

*The Law and*

**YOU!**

*explaining YOUR RIGHTS under the Law!*

POLICE POWERS • MARRIAGE & DIVORCE  
ARRESTS • ACCIDENT COMPENSATION  
LANDLORD & TENANT • HIRE PURCHASE  
PASSES & PERMITS • THE RIGHT TO STRIKE

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*a 'New Age' pamphlet*  
**ONE SHILLING**

# THE LAW AND YOU

**D**O you know your rights under the law? What to do if you are arrested? The powers of the police to enter and search your home? How the pass laws function? Whether your landlord has the right to eject you? How to enter into a hire purchase agreement? Whether you can claim compensation for an injury or accident?

These questions and many others are answered in these articles by JURIST re-printed from NEW AGE Newspaper.

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## HOW THE LAW IS ADMINISTERED

In Roman law there was a saying "Where there is a remedy, there is a right." In other words, a legal right exists only, for practical purposes, where there are means of enforcing it. It is no use having a law laying down that something should be done if there is no machinery for ensuring that it is done. In any discussion of law and legal rights, therefore, it is advisable to begin with a discussion of the means of enforcement which are available to the ordinary citizen—especially to the ordinary citizen who cannot afford expensive legal advice.

If you have been the victim of a crime, such as theft, assault or fraud, the first thing to do is, of course, to complain to the police. But although this may lead to the punishment of the offender, it will not normally lead to your obtaining any compensation for the wrong done to you. And the police are of no assistance in cases of debt, trouble with landlords, matrimonial problems or wrongs committed by the Government itself. For redress in any of these matters, the individual has to bring an action in the civil courts, and this is often an expensive and complicated matter.

The courts in which civil claims are heard are the Supreme Court, the Magistrate's Court, the Native Divorce Court and the Native Commissioner's Court. The Native Commissioner's Court has jurisdiction over all matters where the parties on both sides are Africans, except for divorce cases and two or three other, less important exceptions. The Native Divorce Court has jurisdiction over divorce cases where both parties are Africans. The Magistrate's Court has jurisdiction over cases where one or both parties are not Africans

and where the matter in dispute does not exceed £200 and does not involve divorce, wills or certain other important matters.

The Supreme Court has jurisdiction over all cases, no matter who or what is involved. It can hear cases which are within the jurisdiction of any of the other courts, but since costs are much higher in the Supreme Court than in the others, cases which can be brought in a lower court are not normally brought in the Supreme Court.

### THE FIRST STEP

In all the courts, the first step in a civil case is the issuing of a written summons or petition. This has to be drawn up according to certain technical rules and it is inadvisable for any layman to try his hand at drawing up his own summons. In the Native Commissioner's Court and the Native Divorce Court, however, it is part of the duty of the Clerk of the Court to draw up and issue summonses on behalf of any person who wishes to bring a case but has no lawyer. All that is necessary is to go to the Clerk of the Court and tell him the facts of the case and he will set the machinery in motion and inform you about the subsequent procedure.

If the case is a Supreme Court or Magistrate's Court matter, or if it is a complicated one though in the Native Commissioner's Court, it is essential to have a lawyer. Those who cannot afford lawyers' fees should go for help to the Legal Aid Bureaux which exist in all the large cities. If the Bureau is satisfied that a person has a case in which there is a reasonable chance of success, and cannot afford to pay fees, it will supply a lawyer free of charge.

### BUT REMEMBER . . . !

Those who can afford to pay fees need not worry about technical problems. For them there is only one thing to remember—never go to law unless the matter is really important. It is easy to get annoyed with somebody and decide that you would like the court to teach him a lesson. It is

easy to find the sort of lawyer who will cheerfully take a lot of money for fighting a trivial case. But a court case always consumes more time and money than you anticipate. If the question involved is a petty one, even one hundred per cent victory is seldom worthwhile in the end. It is very much better to think twice before you start.

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*Bail—Admissions of Guilt—Case Postponements—Calling of Witnesses.*

## ARRESTS

Criminal cases, like civil cases, may come before the Supreme Court, the Magistrate's Court or the Native Commissioner's Court. The powers of the Magistrate's Court and the Native Commissioner's Court to impose punishments are limited, and more serious offences are therefore brought before the Supreme Court. The decision to prosecute in the one court or the other lies in the hands of the Attorney-General and his staff of Public Prosecutors. Where a case is to be brought in the Supreme Court, a preparatory examination must first be held in the Magistrate's Court, at which all the crown evidence must be produced, but the accused does not have to present his side of the case.

