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Topic 1
General principles of the Law of Criminal Procedure
Module 1

General principles of the Law of Criminal Procedure

Overview
In this module you will:
• name the general principles of the Law of Criminal Procedure and give examples
• discuss related principles of the Bill of Rights and the Law of Criminal Procedure with examples.

Introduction
Law is necessary for a safe society as it orders and standardises human interactions. It is a hugely comprehensive and dynamic field of study. If we know what the law consists of, we can develop a feeling for justice. Each and every citizen should make it their responsibility to know their rights and to respect the corresponding rights of others.

Anybody who is employed in the criminal justice system must have a basic knowledge of the laws of the country. By studying the Laws of Criminal Procedure and Evidence, you will be able to recognise the key principles of these laws as well as other legal rules of our country. We will identify, analyse and interpret the different principles and ways of implementing or carrying out the South African Laws of Procedure and Evidence. This subject will introduce you to the principles and procedures that apply prior to and during the adjudication or judging of the criminal and the crime committed. You will come to realise that the Laws of Criminal Procedure and Evidence are one of the basic instruments of a safe environment.

All the role-players in the criminal justice system work with criminals and crimes on a daily basis in the execution of their duties. As a result of the high crime rate in South Africa, criminal justice officials need to possess a basic knowledge of the Laws of Criminal Procedure and Evidence in order to combat and adjudicate crime effectively. There is a relationship between the Laws of Criminal Procedure and Evidence and police practice, criminology, criminal justice and governance. The Law of Criminal Procedure determines the rules and procedures which must be followed to punish people who contravene or break the norms of criminal law. It therefore describes the procedures that need to be followed to charge a person for an offence before a court and what procedures the court has to follow.

Our criminal procedure is contained in the Criminal Procedure Act, 1977 (Act No. 51 of 1977) and can therefore be regarded as codified. The criminal procedure is, however, not regulated only by the Criminal
Module 1: General principles of the Law of Criminal Procedure

Procedure Act and the following play an important part in the criminal procedure:
• other Acts which also contain rules for the criminal procedure
• the Constitution of the Republic of South Africa
• the decisions of our courts
• the common law where statutes are silent, i.e. where the statutes do not address a specific matter.

Assessment activity 1.1
Work on your own.
Obtain a copy of the Criminal Procedure Act from your lecturer and then answer the following questions:
1. Who published the Act?
2. Who promulgated the Act?
3. Who signed the Act?
4. What is the heading of section 39 of the Act?
5. Summarise, in your own words, the contents of section 39.

Assessment activity 1.2
Work on your own.
1. Explain the meaning of the word ‘codified’ in your own words.
2. What is the underlying principle of decisions by our courts called?
3. What is the meaning of common law?

The Law of Criminal Procedure forms part of the public law. Public law deals with the relationship between the state (as authority) and the subjects (people) of that state. The state prescribes certain norms of conduct that all members of society have to adhere to, and if a person transgresses or breaks these norms then he or she commits a crime. Such conduct not only affects the person against whom the crime is committed but the whole of society. The state will therefore use its authority to punish persons who commit crimes. The manner in which the state does this is set down in the Law of Criminal Procedure, which deals with the procedure of how a person accused of a crime must be brought before a court, the manner in which the trial must be conducted and the manner in which the punishment must be carried out. On the other hand, private law regulates legal relationships between individuals as subjects of the legal order.

The criminal procedure starts at a certain point, that is, when a crime is allegedly committed. The criminal procedure ends at a specific point when an accused person is either convicted and sentenced or acquitted.

Words & Terms
statutes – also referred to as Acts; they are laws laid down by an organ of state empowered to do so

Think about it
Consider a situation where someone attempts to commit a crime. Does attempt constitute a crime?
The Criminal Procedure Act contains provisions that empower certain persons to do certain things to prevent crimes. Although not part of the criminal process, these powers are closely linked to the powers that form part of criminal procedural powers. Examples of such powers are the powers to arrest, to search and to seize. As soon as a person is suspected of committing a crime, the criminal process starts and describes what should be done to ensure that the alleged offender is brought before the court.

