



WHAT ARE BYLAWS?

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1 BYLAWS AND LAWS ...

Bylaws are a type of **law** made by a municipal council.

But what *e x a c t l y* is "the law"? Without getting too philosophical, the answer is as follows ...

The law is a set of rules which have been developed by society to govern our everyday lives, the conducting of business, the operations of government – in fact, just about every human activity.

Almost **everything** we do on a daily basis is in some way influenced by these laws made to organize and structure our society.



Think it through!

Consider these areas of human life, all of which are regulated by law:

■ Birth Registration

■ Going to school





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- Driving to work



- Employment



- Marriage



- Family



So, we know what law is, but ...

“Where does law come from?”.

Law develops from 2 main sources:

#1: Common law

The first source (or type) of law is **common law**. Strange name, isn't it? But there is nothing “common” about common law – it's the foundation of our legal system!



BYLAWS



Common law is a set of legal principles which is ...

- based on the old Roman Dutch law (a set of rules developed during the Roman empire and extended by the Dutch in the 1600 and 1700s); and



- continually being developed (extended and applied to our modern times) by our courts as they adjudicate disputes brought before them.



Think it through!

You sue someone and take your dispute to court. “**See you in court!**” as they say in the movies. But how does the court decide who is right and who is wrong? The court looks at legislation (and more about that later), but judges also look at the common law. The courts resolve disputes (ie. complaints brought before them) by applying –



- ◆ the principles set out in the Constitution and legislation (but more on this later); and
- ◆ the common law, modifying the common law principles where required by the Constitution (and other legislation) and updating them to suit modern society as necessary.



BYLAWS



X-ample!

You are driving along the freeway one day and find, to your horror, that a large wooden crate has fallen off the back of the lorry and is sitting right in front of you. **Aaaaaaaaaaaaaargh!**

You apply the brakes, but not quickly enough and your car is written off. You later find out that the crate fell off the back of a truck owned by a local transport company. Further investigation reveals that the crate had not been properly secured to the truck.



There may not be any legislation which deals with your situation, so the courts will have to look at the common law. One of the common law principles is that each person must take reasonable steps to prevent harm to others. Using this principle, the courts find in your favour – the transport company should have properly secured the crate to its truck and the transport company has to pay you damages!

The courts use a system called **precedent**. Sounds strange? But it simply means that all courts resolve disputes in a very special way. Specifically, the court –



- investigates the circumstances of a case;
- looks around to see if any other court has had to resolve a dispute in similar circumstances; and
- if the circumstances are sufficiently similar, the court is obliged to resolve the dispute in the same way.



Think it through!

The precedent system sounds strange. But its great benefit is that it gives everyone certainty. You know that the court you approach today is likely to resolve your dispute in a similar way to a court which considered a similar dispute two years ago! You also know that a court in KwaZulu-Natal will, where appropriate, apply similar legal principles to a court sitting in Northern Province. That is ... unless the circumstances are different or new legislation has come along to change the law in the mean time.

So you can see that the common law develops as the courts consider disputes and apply (and modify) the old common law principles. As a result, you will see that common law develops slowly (as disputes arise and are considered) and somewhat haphazardly.



#2: Legislation

Legislation is the second source of law and develops in a **very** different way to common law.

Legislation is the **declaration** (or publication) of a set of rules by a legislator, such as the national parliament, a provincial parliament or a municipal council. Unlike common law, legislation does not slowly develop over time as the courts adjudicate disputes. Legislation is made when a sphere of government (national, provincial or local) decides that rules need to be made to govern a particular situation. Legislation is generally designed to deal comprehensively with a situation.



Think it through!

Let's take a look at some of the differences between common law and legislation ...



Feature	Common law	Legislation
Author	Courts	National, provincial and local government
Development	Gradual, as specific disputes arise	Instant, as legislatures decide to regulate a situation
Scope	Limited to the specific circumstances of the dispute in question	Comprehensively regulating a situation
Basis	Old Roman-Dutch principles, applied and modified	New law – what the legislature wants, subject to the Constitution.
Status	Modified by legislation; subject to the Constitution	Can modify common law principles; but also subject to the Constitution

2 DEFINING BYLAWS

What are bylaws?



Bylaws are a type of law, and specifically a type of **legislation**, made by a municipal council, rather than the other two spheres of government (ie. provincial and national government).

Bylaws, as legislation, must be distinguished from common law. Like all legislation, bylaws are –

- ✗ made by a legislature (your municipal council); and
- ✗ intended to comprehensively regulate a particular situation (such as, street trading).



BYLAWS

Bylaws are **local** in the sense that they –



- relate to issues in the local community; and
- apply only in the area of jurisdiction of the municipality concerned.

Read on to find out more about bylaws ... how they relate to other types of legislation, why they are important and their status.

3 BYLAWS AND OTHER LEGISLATION

Each of the other spheres of government also makes legislation.



National government makes national Acts of Parliament, while provincial legislatures make provincial Acts.



Think it through!

Let's take a look at some of the differences between bylaws and other legislation ...

Feature	Bylaws	Provincial legislation	National legislation
Author	Municipal councils	Provincial Parliaments	National Parliament
Jurisdiction	Municipal areas	The province concerned	The whole of the Republic of South Africa
Subject matter	Local issues	Provincial issues	National issues



Find out more about how these types of legislation relate to bylaws in [The Status of Bylaws](#).

4 BYLAWS AND POLICY

Legislation, including bylaws, must be distinguished from policy.

A “policy” is a plan of action designed to advance or protect some collective goal of the community as a whole.



There are many forms of public policy, such as economic, social and environmental policy and policy is formulated at all three spheres of government – national, provincial and local.

The problem is that policy is general and cannot easily be enforced – it does not impose specific rights and obligations, but speaks broadly of goals and desirable states. So what does government do? It converts policy into legislation, which is detailed, comprehensive and enforceable!



X-ample!

One of government’s policies is the social and economic upliftment of local communities. At the level of policy, no-one has yet been specifically made responsible for achieving this goal and it is difficult for a community to take up the issue of their continuing social or economic deprivation.

So ... the policy was “actioned”, partly anyway, by the [Local Government: Municipal Systems Act](#). The Act requires, for example, that integrated development plans identify communities without access to basic municipal services ... this provides the starting point for assisting these communities. **Now** some sort of enforceable obligation has been created!



5 WHY ARE BYLAWS IMPORTANT?



Bylaws are a powerful tool for municipalities. Unlike the common law, bylaws are –

- purposefully developed, with a view to regulating a situation, rather than growing haphazardly as disputes arise; and
- a comprehensive attempt to govern all possible eventualities and not the determination of a rule in one small disputed circumstance.

In other words, bylaws (like other types of legislation) are comprehensive and deal with the subject in detail. This allows municipal councils to use bylaws to give effect to policy, which may not be legally-binding on the community. Bylaws are a vital policy-implementing tool!

Read on to find out how you can make better use of this important tool!

WELL DONE!

YOU HAVE COMPLETED THE

“WHAT ARE BYLAWS?”

MODULE