### ADMISSION OF GUILT

Criminal proceedings are commenced, in the majority of cases, by the arrest of the accused person. After arrest, if the offence is a trivial one, the accused may be invited to pay an admission of guilt. This means that he admits that he is guilty of the crime charged and voluntarily agrees to pay a fine without appearing in court. Once this is paid, the accused is, of course, entitled to be discharged immediately.

Admissions of guilt are accepted

only for minor offences and in all other cases the accused must appear in court. He may not be kept in custody for more than forty-eight hours without being brought before a court. Unless he is released on bail, he will then remain in custody until the case is concluded, which may be a matter of months where a Supreme Court trial is involved.

An accused person is entitled to apply for bail to the police immediately after his arrest, but at this stage it lies entirely in the discretion of the police to grant or refuse bail. He may apply again to the magistrate as soon as he appears in court, and if bail is refused by the magistrate he may apply to the Supreme Court, even though the case is still being heard in the Magistrate's Court. Where the charge is one of treason or murder, only the Supreme Court can grant bail.

When an application for bail is made in court, the prosecutor must indicate whether or not he opposes the application, and must show some good reason for opposing, if he wishes to do so. Bail will be refused if it is proved that the accused is likely to abscond and evade trial, or that he is likely to intimidate or influence Crown witnesses, or try to get rid of evidence against him. The mere

fact that "the case is still under investigation" is not an adequate reason for refusing bail, though prosecutors sometimes try to get away with this.

The amount of bail will vary according to the financial circumstances of the accused and the seriousness of the charge against him. It may be anything from £5 to £5,000. The amount fixed must be deposited by the accused, his lawyer, or his friends or relatives as a guarantee that he will appear on the day for which his trial has been set down. The money will be returned after the trial, whether the accused is found guilty or not. It will only be forfeited in the event of his failing to appear for his trial.

A subject which causes a great deal of dissatisfaction among the public is that of postponements in criminal cases. Especially in the Magistrate's Courts, cases tend to be repeatedly postponed and to take up time out of all proportion to their importance. Sometimes these postponements are unavoidable. It is often difficult to get all the necessary evidence together at the same time, and it is often impossible to know exactly how many cases a court will be able to get through in a day. But there is no doubt that many postponements are caused by the inefficiency on the part of the police and the prosecutors.

**The important thing to remember is that the prosecutor is not entitled to postpone the case whenever he feels like it. The accused is entitled to ask the reason for a postponement and to argue against it if the reason is inadequate.**

The mere fact that a witness is missing is not an adequate reason for a postponement. The Court should be informed why he is absent and what prospect there is that he will be present at a future date. If an essential witness has vanished without trace, the prosecutor must withdraw the case and not keep the accused waiting indefinitely while the witness is being looked for.

### WITNESSES

Every accused person is entitled to call witnesses in his defence. If he has been kept in custody awaiting trial and has had no opportunity to get into touch with his witnesses, he should inform the court of their names and addresses and ask for them to be brought to court. If he has an opportunity to do so, he should get in touch with his witnesses before the trial and ensure that they are present. If they are unwilling to come, they can be compelled to do so by means of a subpoena, which can be obtained from the clerk of the court.

*Do the Police need warrants?—Wrongful arrests and damages  
—Searching Premises.*

## THE POWERS OF THE POLICE

In our last article, we discussed the procedure of criminal courts after a person has been arrested and brought before them. We must now return to the question of arrests, interrogations and searches by the police, which constitutes a subject on its own.

The powers of policemen to make arrests are extremely wide. The following are the most important categories of persons who may be arrested without a warrant:

(a) Any person who commits or attempts to commit any offence in the presence of a policeman.

(b) Any person reasonably suspected of having committed a serious offence such as murder, robbery, housebreaking, theft, fraud or any other offence for which the penalty is imprisonment without the option of a fine for a period of six months or more. All contraventions of the Suppression of Communism Act are included in this category.

(c) Any person found in possession of property reasonably suspected of being stolen.

(e) Any person reasonably suspected of being a prohibited immigrant.

A warrant for arrest may be issued by a judge or magistrate if he is satisfied that there is reason to suspect a person of having committed any offence.

