [Search]
• Appendix to Title 38 (Rules of Court of Appeals for Veterans Claims)
• Title 39 Postal Service [Search]
• Title 40 Public Buildings, Property, and Works [Search]
• Title 41 Public Contracts [Search]
• Title 42 The Public Health and Welfare [Search]
• Title 43 Public Lands [Search]
• Title 44 Public Printing and Documents [Search]
• Title 45 Railroads [Search]
• Title 46 Shipping [Search]
• Appendix to Title 46
• Title 47 Telegraphs, Telephones, and Radiotelegraphs [Search]
• Title 48 Territories and Insular Possessions [Search]
• Title 49 Transportation [Search]
• Title 50 War and National Defense [Search]
• Appendix to Title 50
The LII website also includes a table of popular names such as the ‘Wild Horse Annie Act’. The screen shot to the right explains the concept:
3. The Library of Congress, see Thomas at http://thomas.loc.gov/home/thomas2.html

*Canada.* Free internet access to Canadian legislation may be found on the CANLII website: http://www.canlii.org/en/info/legislation.html

Their approach to legislation in Canada is described in their own words as follows:

**LEGISLATION**

CanLII reproduces consolidations of statutes and regulations as published by official printers from the federal, provincial, and territorial jurisdictions. Prior and updated versions of legislative materials are becoming available in a growing number of what we call ‘point-in-time databases’. All consolidated legislative databases on CanLII will become point-in-time in the near future.

**Point-in-time Databases**

Point-in-time databases provide you with access not only to a current, up-to-date version of the consolidated legislative text, but also to past versions. Moreover, new search tools have been made available for these databases:

- A new ‘versions’ field in the legislation databases search template (see for instance the search template of the Statutes and Regulations of Canada entry page)
- A versions comparison tool which allows easy identification of the parts of text that have been changed (see for instance the COMPARE button which allows you to launch a comparison between two versions of the Access to Information Act).

There are two types of versions in CanLII’s point-in-time databases, depending upon whether or not CanLII was able to establish the coming into force dates of amendments made to the texts: ‘in force version’ and ‘posted version’.

An ‘in force version’ displays the legislative text as it was legally binding during the period shown (see for instance versions of the Access to Information Act, R.S.C. 1985, c. A-1). You should, however, note that the binding nature of a legislative enactment at a given moment in time may vary for different situations. You remain responsible to check whether or not the text applies to your specific situation.

A ‘posted version’ displays the legislative text as it was posted on the official printer’s website and downloaded by CanLII at the dates shown (see for instance versions of the Bankruptcy and Insolvency General Rules, C.R.C., c. 368). The dates associated to these versions do not match their commencement dates.
7.2.2 Subscription databases

The are two major legal databases in the US and they are Westlaw and LexisNexis. There is considerable duplication in the two databases. They are very good sources for the legislation for both the federal law and the state law. These databases will provide the annotations to the relevant case law and to commentaries and discussions on the laws. Both also give Canadian legal material. There may also be other databases available commercially.

7.3 United Kingdom

Legislative material in the UK is referred to as the Statutes. It is of interest to note that the Chronological table of the statutes begins with the Statute of Merton 1235. It can be seen that South African acts resemble those from the UK in form in that they also have a long title, a date of assent (Royal), and are arranged by sections. UK acts may also contain schedules and a table of repeals. (Moys 75–78).

Subordinate legislation includes Orders, Regulations, Rules (like the Rules of Court), Schemes, Directions or Warrants. They are to be found in the Statutory Instruments (SI) series. For example, building regulations will be found in the SI (Moys 105).