Examples of persons who are empowered to prevent crimes are:
• justices of the peace
• peace officers who include magistrates, justices, police officials and correctional officials.
An example of a power given by the Criminal Procedure Act is the power to arrest someone under certain circumstances without a warrant of arrest.

Assessment activity 1.3
Work on your own.
List the sections in the Criminal Procedure Act (only the number and title of the section) dealing with:
1. arrest
2. search
3. seizure.

The criminal procedure process can be explained as shown below in Figure 1.1. Please note that this is only an example and there are other methods of ensuring that the accused appears in court. Note, too, that sentences other than a fine or imprisonment may be imposed.

Figure 1.1: An example of the criminal procedure process (Source: South African Police Service material)
The criminal process can be divided into four phases. The phases are the following:

- **The pre-trial stage** – This is where the crime is investigated until the commencement of trial. This part is addressed in sections 1–74 of the Criminal Procedure Act. In terms of section 205 of the Constitution, the power to investigate crime is vested in the police, and certain powers in terms of the Criminal Procedure Act have been given to them to do so. The police also have powers to investigate and prevent crime in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995) and other Acts. After the police have completed the investigation, the Director of Public Prosecutions or his or her representative decides whether sufficient evidence is available to indicate the guilt of the alleged offender and to justify the institution of a prosecution. We will discuss various aspects of this stage in Topics 2–6 of this guide.

- **Trial stage** – This stage commences with the trial and ends with the verdict of the court as to whether the accused is guilty or not. This part is addressed in sections 75–270 of the Criminal Procedure Act. This stage is discussed in Topic 7 in this guide.

- **Sentencing stage** – If the accused is found guilty, the court must consider the penalty, and so this phase occurs from the conviction until the court passes sentence. This part is addressed in sections 271–301 of the Criminal Procedure Act. This stage is discussed in Topic 8 in this guide.

- **Legal remedies** – This phase starts after the passing of the sentence and ends when the convicted person has exhausted all the legal remedies at his or her disposal to dispute the decisions of the court in the trial and sentencing stage. This part is addressed in sections 302–327 of the Criminal Procedure Act. This stage is discussed in Topic 9 in this guide.

### Unit 1.1: General principles of the Law of Criminal Procedure

We are now going to consider the general principles of the Law of Criminal Procedure. It is vital that you understand the concepts and the particular words we use in this context.
Accusatory criminal procedure system
The South African criminal procedure is an accusatorial procedure. This means that the crime is investigated by the police, and after the investigation has been completed all the evidence is provided to the prosecution. The prosecution then controls the process by formulating the charges and taking the case to court. It is then a case between the accused and the prosecution, with a judge or magistrate deciding on the matter without becoming involved unless in very specific circumstances.

In an inquisitorial procedure the judge controls the process and is actively involved in the process. The judge performs the investigative process by questioning an arrested person, and during the trial the judge does all the questioning.

Presumption of innocence
Presumption of innocence means that a person is regarded as innocent until properly convicted by a court. This right is contained in section 35(3)(h) of the Constitution, which provides that an accused person has the right to a fair trial, which includes the right to be presumed innocent. In practice, it requires that the prosecution must prove the guilt of an accused beyond reasonable doubt. As a result of this presumption the onus to prove the guilt rests on the prosecution and the accused does not have to prove his or her innocence.

Examples from our case law

Case 1. In the Constitutional Court case of Coetzee 1997(4) BCLR 437 (CC) 442, Judge Sachs described the aim of the presumption of innocence as not only to protect an individual on trial, but also to maintain public confidence in the integrity and security of the legal system.

Case 2. In the case of Nombewu 1996(4) All SA 621 (E), Judge Erasmus remarked that the Constitution is not a set of high-minded values designed to protect criminals from being punished as they deserve to be, but is a shield which protects all citizens from official abuse.

Case 3. In the case of Cloete 1999(2) SACR 137 (C), Judge Davis stated that the attempt to balance the crime-control and due-process approaches is done to preserve the Constitution and is not necessarily a nod in the direction of criminals and the warning against ‘community outrage’.