### UNLAWFUL ARREST

If a policeman attempts to arrest anyone under circumstances not justified by law, the person concerned is entitled to resist the attempt, and is also entitled to sue for damages for wrongful arrest. It is, as a general rule, most unwise to adopt the first of these alternatives. Even if you have committed no crime, someone

may have laid a false charge against you and a policeman may therefore have reasonable grounds for suspecting you. His arrest is therefore justified and if you resist, you will be guilty of the serious offence of resisting lawful arrest. At the time of the arrest, it is virtually impossible to know what information the police may be acting on, and therefore impossible to be sure that the arrest does not fall under one of the many categories of lawful arrest. Resistance is therefore a very dangerous gamble. At a later stage, when the details of the case have become known, it will be possible to decide whether the arrest was lawful or not, and if not, to claim compensation.

### NAME AND ADDRESS

Another important power vested in the police is the power to require a person to supply his name and address. This may be done as an alternative to arrest in all cases in which an arrest is justified, and also in all cases where a person may, in the opinion of the policeman, be able to give evidence as to the commission of an offence. This does not simply imply that the person concerned is in any way involved in the crime; he may be an innocent bystander who simply happens to have seen the commission of a crime or some event connected with it. He is nevertheless obliged to supply his name and address and may be arrested if he refuses. It is therefore advisable to give one's name and address whenever asked to do so by a policeman.

It is important to note that this is the only question which one is obliged to answer when interviewed by the police. A person who is suspected of a crime may

be invited by the police to give an explanation of the matter, and if he has a complete explanation it may save trouble to give it. **But he is not obliged to say anything, and if the police make any attempt to force him to answer questions, this should be reported to the magistrate when the case comes to trial.** Anything which the accused voluntarily tells the police will be reported to the court in evidence and may count against the accused or in his favour. Any statements which are forced from him, however, cannot be used in evidence.

If the police question a person who is not suspected of a crime, but who is required as a witness, that person may also refuse to answer their questions. If he does, however, he may be summoned before a magistrate and compelled to disclose what he knows about the crime under investigation. Before the magistrate he must answer all questions which are put to him, unless the answers would tend to incriminate him.

#### SEARCHING PREMISES

The police may enter premises and conduct a search in any of the following cases:

(a) If it is reasonably suspected that stolen property, or anything which it is illegal to possess (e.g. illicit liquor or drugs) or anything which has been used in the commission of a crime, or anything which may afford evidence as to the commission of a crime, is to be found on the premises.

(b) If it is reasonably suspected that preparations for the commission of any crime are being made on the premises.

(c) If it is reasonably suspected that a meeting which will be dangerous to law and order or the internal security of the Union is being held on the premises.

In all these cases, a search warrant must normally be obtained, but if a policeman considers that the delay involved in obtaining a warrant would defeat the purposes of the search, he may act without a warrant.

The individual's remedies against an unlawful search are, as in the case of arrest, resistance or a subsequent claim for damages. For the same reasons as were given before, the latter is the wiser course of action.

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*The Urban Areas Act—Daily Labour permits—Curfew—Work seekers' permits—The new Reference Books.*

## THE PASS LAWS

There can be few laws in force anywhere in the world which cause so much suffering and hardship as South Africa's pass laws. They are so harsh and arbitrary, and at the same time so complex, that there is very little useful advice that can be given on the subject. There are, nevertheless, a few points which are worth remembering.

The most important of the restrictions which go under the general name of pass laws is section 10 of the Natives (Urban Areas) Act. This provides that no

African, unless he falls under one of the exceptions mentioned below, may remain for more than 72 hours in an urban area without the permission of the urban local authority (i.e. the City Council, Town Council, Village Management Board, etc.) This permission takes the form either of a permit to seek work or of the registration of the person concerned in a particular job, or of the issue of a "daily labour permit" which entitles the holder to work on his own account or to accept casual employment.

## VALIDITY

In the case of a permit to seek work, the permission expires at the end of a maximum period of fourteen days. In the case of registration in employment, the permit remains valid as long as the worker remains in the job for which he was registered. Thus a person who loses his job for any reason must apply for fresh permission to remain in the area, which may be refused at the absolute discretion of the registering officer. If, however, a worker leaves his job temporarily and wishes to return to the same job after an interval of less than a year, he cannot be refused permission to return.

The exceptions, who do not require permission to be in an urban area, are as follows:

1. Those who were born and permanently reside in the area.
2. Those who have worked in the area for the same employer for ten years or more.
3. Those who have been lawfully in the area for fifteen years or more.
4. The wives, unmarried daughters and sons under the age of eighteen, of men falling under any of the first three exceptions.