There is an excellent series known as the Halsbury’s statutes and another series known as the Halsbury’s statutory instruments. (See above under 2.2.3 for Halsbury’s laws of England)

7.3.1 Free on the web

1. BAILII or British and Irish Legal Information Institute http://www.bailii.org/
2. Office of Public Sector Information http://www.opsi.gov.uk/acts

7.3.2 Subscription databases

There are numerous commercially available databases that cover the statutes and their instruments. Westlaw and LexisNexis Butterworths are two examples. Justis at http://www.justis.com/ is a database with legislation covering the UK, Ireland and the EU.
7.4 European Union law

This is to be found at http://europa.eu/geninfo/info/index_en.htm

The list under ‘Legislation’ includes the following:

- Application and infringements of community law
- Case law (Court of Justice)
- Codecision
- EUR-Lex - EU law (free of charge)
- European Data Protection Supervisor - Legislation
- European judicial atlas in civil matters
- Institutional reform of the European Union
- International agreements
- Legislation in force
- Legislation in preparation
- OEIL: Decision-making process (monitoring of, European Parliament)
- Official journal
- Outcome of the European Convention
- PRE-Lex : Decision-making process (monitoring of)
- SCADPlus: Fact sheets on EU policies (Commission)
- Treaties
- Treaty of Nice: A Comprehensive Guide


7.5 African countries

The Legal Information Institute movement aims to make legal information freely available. Note that the LII websites are interconnected. For free material for African countries in general therefore one may use WorldLII at http://www.worldlii.org/. and also CommonLII - Africa at http://www.commonlii.org/resources/55904.html.
SADC countries: SAFLII website gives access to a considerable amount of legal material from the SADC countries. See http://www.saflii.org.za/ and the screen shot to the right:
Francophone African countries: For free material for the francophone countries try the website http://www.droit-afrique.com/. To the right is a screen shot of their website:
Some African countries do have their legislation free online. See:

- Angola - http://www.dnci.net./legislacao/
- Sierra Leone - http://www.sierra-leone.org/laws.html
- Uganda - http://www.ugandaonlineslibrary.com/default.asp (this is not free - requires a subscription)
8 Case law (other jurisdictions)

8.1 In general

One of the free options is WorldLII http://www.worldlii.org/. The acronym stands for World Legal Information Institute. Open the website and select ‘All Countries’. It contains some law reports and legislation for many countries. In some cases there is a great deal of information, but for others there may be very little. See also 7.1 In general above.

8.2 International and regional case law

8.2.1 Free on the web

- International Courts and Tribunals Library http://www.worldlii.org/int/cases/. Aims to provide a search facility for final decisions of all international and multi-national courts and tribunals.


- Court of Justice of the European Communities http://curia.europa.eu/jcms/jcms/j_6/. Since the establishment of the Court of Justice of the European Communities in 1952, its mission has been to ensure that ‘the law is observed’ ‘in the interpretation and application’ of the Treaties. As part of that mission, the Court of Justice: reviews the legality of the acts of the institutions of the European Union, ensures that the Member States comply with their obligations under Community law, interprets Community law at the request of the national courts and tribunals. The Court thus constitutes the judicial authority of the European Union and, in cooperation with the courts and tribunals of the Member States, it ensures the application and uniform interpretation of Community law.


- International Criminal Court http://www.icc-cpi.int./Menus/ICC?lan=en-GB. The International Criminal Court (ICC), governed by the Rome Statute, is the first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community. The ICC is an independent international
organisation, and is not part of the United Nations system. Its seat is at The Hague in the Netherlands. For the ICC Legal Tools see the website http://www.legal-tools.org/en/terms-and-conditions-of-use/.