Assessment activity 1.4
Work in pairs.
Sometimes we hear people complain that ‘the law is soft on criminals’. This complaint would have been justified if the law is presumed to be ‘hard on victims’.
Discuss these ideas with a partner, and then list some of the reasons to argue against this complaint. File your work in your Portfolio of Evidence.
**Did you know?**

Judgments of the high courts and the Supreme Court of Appeal are reported in law reports. We use an abbreviated way to refer to each case, which includes names, letters and numbers. Cases before 1910 are cited in different ways as they were usually reported by individuals. From 1910 to 1946 the decisions of the separate divisions of the Supreme Court were reported separately. The different courts were referred to in the following manner:

- Appellate Division – AD
- Transvaal – TPD
- Natal – NPD
- Cape – CPD
- Orange Free State – OPD
- Witwatersrand – WLD
- Eastern Cape – ECD or E
- Northern Cape – NC
- Durban and Coast – DC
- South West Africa – SWA

From 1947 all reported decisions can be found in the *South African Law Reports*, which appear monthly and are bound quarterly.

For example *S v De Blom* 1977(3) SA 513 AD indicates that there was a case between the state and De Blom and that the case went to the Appellate Division. The ‘S’ is an abbreviation for the state and the ‘v’ is an abbreviation for versus, which means against. The case was reported in 1977 and the ‘3’ refers to the third volume of the law reports published in that year. ‘SA’ refers to the *South African Law Reports* and ‘513’ to the page on which the specific judgment commences. ‘AD’ indicates that the case was decided in the Appellate Division.

Apart from the *South African Law Reports*, cases can also be found in the following specialist law reports:

- *South African Criminal Law Reports* – SACR
- *Juta’s Commercial Law Reports* – CLR
- *South African Labour Law Reports* – SALLR
- *Labour Court Digest* – LCD
- *Butterworth Labour Law Reports* – BLLR
- *Butterworth Constitutional Law Reports* – BCLR

**Assessment activity 1.5**

**Work in a group.**

If we read in the newspaper that the police have arrested a person for a brutal murder, we usually immediately assume that it is in fact that arrested person who committed the murder. Why is that so? Debate this issue among yourselves. Share your conclusions with the rest of the class.

**The right to remain silent**

The right to remain silent means that an accused can never be forced to testify. An accused therefore has the right to choose whether or not to say anything during the plea proceedings or during the stage when he or she may testify in his or her defence. It is also applicable during the investigative phase. The right to remain silent is guaranteed in section 35(1)(a) of the Constitution. This section provides that any arrested person has a right to remain silent. In terms of section 35(3) of the Constitution, an accused person has the right to remain silent and not to testify during the proceedings. A person should not be penalised for exercising the right to remain silent and no one should presume that it is an indication of guilt as the person may have good reasons for remaining silent.
Privilege against self-incrimination

Section 35(3)(j) of the Constitution provides that an accused person has the right to a fair trial, which includes the right not to be compelled to give self-incriminating evidence. In the case of *Ferreira v Levin* 1996(1) BCLR 1 (CC), the Constitutional Court concluded the following:

- The right of a person not to be compelled to give evidence which incriminates such a person is inherent in the Bill of Rights.
- The rule against self-incriminating evidence is not simply a rule of evidence – it is inextricably linked to the right to a fair trial; if that right is not threatened the rule finds no application. For that reason someone already indemnified against prosecution, or a person already convicted of a crime who is subsequently called to give evidence against a co-conspirator, would not be entitled to claim the privilege in respect of evidence covered by the indemnity or the conviction.