Those who fall under any of these exceptions have an absolute right to remain in the urban area and are not obliged to submit to any of the so-called "tests" which some local authorities have devised to find out whether a person has really been in the area for the required period.

## AN APPEAL

A right which is not nearly so widely known as it should be is the right to appeal against the refusal of a registering officer to grant permission to remain in an urban area. The appeal can be made to the chief native commissioner for the area in question, and may be brought by any per-

son who, having obtained employment in an urban area, is refused permission to remain there.

**A person who wishes to enter an urban area for the first time for the purpose of seeking work, has no appeal if he is refused permission. If he is entering in order to take up a specific offer of employment, or if he is "endorsed out" after he has already worked in the area, he has an appeal.**

## SHORT VISITS

All these provisions apply to an African who remains in an urban area for more than 72 hours. Visits to an urban area for a shorter period may be made without any pass—this is the only concession of any importance made by the so-called Abolition of Passes Act. The value of this concession, such as it is, is reduced by the fact that when an African is charged with being unlawfully in an urban area, it is for him to prove that he has been there for less than 72 hours.

Statements by officials of the Native Affairs Department appear in the press from time to time, debating the question whether "reference books" are passes, or are meant to replace passes, or have nothing to do with passes. We need not enter into this metaphysical controversy. **A reference book must be carried at all times, must be produced on demand by a policeman and contains a record of the holder's employment, right to be in urban areas, etc. There is no real difference between it and a pass.**

The other main aspect of the pass laws is, of course, the curfew regulations, by which Africans are required to have permission to be out of doors after a certain time at night. These are municipal regulations which vary from one town to another, and the rights of the inhabitants depend entirely on the wording of the regulations in their particular area.

# LANDLORD AND TENANT

The majority of people live in houses for which they pay rent. In discussing the legal rights of tenants against their landlords, we must first note that these rights are different in locations and in other areas. In this article, we will deal with tenants who do not live in locations and whose rights are governed by the common law and the Rents Act. The position of tenants in locations will be discussed next week.

The main obligation of the tenant is, of course, to pay his rent. The rent may be payable weekly, monthly or at some longer interval—the period must be agreed upon when the tenancy begins. If there is no agreement as to the exact day on which the rent falls due, it need not be paid until the end of the week or month, as the case may be.

## **EJECTION**

If the tenant fails to pay his rent on due date, the landlord may always sue him for it. The more important question is, however, under what circumstances may the tenant be ejected for failure to pay rent. This again depends on the terms of the agreement, and it is again important to emphasise that tenants who enter into written leases should read the agreement carefully before signing it. If there is no written lease or if there is no clause in the lease dealing with the question of late payment, the landlord cannot claim ejection merely because one rent payment is overdue. The majority of written leases, however, contain a clause entitling the landlord to eject the tenant if the rent is not paid by a date specified in the contract. If the tenant has signed an agreement containing such a clause, he has no protection against its effects. A delay of even one day is sufficient to bring the clause into operation, and the fact

that the tenant is in financial difficulties and cannot pay is no excuse. If the agreement does not stipulate the place at which the rent is to be paid, the landlord must come to the tenant to receive payment, but if it is provided that the rent is to be paid at the landlord's home or office, the tenant must see that it gets there in time, and postal delays are no excuse.

It is important to note that the landlord forfeits his right to ejectment if he accepts late payment of rent. If the lease stipulates that rent is to be paid on, say, the seventh of the month and the tenant offers to pay on the eighth, the landlord must immediately decide whether to refuse the late payment and claim ejection or accept the payment and condone the delay. He cannot accept the rent and then sue for ejection. It is always worthwhile, therefore, for the tenant to offer payment after due date if he has failed to pay at the proper time.

## **BREACH OF CONDITIONS**

A tenant may also be ejected for breach of the conditions of the lease, e.g. for carrying on a business on premises which were let for purely residential purposes, or for damaging the premises. Here again, the landlord forfeits his right to claim ejection if he continues to accept rent after he knows of the breach of contract.

A lease may be entered into for a definite period (e.g. five years). In this case, the landlord cannot give notice to the tenant before the period has expired, nor can the tenant leave. If the tenant does leave before the period expires, he will continue to be liable for the rent until such time as the landlord finds a new tenant.