- United Nations – International Criminal Tribunal for Rwanda at http://0-69.94.11.53/default.htm. The Security Council created the International Criminal Tribunal for Rwanda (ICTR) by resolution 955 of 8 November 1994. The purpose of this measure is to contribute to the process of national reconciliation in Rwanda and to the maintenance of peace in the region.
- United Nations – International Criminal Tribunal for the former Yugoslavia at http://www.icty.org/. ‘The International Criminal Tribunal for the former Yugoslavia (ICTY) is a United Nations court of law dealing with war crimes that took place during the conflicts in the Balkans in the 1990’s’.
- Project on International Courts and Tribunals – PICT http://www.pict-pcti.org. There now are more than 20 international courts and tribunals that is to say permanent institutions, composed of independent judges, that adjudicate disputes between two or more entities (at least one of which is either a State or an International Organization); operate on the basis of predetermined rules of procedure; and render decisions that are binding on the parties. Beside these international courts and tribunals, there are at least 70 other international institutions, which exercise judicial or quasi-judicial functions.
- International Tribunal for the Law of the Sea (ITLOS) http://www.itlos.org/. The United Nations Convention on the Law of the Sea was opened for signature at Montego Bay, Jamaica, on 10 December 1982. The Convention establishes a comprehensive legal framework to regulate all ocean space, its uses and resources. It contains, among other things, provisions relating to the territorial sea, the contiguous zone, the continental shelf, the exclusive economic zone and the high seas.
- The World Trade Organization (WTO) http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm. The WTO is the only international organization dealing with promotion and regulation of international trade at a global level. Its aims are to help trade flow as freely as possible, to achieve further liberalization gradually through negotiation, and to provide an impartial means of settling disputes.
- Court of Justice of the European Free Trade Agreement http://www.eftacourt.lu/. In 1992, the European Communities, the EFTA, and their member States, entered into an agreement aimed at integrating the two economic areas into a so-called European Economic Area (EEA). The aim of the EEA is to guarantee the free movement of persons, goods, services, and capital; to provide equal conditions of competition; and to abolish discrimination on grounds of nationality in the area. The EFTA Court is entrusted with monitoring the obligations of those EFTA States which have ratified the EEA Agreement (Iceland, Liechtenstein, and Norway, but not Switzerland) and the functioning of the ESA under EEA law. Conversely, the Court of Justice of the European Communities ensures the respect of EEA law by the communities’ member States and organs. It is evident that for the EEA Agreement to work, coordination between the EFTA Court and the ECJ had to be guaranteed.
• Inter-American Court of Human Rights. http://www.corteidh.or.cr/index.cfm?&CFID=55120&CFTOKEN=47885654. In a manner similar to the ECHR, the Inter-American Court of Human Rights (IACHPR) was established by the 1969 American Convention of Human Rights, concluded under the aegis of the Organization of American States, with the task to ensure, along with the Inter-American Commission of Human Rights, the observance of the rights and freedoms protected thereunder. The Inter-American Court of Human Rights, which is an autonomous judicial institution of the Organization of American States established in 1979, and whose objective is the application and interpretation of the American Convention on Human Rights and other treaties concerning this same matter.

• Central American Court of Justice (no website). The Central American Court of Justice (Corte de Justicia Centroamericana) was established in 1907 to maintain peace and resolve disagreements among Central American states. The CACJ is characterized by strong supra-national features. It acts as a permanent consultative organ for Supreme Courts of the region and can, upon request of a party, hear disputes between constitutional organs of member States.

• The Caribbean Court of Justice (CCJ) http://www.caribbeancourtofjustice.org/ is a nascent regional judicial body. After the Agreement Establishing the Caribbean Court of Justice of February 14, 2001, it entered into force on July 23, 2002 (when Guyana joined Saint Lucia and Barbados in depositing its instrument of ratification). The CCJ has a hybrid nature that sets it apart from all other courts. Indeed, like the ECJ, COMESA Court, TJAC, and even the ICJ, the CCJ is an international tribunal applying rules of international law in respect of the interpretation and application of the applicable treaties.

• L’Organisation pour l’Harmonisation en Afrique du Droit des Affaires http://www.ohada.com/ is a regional international organisation that groups together 16 African states, mainly of the francophone area. Its aim is to harmonise the legal and judicial systems specifically in the field of business and corporate law of member states.

• The Court of Justice of the Common Market for Eastern and Southern Africa (COMESA). http://about.comesa.int/lang-en/institutions/court-of-justice. The aim of COMESA is to promote regional economic integration through trade and investment. The Court was established in 1994 under Article 7 of the COMESA Treaty as one of the organs of COMESA.


• International Centre for Settlement of Investment Disputes - ICSID http://icsid.worldbank.org/ICSID/Index.jsp. ICSID is an autonomous international institution established under the Convention on the Settlement of Investment Disputes between States and Nationals of other states with over one hundred and forty States. The Convention sets forth ICSID’s mandate, organization and
core functions. The primary purpose of ICSID is to provide facilities for conciliation and arbitration of international investment disputes.