Constitutional rights

A person who is exposed to the criminal justice system is vulnerable in the face of the extensive powers granted to state officials, and can easily become a victim of the formidable infrastructure of the state. The aim of granting rights to detained, arrested and accused persons is to protect them by ensuring that the ‘due process of law’ is upheld. The procedures that existed before the Constitution took effect were extended and were converted into constitutional rights. The interests of the individual should be balanced against the interests of the members of the community as a whole. Society’s interests relate to the dominant purpose of a system of criminal justice, which is to prevent crime effectively. The community has an interest in the successful detection of crime and prosecution of criminals. When officials or courts are called on to strike a balance between protecting individual rights and controlling crime, they should follow reliable fact-finding procedures in pursuit of the elusive ideal of finding the truth.

An ideal criminal justice system therefore rests on three pillars, namely:

- effective crime control
- protection of individual rights
- reliable fact-finding.

The inevitable infiltration of human rights into the system of criminal justice should be viewed as reinforcing rather than undermining the legitimacy of the system.

Independent judiciary

Section 165 of the Constitution deals with the judicial authority and provides, *inter alia*, that the courts are independent and subject only to the Constitution and the law, which they must apply impartially (without taking sides) and without fear, favour or prejudice.
Module 1: General principles of the Law of Criminal Procedure

Assessment activity 1.6

Work on your own.

Ask your lecturer to read section 165 of the Constitution to the class. Make a summary of all the salient points.

The moment members of the legal profession cease to be independent, judicial officers will become instruments of the government.

In the Constitutional Court case of *De Lange v Smuts NO and others* 1998(3) SA 783 (CC); 1998(7) BCLR 1253 (CC), Judge Ackermann stated that over time the courts will develop a distinctly South African model of separation of powers which fits the particular system of government provided for in the Constitution. This separation will:

- reflect a balance between South Africa’s history and the new dispensation
- control government by separating powers and enforcing checks and balances
- avoid diffusing power so completely that the government is unable to take timely measures in the public interest.

In the case of *Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa*, 1996, it was said that an essential part of the separation of powers is that there must be an independent judiciary. The mere fact, however, that the executive makes or participates in the appointment of judges is not inconsistent with the doctrine of separation of powers or with judicial independence. In many countries in which there is an independent judiciary and a separation of powers, judicial appointments are made either by the executive or by Parliament or by both. What is crucial to the separation of powers and the independence of the judiciary is that the judiciary should enforce the law impartially and that it should function independently of the legislature and the executive.

The importance of the independence of the judiciary was recognised in the case of *Bernstein and others v Bester and others NNO* 1996(2) SA 751 (CC); 1996(4) BCLR 745 (CC). This case dealt with the guarantee that every person has the right to have *justiciable* disputes settled by a court of law or other independent or impartial forums. Judge Ackermann stated, *inter alia*, that when the section is read which provides that the judiciary shall be independent, impartial and subject only to this Constitution and the law, the purpose seems to be clear. It is to emphasise the protection of the individual, the separation of powers, and particularly the separation of the judiciary from the other arms of the state. This section achieves this by ensuring that the courts and other forums which settle justiciable disputes are independent and impartial. It is a provision fundamental to the upholding of the rule of law and the constitutional state because it prevents legislatures, at whatever level, from turning themselves by acts of legerdemain (‘sleight of hand’ or trickery) into ‘courts’.

Did you know?

The principle of the separation of powers means that power in a government is divided between the legislative, executive and judicial authorities. Each branch has separate responsibilities. The legislative authority (or legislature) is the law-making body. The executive authority consists of those organisations that implement policies and legislation. The judiciary consists of the judges and magistrates who preside over the courts, and who decide what the laws mean and how they should be applied.

**Words & Terms**

**Justiciable** – capable of being decided by a court of law
The importance of the independence of the judiciary is evident from the text of an address on the *Role of the Judiciary in a Constitutional State* delivered by the late Chief Justice Mohamed:

“The exact boundaries of judicial power have varied from time to time and from country to country, but the principle of an independent judiciary goes to the very heart of sustainable democracy based on the rule of law. Subvert it and you subvert the very foundations of the civilisation which it protects....

What judicial independence means in principle is simply the right and the duty of judges to perform the function of judicial adjudication, through an application of their own integrity and the law, without any actual or perceived direct or indirect interference from or dependence on any other person or institution.”