If the lease is not for any fixed period, it may be terminated by

notice. One month's notice is required where the rent is paid by the month and one week's notice where the rent is paid by the week. A month's notice must expire at the end of a month, not in the middle. e.g. if a month's notice is given on the 15th of May it expires on the 30th of June, not on the 15th. This applies equally to notice given by the landlord or by the tenant.

It must be clearly understood that the termination of a lease by notice is quite separate from the question of ejection for non-payment of rent or breach of contract. Notice may be given whenever either of the parties chooses, even if there has been no breach of contract.

The right of the landlord to eject the tenant upon notice is, however, limited by the Rents Act. Under this Act, a tenant who has been given notice becomes what is known as a statutory tenant. This means that he may continue in occupation, provided that

he pays his rent by the seventh of each month (irrespective of the due date which may have been provided in the original contract). He may only be ejected on one of the following grounds:—

- (a) Non-payment of rent;
- (b) that he is damaging the premises or creating nuisance there;
- (c) that the landlord requires the premises for his personal use or for rebuilding.

As a general rule, the landlord is obliged to keep the premises in reasonable repair and is liable to compensate the tenant for any damage caused to him by defects in the premises—e.g. damage caused to furniture by water leaking through the roof. Both these obligations may, however, be excluded by clauses in a written lease. The tenant is obliged to make good any damage which he causes to the premises by negligence, but if damage is accidentally caused, the loss falls on the landlord.

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### *Location Regulations—Site permits—Rent scales.*

## TENANTS IN LOCATIONS

The conditions of tenancy in locations are governed not by the common law but by the regulations of the particular location concerned. These regulations vary from one town to the next and it is therefore impossible to state exactly what the position is for all locations. There are, however, certain Union-wide rules which apply to all locations and certain features which most location regulations have in common.

Unlike an ordinary landlord, the municipality which owns a location cannot pick and choose its tenants at will. It is under a duty to provide accommodation for African residents. The regulations usually lay down the condi-

tions under which site permits and residential permits are issued, and the usual conditions are that the person applying for a permit must be employed in the municipal area and must be "a fit and proper person to reside in the location." The Supreme Court has laid down that location superintendents have not an unlimited discretion to decide who is a "fit and proper person." He must have some substantial reason for refusing a permit on this ground—e.g. that the applicant has a long criminal record.

### PERMIT CANCELLATIONS

The municipality is also not at liberty to give notice to tenants in a location whenever it sees fit.

The regulations lay down the grounds on which a permit may be cancelled, and the most usual grounds are non-payment of rent or the fact that the holder of a permit no longer has a lawful occupation within the municipal area. According to a decision of the Supreme Court, "lawful occupation" does not necessarily mean a full-time job. A person may be employed in another district but still have a "lawful occupation" in the district where he resides if

he is, for example, an Advisory Board member, a preacher in a church or has some other legitimate part-time activity.

Rents in locations are fixed by the municipality, subject to the supervision of the Minister of Native Affairs. If rents are increased without the Minister's approval, the residents may appeal to the Minister. Once the Minister has approved the scale of rents, however, there is no further redress.

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### *Contracts—Instalment Payments—Court orders.*

## HIRE PURCHASE

They say that a sucker is born every minute. Sooner or later, each one enters into a Hire Purchase contract. He signs the contract without reading it, agrees to pay instalments which are more than he can afford and goes about telling everyone what a bargain he's got. A few months later he is in a lawyer's office, telling a sad story.

"I was just one day late with my instalment," he wails, "and they came and took the things back. Now they say they're entitled to keep the money I've already paid and they're even suing me for the instalment that was overdue. They can't do that, can they?"

"Well, what does the contract say?" asks the lawyer.

"I don't know."

The lawyer reads it. "Yes, here it is. Clause 20. 'In the event of any instalment not being paid on due date . . .'"

"But that's ridiculous! I never agreed to that!"

### **YOUR OWN FAULT**

It doesn't help. If you sign a contract, you agree to everything that is written in it. If you haven't read it, that's your own fault.

Some unscrupulous businessmen have contracts printed with a number of important clauses in very small print at the end. When the customer asks what these clauses are all about, he is told, "Oh, those are just the usual formalities. Don't worry about those." The customer signs and finds out the contents of the clauses later on—when it's too late to do anything about it.