### 8.2.2 Subscription databases

Some case law from international and regional courts can be found on the Westlaw and LexisNexis databases. These two are widely used databases for global legal information but are by no means the only commercially available databases to use. However, both of these can be found in large academic, and some corporate, law libraries in South Africa.

### 8.3 Case law by country

#### 8.3.1 Free on the web

For country-specific case law that is free, a useful site is WorldLII http://www.worldlii.org/. The acronym stands for World Legal Information Institute. The aim of the Legal Information Institute movement worldwide is to provide free access to the law. Open the website and select ‘All Countries’. It contains some law reports and legislation for many countries. (See under 7.1).

More free case law may be obtained by means of searches on the internet.

Bear in mind that there are a very large number of law report series throughout the world. For example, in the Digest (see under 2.2.3 page 8), there are many hundreds of different law reports series and these only cover Commonwealth countries.
8.3.2 Subscription-based law reports

Although there are a great many series titles, the well-known legal databases such as *LexisNexis* and *Westlaw* do hold extensive, but not exhaustive, collections of these. A great deal of the case law from the western world can therefore be found on these databases. *Justis* at http://www.justis.com/ is a database with case law covering the UK, Ireland and the EU. In fairness there are probably a number of other databases that also contain this information.

See the *Digest* (see under 2.2.3) for useful summaries of case law from the Commonwealth countries. All university law libraries carry holdings of some of the overseas law reports.
9 Journals: Other jurisdictions

9.1 In general

Literally many hundreds of legal journals are published worldwide. They range from newsletters and practitioners journals to academic journals. The quality of the content varies a great deal too. Academic journals differ from the others in a number of ways. Generally they are peer-reviewed and the articles contain footnotes and bibliographies. More time has been taken and more research done during the writing of the articles and, consequently, the contents have more credibility. The emphasis is on the need for substantiation and authority. Internationally legal academic journals are rated like other academic journals by using the citation rates of the journals. Journal titles that are frequently cited have a good reputation, they are more trusted and are sought-after as vehicles for new publications.

The citation rates or impact factors of journals may be seen on the following two websites:

- *International Science Index* or *ISI Web of Knowledge* (only available with a subscription to the database). For *ISI* use ‘Additional Resources’ and ‘Journal Citation Reports’. A list of law journals rankings is available. http://www.isiknowledge.com/. There are only about 100 titles on the list.

Journal articles generally contain commentary and discussion on the law. For postgraduate research in law it is essential to use this source of information.

9.2 Free on the web

Increasingly titles are being made available free on the web because of the worldwide ‘Open Access’ movement. This movement enables legal researchers to obtain journal articles on the law without cost by using the web. Many titles may be found by means of an internet search.

Another related trend is that of ‘institutional repositories’. Institutions, such as universities and research institutes, are placing all their own publications in repositories which are freely available on the web. These publications may then be found by means of internet searches, especially *Google Scholar* searches. It does not mean that such publications are not also published in subscription-based journals as well. It does mean, though, that they are freely available from the institutions where the research was done.
The Directory of Open Access Journals, DOAJ at http://www.doaj.org/ provides free access to a number of law journal titles.

9.3 Subscription-based journals

The majority of journals fall into this category. In general, overseas law journals, for which subscriptions are required, are available both in print form and in an electronic format. As such they may be purchased individually or as part of a collection in a database. A great number of them are included in journal collections within databases. Certainly it is through these databases that most of the use of journals happens.

