



Court and Legal Reporting Guidelines

The South African legal system is based on the English legal system, Roman-Dutch law. A law, or statute, is an Act that has been passed by parliament. Common law are those laws which need no interpretation and are not governed by statutes such as the crimes of murder, rape, theft and trespassing. Before 1994 parliament was regarded as the highest law maker. That changed with the adoption of first the interim constitution and later the constitution in 1996.

The courts consists of the Constitutional Court, the Supreme Court of Appeal, the High Court, the Labour Appeal Court, the Labour Court, the Regional Court, Land Claims Court, Income Tax Special Court, the Divorce Court, the District Court and the Small Claims Court.

Also found in the legal firmament are the Competition Commission which has investigative power, the Competition Tribunal which is adjudicative and the Competition Appeal Court. The latter two bodies are chaired by High Court judges, These bodies are all products of the Competition Act but its jurisdiction is now subject to a dispute.

The Constitutional Court is the highest court in the land and judgment by this court is supreme law. It hears cases of a constitutional nature and weighs up laws to determine if it passes constitutional muster. Should the court find that a law unconstitutional it would either strike down the law or, as in recent cases, suspend the operation of its judgments to give the government time to amend any defects.

The president of the Constitutional Court is known as the Chief Justice and he is assisted by 10 other judges. It is not often that all the judges agree on a particular case and when that happens, the judges who disagree with the majority, would hand down a dissenting judgment.

The Constitutional Court, through its judgments, would often give new interpretations to existing judgments, and would often develop new law.

There are High Courts located in Bloemfontein, Cape Town, Grahamstown, Kimberley, Pietermaritzburg, Pretoria, Durban, Johannesburg and Port Elizabeth.

The High Court is divided in provincial and local divisions eg. the Cape High Court is officially known as the Cape of Good Hope Provincial Division (CPD), the Pretoria High Court is known as the Transvaal Provincial Division (TPD) while the Witwatersrand Local Division is known as the Johannesburg High Court.

The chief judge in a provincial division is known as the Judge-President and his/her deputy is known as the Deputy Judge-President. Previously judges were selected from the ranks of senior advocates but with the onset of a democratic South Africa judges are selected by the Judicial Service Commission (JSC). The JSC consists of the judges presidents of all the divisions, the premier of all the provinces, representatives all the political parties and representatives of the national advocates body the General Council of the Bar.

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The High Court has the jurisdiction to hear all appeals from the lower courts and all appeals involving the likelihood of a sentence which exceeds 15 years. It also has the jurisdiction to hear civil cases which involves a fixed debts of more than R200 000. This court also hears all cases involving personal liberty. The High Court's decision is final unless there is an appeal either to a Full Bench (only if the decision was given by a single judge) or the Supreme Court of Appeal or the Constitutional Court.

When an appeal is heard against a criminal conviction, it must be heard by two judges. If the case is complex, it would be heard by three judges. This is known as a Full Bench. In an appeal against a criminal conviction the person who appeals is known as the Appellant while the state is known as the Respondent. The Appellant would state his case first. In civil matters the person who starts is called the Plaintiff while the other side is known as the Defendant.

Most people who appear in the High Court are advocates. Attorneys also have a right of appearance. The difference between advocates and attorneys is that advocates wear a white bib while attorneys wear a tie under their gowns. When someone is admitted as an advocate, they are being called to the Bar. All attorneys are members of the side Bar.

It is uncool to refer describe advocates as "Advocate Joe Bloggs". The correct way is to say "Joe Bloggs, counsel for..." Advocate denotes a qualification and is not a title.

An advocate cannot take instructions, or money, directly from a client. An attorney would brief counsel, or instruct an advocate, to appear in a particular matter. Advocates' offices, like those of judges, are known as chambers.

After 10 or more years in practice and having gained considerable expertise in some areas of law, advocates would, with the support of the Bar Council, apply to the president for senior counsel status. Once the president issues a "Letter Patent" that advocate can sign him or herself as Joe/Jane Bloggs SC. This is also known as taking silk, meaning that the senior advocate is entitled to wear a silk gown.

You will also notice advocates carry a red cloth bag. This is known as a robe bag. It comes from an old tradition whereby if a junior advocate had assisted a senior advocate in a big case or cases, he/she would be rewarded with the bag as a token of appreciation. His or her initials would be embroidered on the bag. Senior advocates traditionally have blue bags.

Advocates' professional body is known as the Bar Council e.g. Cape Bar Council and the national umbrella body is known as the General Council of the Bar. The Bar Council to which an advocate belongs has the power to charge them with misconduct and has the power to fine them and impose other sanctions.

Every criminal conviction in which imprisonment follows or a heavy suspended sentence is imposed, is automatically reviewed by a High Court judge. This is an administrative action done in his chambers and, if an irregularity is found, the judge would order a formal review in court. It is often in cases like this that the judge would appoint an *amicus Curiae* (friend of the court) to assist a party who has been wronged. A recent example is where Judge Siraj Desai appointed an *amicus Curiae* when the V & A Waterfront Company tried to interdict a homeless person from entering the Waterfront.

Judges could also be appointed to head commission of inquiry such as the Hefer Commission into allegations that Bulelani Ngcuka was an apartheid spy.

