

PRACTICAL LAW FOR SOUTH AFRICAN STUDENTS



1: Introduction to South African law and the legal system

mai madrina menon or more our constant

illustrated by Andy Mason



Book One Introduction to South African law and the legal system

David McQuoid-Mason

illustrated by

Andy Mason



Published by

The Association of Law Societies of South Africa and the Centre for Socio-Legal Studies at the University of Natal, Durban





ISBN (Street Law Series) 0 | 86980 547 9 ISBN (Book T, Student Text) 0 86980 548 7 ISBN (Book T, Teacher's Manual) 0 86980 549 5

© David McQuoid-Mason, Andy Mason and Association of Law Societies of South Africa.

First impression 1987 Revised impression 1988

Revisions have been made on pages 19, 24, 28, 56, 57, 58, 59 and 69 to bring the text in line with new legislation governing the Magistrates' Courts and Small Claims Courts.

This book is copyright. Schools and non-profit community groups have permission to photocopy parts of this book for use in teaching materials, provided that: such materials are at no stage printed or sold, the original meaning is retained, and proper credit is given to *Street Law: Practical Law for South African Students.* All other persons and organisations wishing to reproduce materials from this book in any manner whatsoever should obtain permission from the publishers.

Designed and produced by Tegwen Publications, tel (031) 257573
Typography: Jeremy Woodhouse
Typesetting: Lauren Smart of Hirt and Carter, Durban
Printed by Robprint, Pinetown
Set in Gill Sans & American Typewriter.

This book is published and distributed by the Association of Law Societies of South Africa and the Centre for Socio-legal Studies, University of Natal, Durban. Copies of this book and its companion Student Texts and Teachers' Manuals are available direct from: Association of Law Societies, 2nd Floor, Prodinsa Building, cor Pretorius and Beatrix Streets, Arcadia 0083; and, Centre for Socio-legal Studies, School of Law, University of Natal, King George V Ave, Durban 4001.

The views expressed in this book are those of the authors and do not necessarily represent those of the publishers.

Acknowledgements

Acknowledgements are due to the Association of Law Societies (ALS) for financing the Street Law project: Graham Cox for enlisting the support of the ALS and overseeing the project; Edward O'Brien, Co-Director of the National Institute for Citizen Education in the Law (NICEL), Washington DC for introducing the concept and acting as a consulting editor; the pioneering America text book Street Law: A Course in Practical Law 3ed (1986) published by West Publishing Co., USA and NICEL on which the South African Street Law books are based; and the LRC Advice Office Training Manual for aspects of South African public interest law.

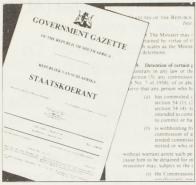
Thanks are also due to the 1985 Natal University legal aid students who prepared an early Street Law draft; the 1986 law students for testing the materials in the schools pilot project; Mandla Mchunu for running the 1986 pilot project; Alan Rycroft for supervising the 1986 pilot project; Anne Kroon of the Careers Information Centre for assisting in setting up the 1986 pilot project; and Margaret Fisher, of NICEL, Seattle, USA, Kelebani Maope and Michael Meteka of the Practical Law for Lesotho Project who field-tested some of the 1986 Street Law materials in Lesotho.

Finally thanks are due to Beverley Dyason for assisting with lay editing and Nomathemba Khuboni for typing the manuscript.

Table of contents



Imagine there were no laws



How S A law is made



The different courts in S A



Settling disputes outside of court

1.	Street	law	and	law	in	general.
----	--------	-----	-----	-----	----	----------

A.What is Street law?		
B. What is law?	5	5

2. Where law comes from, how it is made and the different kinds of law.

A.Where South African law comes from	7
B. How South African law is made Statute Law	8
Common Law Judgments and precedents	12
C. Kinds of laws	14

3. The courts and settling disputes outside of the courts.

A. The different courts in South Africa	18
I. Magistrates' Courts	19
i) Criminal courts	19
ii) Civil courts	19
2. Supreme Court	20
3. Appellate Division	21
i) Trials	22
ii) Appeals	22
iii) Review	24
4. Small Claims Courts	24
5. Special courts for disputes between Africans	25
B. Settling disputes outside of court	29
I. Negotiation	31
2. Arbitration	31
3. Mediation	31

Table of contents



Advocates and attorneys



People who can't afford lawyers



Problems with lawyers



Enforcing a judgement

4. Lawyers and the adversary system.

A.Lawyers	35
I. When do you need a lawyer?	35
2. Different types of lawyers	36
i) Advocatesii) Attorneysiii) Conveyancers	37 37 39
iv) Notaries Public	39
3. How to find a lawyer i) Finding an attorney ii) Finding an advocate	39 40 40
4. People who cannot afford lawyersa) University law clinicsb) Legal Aid Boardc) Advice officesd) Legal Resources Centres	41 41 42 43 43
5. Help in political cases	44
6. Working with your attorney	46
7. Problems with lawyers	46
B. The adversary system	47
I. Should lawyers defend "guilty" people?	49
2. Steps in a trial under the adversary system	50

5. Civil courts and Small Claims Courts

A.Civil courts	52
I. Examples of civil cases	53
2. Steps in a civil case	53
3. Enforcing a judgment	55
B. Small Claims Courts	57
I. Examples of Small Claims cases	58
2. Steps in a Small Claims case	59
nder and Simple legal dictionary	63