**Assessment activity 1.7**

*Work on your own.*

Name three factors which determine the independence of the judiciary.

**Unit 1.2: The Bill of Rights and the Law of Criminal Procedure**

We will discuss the interactive roles of the Bill of Rights and the Law of Criminal Procedure under three headings: the founding principles of the Constitution; the rights of arrested, detained and accused persons; and limitations to procedural powers.

**Founding principles of the Constitution**

A humane criminal justice system is a prerequisite for a rights-based democracy. South Africa is not unique in its efforts to ensure a combination of humane treatment, effective crime control and reliable fact-finding in criminal justice.

**Assessment activity 1.8**

*Work on your own.*

Find and summarise sections 1 and 2 of the Constitution. Which one of the two deals with the supremacy of the Constitution?

File your summary in your Portfolio of Evidence.
The Bill of Rights lays down the rules that bind the state and which prohibit the state from violating the fundamental rights of an individual except where it is expressly allowed by the Bill. As a result of various provisions in the Constitution, the rules created by the Bill of Rights are of higher authority than other rules, which ensures that nobody can change or get around the Bill of Rights at will.

These provisions are as follows:

- The state must respect, promote and fulfil the rights in the Bill of Rights [section 7(2)].
- The Bill of Rights binds the legislature, the executive, the judiciary and all organs of state [section 8(1)].
- The Bill of Rights may only be amended by legislation adopted by a two-thirds majority of Parliament [section 74(2)].
- The Constitutional Court may declare legislation that is inconsistent with the Constitution invalid [section 167(5)].

Assessment activity 1.9

Work in pairs.
Find the sections in the Constitution that deal with the Bill of Rights, as mentioned above, and write down the headings of the following sections:

1. Section 7
2. Section 8
3. Section 74
4. Section 167

Rights of arrested, detained and accused persons

As we have said, persons who are exposed to the criminal justice system could become victims of the wide-ranging powers granted to state officials, if they were not given rights of their own. These rights, granted to detained, arrested and accused persons, protect them by ensuring that the law can be properly carried out. The Constitution specifically includes provisions related to the rights of arrested, detained and accused persons in the Bill of Rights (section 35). The exact wording of this section is included below.

Section 35 is one of the most detailed provisions in the Bill of Rights. The body of criminal procedure, consisting of common law and legislation, has for many years also protected individuals in various respects. In the case *Klein v Attorney-General WLD* 1995(3) SA 848 (W), the judge remarked that the court has, as the common law has always required, a clear duty to ensure that an accused person is afforded a fair trial. Apart from the right to legal representation at state expense, the common law principles have not been broadened or emphasised by the codification of the right to a fair trial in the Constitution.
Section 35 of the Constitution of the Republic of South Africa, 1996

35. Arrested, detained and accused persons.

(1) Everyone who is arrested for allegedly committing an offence has the right –
   (a) to remain silent;
   (b) to be informed promptly –
       (i) of the right to remain silent; and
       (ii) of the consequences of not remaining silent;
   (c) not to be compelled to make any confession or admission that could be used in evidence against that person;
   (d) to be brought before a court as soon as reasonably possible, but not later than –
       (i) 48 hours after the arrest; or
       (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
   (e) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
   (f) to be released from detention if the interests of justice permit, subject to reasonable conditions.

(2) Everyone who is detained, including every sentenced prisoner, has the right –
   (a) to be informed promptly of the reason for being detained;
   (b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
   (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
   (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
   (e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
   (f) to communicate with, and be visited by, that person’s –
       (i) spouse or partner;
       (ii) next of kin;
       (iii) chosen religious counsellor; and
       (iv) chosen medical practitioner.

(3) Every accused person has a right to a fair trial, which includes the right –
   (a) to be informed promptly of the charge with sufficient detail to answer it;
   (b) to have adequate time and facilities to prepare a defence;
   (c) to a public trial before an ordinary court;
   (d) to have their trial begin and conclude without unreasonable delay;
   (e) to be present when being tried;
   (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
   (g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
   (h) to be presumed innocent, to remain silent, and not to testify during the proceedings;
   (i) to adduce and challenge evidence;
   (j) not to be compelled to give self-incriminating evidence;
   (k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
   (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
   (m) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
(n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
(o) of appeal to, or review by, a higher court.