9.3.1 Indexes to journal articles

Some databases provide only references or abstracts to articles within journals. Examples of these databases are:

- **Legaltrac** (incorporated into Academic OneFile). This international bibliographic database is a combination of some full-text access and some abstract-only access. Searches will produce lists of articles with either abstracts or full-text.
- **Index to Legal Periodicals** and **Index to Foreign Legal Periodicals**. These two databases are very similar to Legaltrac. The first deals with the US and UK material, whilst the second one has foreign (as in ‘not UK or US’) journals. Some South African titles are included in the Foreign database.
- **AGIS** (old name – Austrom) is a bibliographic database that indexes and abstracts articles from over 120 Australian, New Zealand and Pacific law journals; and selected articles from major law journals from the United States, Canada and the United Kingdom.
- **ABI World**. World Bankruptcy Institute. Journals and other material on insolvency law.
- **Criminal Justice Abstracts** (part of CSA Illumina). References to articles and their abstracts on this topic.

9.3.2 Full-text journals in electronic form

For foreign journals in electronic form there are a number of options. The best known in South Africa are Westlaw, LexisNexis International; HeinOnline and Justis. Two of these are discussed to give some idea of their contents.

9.3.2.1 Westlaw

http://www.westlawinternational.com/ A very large full-text legal information database used extensively in the English-speaking world. It contains many journals and its coverage of case law and legislation is extensive. Other types of documents are also found on Westlaw. (Please
note that the database *LexisNexis International* is a very similar database. The difference lies in that the journal titles and the law report series are not all the same).

**Using Westlaw**

1. Once access to the database is gained you will need to select the ‘tab’ (near the top under ‘Westlaw International’) that you would like to search under, eg WLI Academic; World Journals; Westlaw UK, US Research; 50 State Surveys; European Union and so on.
2. Then select the database you require when searching in *Westlaw*, for example: ‘Combined world journals and law reviews’; ‘US collection-All Federal and State Cases’; ‘United Kingdom Statutes’ and so on. (Tip: In general, use ‘World Journals’ for journal articles and ‘WLI Academic’ for case law and legislation).
3. If you use the ‘Terms and connectors’ search option (which is recommended) you will need to search for a phrase by using inverted commas. Using “ ” for the phrase keeps the words together.
4. Other searching tips:
   - &    AND                    /s    In same sentence
   - space OR                    /p    In same paragraph
   - “”    Phrase                  /n    Within n terms of
   - %    But not                  AU( )  author’s name
   - !    Root expander            TI( )  words in the article title
   - *    Universal character      SU( )  summary
5. For example, search in the title for articles written on the topic of ‘therapeutic justice’ by putting in: TI(“therapeutic justice”).

See screen shot on next page.
The results can be printed or e-mailed. Note that the list of references - ‘Result List: 7 docs’ is on the left, whereas the document itself, the first article on the ‘Result List’, is displayed in the middle of the screen. Scrolling down the ‘Result List’ will take one to the other articles. The results will look like this:
9.3.2.2 HeinOnline

http://heinonline.org/ A subscription database that is much used in law school libraries. This is also a full-text international legal database, but it differs from the others in that it is a retrospective database. It usually carries the full-text of the journals (and other documents) from the first volume. The focus is on journals.

Using HeinOnline:

To familiarise yourself with the database, try this exercise:

1. Gain access to their webpage.
2. Once on the HeinOnline webpage go to: Subscribers click here to enter.
3. Access requires a username and password
4. Select ‘Law Journal Library’
5. Use the ‘Search’ tab and then click on ‘Field Search’
6. Type in ‘therapeutic justice’ using the ‘title’ field - as in the screen shot to the right:
The results should look like this:
9.3.2.3 Other foreign databases for law journals

All the large legal databases mentioned in 7.3.2 above are widely used and provide access to a great deal of legal scholarship. Some also provide access to case law and legislation. See also:

§ LexisNexis http://www.lexisnexis.com/
§ Justis http://www.justis.com/ (Justis and Justcite)
10 Government information

Statutory law is passed by parliament and therefore government is the source of this legal information. Government printers are usually responsible for the issuing of the government gazettes, statutes, bills, subordinate legislation, etc. Note that Government Gazettes from South Africa are not available online from the printers office. In general, however, Government websites may be a good source for government documents and legislation.

For South Africa, the following websites are suggested:

- Government’s own website: http://www.gov.za
- Polity: http://www.polity.org.za
11 Documents and treaties

There are books in libraries that contain this material but it is recommended that you first try the Internet for these.