Only the president can appoint a judicial commission of inquiry. The Western Cape Province however is an exception because in terms of its own constitution the Premier can appoint a judicial commission of inquiry. You will recall Judge Siraj Desai was appointed to investigate the role of German fraudster Jurgen Harksen in a DA funding scandal.

Of course other commissions could be appointed such as the section 417 inquiry into the multi-million rand collapse of LeisureNet, the company which owned the now defunct Health and Racquet Clubs.

In court judges are addressed as "Your Lordship", or "My Lord" (M'Lud). Never "Your Honour". In Afrikaans judges are addressed as "u Edele" or simply "Edele". Magistrates are addressed as "Your Worship" or "u Edele" in Afrikaans.

Judges wear robes of two colours. A black robe is for civil matters while judges presiding in criminal trials wear red robes. A District Court Magistrate wears a black robe while a Regional Court magistrate wears a black robe with a red stripe sewn in on the chest area. An appeal against a criminal conviction is regarded as a civil case and judges therefore wear black robes.

In criminal cases a judge is assisted by two assessors, who could be either attorneys, advocates or retired magistrates or prosecutors.

A criminal prosecution is instituted by the Director of Public Prosecutions (formerly Attorney-General) and the state is represented in a criminal case by a state advocate. In civil matters the state is represented by the state attorney's office who often appoints advocates in private practise to act on its behalf. This could be on behalf of the Minister of Safety and Security where a policeman had fatally wounded someone.

If someone is arrested for either petty or serious crime, they would first appear in the Magistrates Court (the District Court) where they would be asked to plead to the charge, or charges. Depending on the severity of the offence, the person would either be tried in District Court, the Regional Court or in cases of murder, multiple fraud, culpable homicide etc be tried in the High Court. Minimum Sentence legislation now means that a High Court must decide on the ultimate sentence.

The District and Regional Courts would also conduct inquests in all cases of unnatural deaths. Some inquests are dealt with administratively (i.e in the office of the magistrate when there are no dispute of facts) or it would be held in open court. In such cases the magistrate would be assisted by assessors who would have the necessary expertise in a particular matter. If for example someone dies on the operating table of a hospital, the magistrate would be assisted by a medical doctor.

In rare cases inquests would be conducted by a High Court judge especially in cases of multiple deaths. An inquest magistrate must make four findings. The identity of the deceased, the cause of death; whether the person's death has been caused by an act or omission on the part of anyone and; whether can be held criminally liable.

People you will find in a (High) Court room are:

- ❑ The judge's registrar, who often sits below the judge. Be polite to this person at all times. She (often is a woman) is your passport to access to the judge. Cross this person once and you will rue the day. They have long memories. The judge's registrar would be able to assist you with the names and spelling of the lawyers involved, copies of judgments and access to the court file. It is crucial for you to maintain good relations with this person.
- ❑ Another person you will depend on is the stenographer. This is the person wearing a headphone. This person is not listening to music but ensures that the proceedings are recorded. If you miss crucial evidence, you could ask the stenographer to play the recording back during tea or lunch adjournment. If a trial is underway, the evidence would be transcribed over night and is known as a running record or a transcript.
- ❑ Other allies are the interpreter and last but not least the usher who escorts the judge in and out of court (in civil and criminal trials). This is most likely the person who would shout "Rise in Court" when the judge enters or leaves
- ❑ Another person to have on your side would be the police court orderly. They are often a wealth of information and could gain you access to interesting exhibits etc.
- ❑ Of course in criminal trials do not forget the investigating officer.

While access to the courts is a constitutional right, it is incumbent on court reporters to ensure that they respect the courts as an institution. When you enter a courtroom give a small bow. This shows deference to the court. Dress smartly at all times. T-shirts and beach tongs are out. Ensure that you switch your cell phone off before you enter a court room. You leave it on at your peril.

Latin is often used in court language. Some words and phrases you will come across are in every day use. This includes *rule nisi* (interim order), *ex parte* (without notice), *audi alteram partem* rule (hear the other side), *locus standi* (right of appearance) etc.

Your first port of call when you enter the court building is to read the court roll attached on the notice board. The first part of the court roll consists of cases that would be dealt with in the Motion Court or Third Division. Here you will find anything from urgent interdicts, insolvencies, presumption of death and asset forfeiture cases and towards the latter part of the roll divorces. Proceedings takes a few minutes and would either be disposed of or postponed for trial to another court. Divorces on average takes three minutes to finalise. At the back of the court roll you will find civil trials. The initials of the judge would be given e.g SD (for Siraj Desai, the names of the parties involved in the trial and the court number. You also see a judge described as Desai J. The initial J is not that of his first name but denotes Desai Judex (Justice Desai).

Once you get to the court room in which the trial takes place, approach the instructing attorneys during tea and lunch breaks and ask them to assist you either with copies of the court papers or, if you do not understand something, ask them to explain it to you. Attorneys and advocates are normally eager to assist reporters because it ensures that the case is properly and correctly reported.

Court reporting could seem like a daunting task in the beginning. You could however make the beat your own and introduce your own style to make it interesting and exciting to your listeners.

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