(4) Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.

(5) Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

We have learnt that everyone has the right to a fair trial. Do you think it is necessary to give a person who has been ‘caught in the act’ a fair trial? If that person is not given a fair trial, how does that affect you and the rest of society?

Think about it

Assessment activity 1.10

Work in a group.
Identify and compare the various rights of arrested, detained and accused persons as contained in section 35 of the Constitution and discuss in your groups. Write a summary for inclusion in your Portfolio of Evidence.

In the case of Zuma 1995(4) BCLR 401; 1995(2) SA 642 (CC), Judge Kentridge remarked that this section has for 150 years or more been recognised as basic principles of our law, although all of them have to a greater or lesser degree been eroded by statute and in some cases by judicial decision. The resulting body of common law and statute law now forms part of the background to this section.

In a later decision of the Constitutional Court in the case of Makwanyane 1995(6) BCLR 665 (CC), Judge O’Regan subscribed to this view, observing that in interpreting the rights contained in this section, those common law principles will be useful guides. She added that the main duty of the court, when interpreting the Constitution, is to look forward, not backward, to recognise the evils and injustices of the past and to avoid their repetition. However, pre-constitutional judicial interpretation will not necessarily reflect the correct approach.

Examples where section 35 has extended or accentuated the pre-constitutional position are as follows:

- The minimum conditions of dignified detention are listed [section 35(2)(e)].
- In common law there was no right to ‘be informed’ of the right to consult with a lawyer at detention.
- Previously there was no guarantee that ‘a partner’ had the right to visit or communicate with a detained person.
- Before the new Constitution, a detained person could not challenge ‘in person’ the lawfulness of detention before a court of law.
- Section 50(1) of the Criminal Procedure Act provides that an arrested person may be detained for a period not exceeding 48 hours unless he or she is brought before a court and further detention is ordered. In section 35(1)(d) a standard is introduced, that of ‘as soon as reasonably possible’. 

Limitations to procedural powers

Criminal procedural powers are the powers conferred upon certain persons by the law, which empower them to lawfully interfere with the rights of others in order to bring criminals to justice and to have them tried. Under normal circumstances these powers, for example to search, arrest and detain a person, would be inconsistent with the Constitution as they have a severe impact on the right of the person to freedom and privacy. The Bill of Rights does, however, contain a provision that some rights may be encroached upon in certain specified and limited circumstances (see the limitation clause in section 36 of the Constitution).

If an authorised person encroaches upon the rights of another in circumstances that do not fall under the specified and limited circumstances, then whatever evidence is collected will be invalid.

Assessment activity 1.11

Work in a group.
Obtain a copy of the provisions of section 36 of the Constitution and discuss it in your groups.

Assessment activity 1.12

Work in pairs.
Imagine that you are a judge of the Supreme Court. The Minister of Justice requests you to write a brief (short) addendum to the Constitution concerning the rights of the victims of criminal acts. What main points will you cover? Do not write more than one page. File your work in your Portfolio of Evidence.

Summary

The Law of Criminal Procedure determines the rules and procedures that must be followed to punish people who contravene the norms of criminal law. It therefore describes the procedure that needs to be followed to charge a person for an offence before a court, and what procedure then has to be followed by the court. Our criminal procedure is contained in the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

The Law of Criminal Procedure forms part of the public law. Public law deals with the relationship between the state (as authority) and the subjects (people) of that state.

The criminal procedure can be divided into four phases: the pre-trial, trial, sentencing and legal remedies stages.

The interactive roles of the Bill of Rights and the Law of Criminal Procedure can be viewed in relation to the founding principles of the Constitution; the rights of arrested, detained and accused persons; and limitations imposed on procedural powers.
## Summative assessment

### A: New words and phrases

Write the meanings on a sheet of paper and file the paper in your Portfolio of Evidence.