11.1 South Africa

- For a list of treaties and conventions signed by the South African government go to http://www.dfa.gov.za/foreign/index.html. For South Africa’s involvement in conventions and treaties on environmental affairs go to http://www.environment.gov.za/Enviro-Info/env/intro.htm. This website has links to the full text of the conventions.
- SADC Key documents: http://www.sadc.int/index/browse/page/32.

11.2 Other countries

- Yale Law School, Avalon Project, Documents in law, history and diplomacy: http://avalon.law.yale.edu/.
11.3 Environmental

- For South Africa’s involvement in conventions and treaties on environmental affairs go to http://www.environment.gov.za/Enviro-Info/env/intro.htm. This website has links to the full text of the conventions.
12 Understanding references

Academic books and journal articles are characterised by the inclusion of references. In order to substantiate a statement, argument or idea in law, writers will refer to legislation, case law and the writings of other researchers in law. The references to such material will usually be found, in the legal field anyway, in the footnotes and the bibliography. For someone unaccustomed to the terminology used, the terms used could be confusing and it could therefore be difficult to be able to follow up these references.

There are many reference techniques and those will not be discussed here. In general, though, one should bear in mind that a reference should contain all the information needed to actually find the document referred to, so that one can see the contents oneself.

12.1 Books, monographs, textbooks and chapters

A reference to a book should always include:

- The title
- The author(s) or editor(s)
- Publisher
- Place of publication
- Year of publication
- Edition (if not the first edition)

Note that a chapter in a book may be referred to specifically, especially when the chapters are written by different authors. The reference may then look something like this (note the use of the word ‘in’):


12.2 Journal articles

It makes no difference whether the article is in print or electronic format, the citation or reference is the same. It is not required to say that the article was obtained from the *Westlaw* database.
Journal article references are characterised by the following:

- Author of the article
- Article title
- Journal title
- Year of that issue
- Either volume, issue or number or a combination of these
- Pages - beginning and end of the article

There are various ways to cite an article but the reference should always contain the above items of information. An example follows:


Abbreviations for law journals are commonly used in references. For abbreviations in general see http://www.legalabbrevs.cardiff.ac.uk/ - Cardiff Index to Legal Abbreviations. The abbreviations that are used for the South African law journals are listed below:
<table>
<thead>
<tr>
<th>Journal Title</th>
<th>Abbreviation</th>
<th>Journal Title</th>
<th>Abbreviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comparative and International Law Journal of South Africa</td>
<td>CILSA</td>
<td>South African Journal on Human Rights</td>
<td>SAJHR</td>
</tr>
<tr>
<td>Contemporary Labour Law</td>
<td>CLL</td>
<td>South African Law Journal</td>
<td>SALJ</td>
</tr>
<tr>
<td>De Jure</td>
<td>DJ</td>
<td>South African Mercantile Law Journal</td>
<td>SA Merc LJ</td>
</tr>
<tr>
<td>De Kebus</td>
<td>DR</td>
<td>South African Public Law or Suid-Afrikaanse Publiekreg</td>
<td>SAPL or SAPR</td>
</tr>
<tr>
<td>Employment Law</td>
<td>EL</td>
<td>South African Yearbook of International Law</td>
<td>SAYIL</td>
</tr>
<tr>
<td>Economic and Social Rights in South Africa Review</td>
<td>ESR</td>
<td>Stellenbosch Law Review or Stellenbosse Regstydskrif</td>
<td>Stell LR</td>
</tr>
<tr>
<td>Industrial Law Journal</td>
<td>ILJ</td>
<td>Tydskrif vir Regswetenskap or Journal for Juridical Science</td>
<td>TRW or JJS</td>
</tr>
<tr>
<td>Journal for Juridical Science or Tydskrif vir Regswetenskap</td>
<td>JJS or TRW</td>
<td>Tydskrif vir Hedendaagse Romeins-Hollandse Reg or Journal of Contemporary Roman-Dutch Law</td>
<td>THRHR</td>
</tr>
<tr>
<td>The Judicial Officer</td>
<td>TJO</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juta’s Business Law</td>
<td>JBL</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Magistrate</td>
<td>TM</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Modern Business Law of Moderne Besigheid</td>
<td>MB</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
12.3 Case law or law reports

There are a fair number of law reports series in South Africa. In law it is essential to be familiar with the recognised South African citations to cases. See 4.1 above for the style used to cite South African case law.

