

# CLA1501

## 1. The South African Legal System

Law is a social science.

South African Law is not codified; recorded in one comprehensive piece of legislation.

**Origin:**

- Indigenous legal systems applied at the southernmost tip of Africa before 1652.
- Jan van Riebeeck arrives in Cape Town in 1652 and the adoption of Roman-Dutch law as a legal system to the Cape.

### 1.1 A SHORT HISTORY OF THE LAW

- Unlike most European continental legal systems, SA law is not codified:
  - It is drawn from various authoritative sources
  - Such as statutes (legislation) and decided cases
  - Occasionally also Roman and Roman-Dutch law.

**Roman Law**

- 735BC to AD658
- The *Law of the Twelve Tables of 449BC* were the cornerstone of the future development of Roman Law
- Attempts to codify the law led to the *Corpus Iuris Civilis (body or civil law)* which is still the primary authoritative source of Roman Law.

**Roman-Dutch Law**

- Roman Law was revised in the Netherlands during the 15<sup>th</sup> and 16<sup>th</sup> centuries and became mixed with the existing Dutch customary law.
- Some great Roman-Dutch Jurists:
  - Hugo de Groot "Father of Roman-Dutch Law"
  - Johannes Voet
  - Dionysius Godefridus van der Keessel
  - Johannes van der Linden

**English Law**

- After 1814, English Law began to seep into the existing Roman-Dutch system:
  - A jury was introduced
  - New legislation e.g. criminal often drew on English law
  - A number of statutes in existence today are squarely based on English legislation e.g. Bills of Exchange Act.

### 1.2 SOURCES OF LAW IN SOUTH AFRICA

- Some are authoritative: courts are bound by authoritative sources
- Others have merely persuasive authority: serves to convince a court to apply or interpret a rule in a particular way.

*Corpus Iuris Civilis*: codification of Roman law that is a primary authoritative source on which South African courts draw when reverting to Roman Law to solve a legal problem.

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