<table>
<thead>
<tr>
<th>New word/phrase</th>
<th>Meaning in your own words</th>
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<tbody>
<tr>
<td>accusatory system</td>
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<td>checks and balances</td>
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<td>common law</td>
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<td>criminal procedure (process)</td>
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<td>due process of law</td>
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<td>executive</td>
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<td>independent judiciary (judicial independence)</td>
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<td>inquisitorial system</td>
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<td>justice of the peace</td>
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<td>justiciable disputes</td>
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<td>Law of Criminal Procedure</td>
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<td>legislature</td>
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<td>presumption of innocence</td>
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<td>pre-trial stage</td>
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<td>separation of powers</td>
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<td>supreme law</td>
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B: Multiple-choice questions
There is only one correct answer for each question. It is therefore important to make only one cross (X) for each question.

Question 1: Which statement is correct?
A) Our criminal procedure is contained in the Criminal Procedure Act, 1977 (Act No. 53 of 1977).
B) Our criminal procedure is contained in the Criminal Procedure Act, 1996 (Act No. 108 of 1996).
C) Our criminal procedure is contained in the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
D) Our criminal procedure is contained in the Criminal Procedure Act, 1995 (Act No. 68 of 1995).

Question 2: Which statement is not correct?
A) Crime affects only the persons involved – the criminal and the victim.
B) Criminal procedure deals, inter alia, with how an accused person is brought before a court.
C) The Law of Criminal Procedure forms part of the public law.
D) The state prescribes certain norms of conduct that bind all members of society.

Question 3: Which statement is correct?
The criminal procedure is usually divided into:
A) five phases
B) three phases
C) two phases
D) four phases.

Question 4: Which statement regarding the accusatorial system is not correct?
A) The prosecution controls the process by formulating the charges and taking the case to court.
B) The judge controls the process and is actively involved in the process.
C) It is a case between the accused and the prosecution with a judge or magistrate deciding on the matter without involvement.
D) The South African criminal procedure is an accusatorial procedure.

Question 5: Which one of the following statements is correct?
A) The prosecution must prove the guilt of an accused beyond reasonable doubt.
B) The onus to prove the guilt rests on the prosecution.
C) The presumption of innocence means that a person is regarded as innocent until properly convicted by a court.
D) All the above statements are correct.

Question 6: In which case did the judge call the Constitution “a shield which protects all citizens from official abuse”?
A) Ferreira v Levin 1996
B) Coetzee 1997
C) Nombewu 1996
D) Cloete 1999
Question 7: In which case did the judge observe that the right of a person not to be compelled to give self-incriminating evidence is inherent in the (Constitutional) rights?
A) Ferreira v Levin 1996
B) Coetzee 1997
C) Nombewu 1996
D) Cloete 1999

Question 8: Which statement is not correct regarding the meaning of section 165 of the Constitution?
A) Courts are independent and subject only to the Constitution and the law.
B) Separation of powers and checks and balances are unconstitutional.
C) Courts must apply laws impartially and without fear, favour or prejudice.
D) Section 165 of the Constitution deals with the judicial authority.

Question 9: Which one of the following statements is correct?
An ideal criminal justice system should rest on three pillars, namely:
A) effective policing; protection of individual rights; and reliable fact-finding
B) effective crime-control; protection of social rights; and reliable fact-finding
C) effective crime-control; protection of individual rights; and reliable fact-finding
D) effective crime-control; protection of individual rights; and reliable officials.

Question 10: In which case did the judge remark that the rights of arrested, detained and accused persons have been with us for nearly 150 years?
A) Makwanyane 1995
B) Klein v Attorney-General 1995
C) De Lange v Smuts NO and others 1998
D) Zuma 1995

Final checklist
Check your competence

Now that you have worked through the general principles of the Law of Criminal Procedure, please check that you can perform the tasks below:

☐ I can name the general principles of the Law of Criminal Procedure with examples.
☐ I can discuss related principles of the Bill of Rights and the Law of Criminal Procedure with examples.