Once you are familiar with the South African law report citations it is easier to recognise a law report from a foreign country. There are probably thousands of different series and it is not possible to be familiar with all of them. There are a few publications which list the abbreviations to law reports.

- D Raistrick *Index to legal citations and abbreviations* (1994) East Grinstead: Bowker-Saur (this publication also gives standard abbreviations to law journals)
- S Noble *Noble’s revised international guide to the law reports* (1998) Etobicoke: Nicol Island
- *Cardiff index to legal abbreviations* at http://www.legalabbrevs.cardiff.ac.uk/

12.4 Terminology

Some of the most common terms used in footnotes follow:

- *Supra*  above
- *Infra*  below
- *Cf (confer)*  compare
- *Ch*  chapter
- *Contra*  to refer to a contrary view
- *Ed*  edition
- *Et seq (et sequens)*  and the following
- *Ibid (ibidem)*  the same, as above - used when referring to the exactly the same reference as the one above
- *Id*  used when citing to the immediately preceding authority.
- *loc cit (loco citato)*  in the place quoted
- *n (or fn)*  footnote
- *Op cit (opere citato)*  in the book previously mentioned, ‘opus’ means ‘a work’
12.5 Common abbreviations within South African references

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Appeal Court</td>
</tr>
<tr>
<td>AD</td>
<td>Appellate division</td>
</tr>
<tr>
<td>All ER</td>
<td>The All England Law Reports</td>
</tr>
<tr>
<td>All SA</td>
<td>The All South African Law Reports</td>
</tr>
<tr>
<td>ALS</td>
<td>Association of Law Societies</td>
</tr>
<tr>
<td>AMSSA</td>
<td>Arbitration, Mediation Service of South Africa</td>
</tr>
<tr>
<td>ANC</td>
<td>African National Congress</td>
</tr>
<tr>
<td>ANCWL</td>
<td>African National Congress Womens’ League</td>
</tr>
<tr>
<td>ANCYL</td>
<td>African National Congress Youth League</td>
</tr>
<tr>
<td>a quo</td>
<td>from which</td>
</tr>
<tr>
<td>AS</td>
<td>Annual Survey of South African Law</td>
</tr>
<tr>
<td>ASSA</td>
<td>Annual Survey of South African Law</td>
</tr>
<tr>
<td>BAC</td>
<td>Buchanan’s Appeal Cases</td>
</tr>
<tr>
<td>BALR</td>
<td>Butterworths Arbitration Law Reports</td>
</tr>
<tr>
<td>BCLR</td>
<td>Butterworths Constitutional Law Reports</td>
</tr>
<tr>
<td>BCT</td>
<td>Broadcasting Complaints Tribunal of SA</td>
</tr>
<tr>
<td>BF&amp;P</td>
<td>Butterworths Forms and Precedents</td>
</tr>
<tr>
<td>BIP</td>
<td>Burrell’s Intellectual Property Law Reports</td>
</tr>
<tr>
<td>BLLR</td>
<td>Butterworths Labour Law Reports</td>
</tr>
<tr>
<td>BPLR</td>
<td>Butterworths Pension Law Reports</td>
</tr>
<tr>
<td>BP</td>
<td>Burrell’s Patent Law Reports</td>
</tr>
</tbody>
</table>

Kok et al 65
Bona fide in good faith
Bop Bophuthatswana
Bpk Beperk
C Cape
CAC Competition Appeal Court
C&B Corbett and Buchanan Quantum of Damages
CC Constitutional Court
CCMA Commission for Conciliation, Mediation and Arbitration
CIR Commissioner for Inland Revenue
CK Ciskei
Co Company
CODESA Convention for a Democratic South Africa
Contra bonos mores Against good morals
D Durban and Coast local division
D&C Durban and Coast local division
De facto in fact
De jure in law
E Eastern Cape
ECJ European Court of Justice
ECHR European Convention on Human Rights
EDL Eastern Districts Local Division
EHHR European Human Rights Reports
et seq and the following page
GATT General Agreement on Tariffs and Trade
GenN General Notice
GN Government Notice
HSRC Human Sciences Research Council
ICJ International Court of Justice
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ILO</td>
<td>International Labour Organization</td>
</tr>
<tr>
<td>ITC</td>
<td><em>Income Tax Cases</em></td>
</tr>
<tr>
<td>ITR</td>
<td><em>Income Tax Reporter</em></td>
</tr>
<tr>
<td>Ltd</td>
<td>Limited</td>
</tr>
<tr>
<td>LAC</td>
<td>Labour Appeal Court</td>
</tr>
<tr>
<td>LAWSA</td>
<td><em>The Law of South Africa</em> (an encyclopaedia of SA Law)</td>
</tr>
<tr>
<td>LC</td>
<td>Labour Court</td>
</tr>
<tr>
<td>LCC</td>
<td>Land Claims Court</td>
</tr>
<tr>
<td>LHR</td>
<td>Lawyers for Human Rights</td>
</tr>
<tr>
<td>LRA</td>
<td>Labour Relations Act</td>
</tr>
<tr>
<td>LRC</td>
<td>Legal Resources Centre</td>
</tr>
<tr>
<td>MN</td>
<td>Municipal Notice</td>
</tr>
<tr>
<td>Mpy</td>
<td>Maatskappy</td>
</tr>
<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
</tr>
<tr>
<td>NLR</td>
<td>Natal Law Reports</td>
</tr>
<tr>
<td>Nm</td>
<td>Namibia</td>
</tr>
<tr>
<td>NYP</td>
<td>not yet published</td>
</tr>
<tr>
<td>O</td>
<td>Orange Free State</td>
</tr>
<tr>
<td>OAU</td>
<td>Organization of African Unity</td>
</tr>
<tr>
<td>PAB</td>
<td>Publications Appeal Board Reports</td>
</tr>
<tr>
<td>PC</td>
<td>Privy Council</td>
</tr>
<tr>
<td>PFA</td>
<td>Tribunal of the Pension Funds Adjudicator</td>
</tr>
<tr>
<td>PH</td>
<td>Prentice Hall</td>
</tr>
<tr>
<td>PN</td>
<td>Provincial Notice</td>
</tr>
<tr>
<td>Proc</td>
<td>Proclamation</td>
</tr>
<tr>
<td>Pty</td>
<td>Proprietary</td>
</tr>
<tr>
<td>R</td>
<td>Rex, Regina, the Crown</td>
</tr>
<tr>
<td>SC</td>
<td>Supreme Court; senior counsel (Latin: senior consultus)</td>
</tr>
</tbody>
</table>
SCA
T
T
UNCITRAL
UNCRC
UNDP
UNEP
UNESCO
UNHCR
UNICEF
UNIFEM
V
WIPO
Z
ZS

Supreme Court of Appeal
Transvaal
Transkei
United Nations Commission on International Trade Law
United Nations Convention on the Rights of the Child
United Nations Development Programme
United Nations Environment Programme
United Nations Educational, Scientific and Cultural Organization
United Nations High Commissioner for Refugees
United Nations Childrens Fund
United Nations Development Fund for Women
Venda
World Intellectual Property Organization
Zimbabwe
Supreme Court, Zimbabwe
13 Books on legal writing and research

With regard to books on research and on writing itself, the following are suggested:

- Hofstee E 2006 *Constructing a Good Dissertation*. Johannesburg: EPE
- Mouton J 2001 *How to succeed in your master’s and doctoral studies*. Pretoria: Van Schaik
- Squires LB 1996 2nd ed. *Legal writing in a nutshell*. St Paul: West (or the latest version)
- Van der Walt C and AG Nienaber. 2002 2nd ed. *English for law students*. Lansdowne: Juta
Bibliography