So the first golden rule, which applies not only to Hire Purchase contracts but to every kind of legal or business document, is, **read before you sign.**

The main difference between a hire purchase contract and an ordinary sale is that in an ordinary sale, the buyer becomes owner of the thing sold immediately, while in a hire purchase contract, the seller remains the owner until all the instalments have been paid. Therefore the buyer may not re-sell the thing, or otherwise dispose of it, while instalments are still due. If the seller has reason to believe that the buyer is attempting to dispose of the thing, he may obtain a court order to prevent this.

If the buyer fails to keep up with the instalments, the seller

may claim his property back. He is not entitled simply to seize it himself; he must obtain a court order for its return. The important question which then arises is, what happens to the instalments which have already been paid? In answering this question, we have to distinguish between those contracts which are governed by the Hire Purchase Act and those which are not. The Hire Purchase Act governs all hire purchase contracts for the sale of movable goods, in which the purchase price does not exceed £2,000. For the purposes of the average person, therefore, the only contracts which he is likely to enter into which are not governed by the Act are contracts for the purchase of land and buildings.

### WORDING OF CONTRACT

If the contract is not subject to the terms of the Act, the rights of the parties will depend entirely on the wording of the contract. If there is nothing to the contrary in the contract, the seller will have to return the money already paid to him if he wishes to take back the thing sold. But in practice he usually inserts a clause providing that he may keep the money and take back the thing.

The buyer has no remedy if he has agreed to such a clause. Even though nine-tenths of the price may have been paid and only one instalment be overdue, the seller will be able to take back the thing and keep the money.

Where the Act does apply, these extreme hardships are excluded. When the matter comes before the court, the court has power to make an order which will deal fairly with the position which has arisen. Among the

steps which the court may take are:

1. To order that the instalments already paid be returned to the buyer, possibly with some reduction to compensate the seller for the fact that the goods have been used and have therefore been reduced in value.

2. To order that the buyer be allowed to keep part of the goods and return the rest.

3. To order that the buyer be allowed another chance to catch up with his arrears.

4. To order that the goods be sold by public auction and the proceeds divided between the buyer and the seller in such proportion as appears just.

### PROTECTION

These provisions of the Act afford valuable protection to the buyer, but there is still one trap into which an unwary buyer may fall. When he gets into arrears with his payments, the seller may come to him and suggest that, in order to avoid a court case, he should voluntarily return the goods and let the matter rest. If the buyer does this, the matter is at an end and he cannot subsequently claim his rights under the Act. In order to receive the protection of the Act, the buyer must force the seller to go to court for the return of the goods.

Another useful provision of the Hire Purchase Act is that the seller must always disclose the difference between the cash price of the article and the instalment price, and must render monthly accounts showing the buyer how much has been paid and how much remains to be paid.

# MARRIAGE

**T**HE South African law recognises two kinds of marriage. The first is known as common law marriage and takes place when two people, of any race, are married before a magistrate or before a priest, rabbi or other religious functionary who has been recognised by the Government as a marriage officer. All priests of recognised churches are marriage officers. The second is known as native customary union and takes place according to the laws of the various African tribes. It sometimes happens that Africans marry both by a tribal ceremony and by a Christian or a civil ceremony. In this case, the marriage is a common law one.

The rules governing tribal marriages vary from one tribe to the next and it would be impossible to discuss them all in these articles. The points which follow apply to common law marriages.

## ENTITLED TO SUPPORT

One of the most important consequences of marriage is that the wife is entitled to be supported by her husband. If he fails to support her, she may complain to the magistrate, who will summon the husband to appear in Court and order him to pay a fixed amount to his wife every month. The husband may be imprisoned if he fails to comply with this order. The amount which the husband is ordered to pay will depend on his financial circumstances and how much he can afford, and also on his wife's financial circumstances, and how much she needs. Either party may subsequently apply to Court to have the amount altered, if circumstances change.

## PROPERTY

The rules relating to the property of married persons depend on agreement between the parties. Among Europeans, Coloured

people and Asiatics, a marriage is in community of property unless a written contract is drawn up before the marriage, signed before a notary and registered in the Deeds Registry, providing that there shall be no community of property. This is known as an ante-nuptial contract. Among Africans, there is no community of property unless the husband and wife declare to the marriage officer that they wish to be married in community of property.

Community of property means that everything owned by either party at the time of the marriage, or acquired by either of them after the marriage, is jointly owned by both and controlled and administered by the husband. Until 1953, the husband had unlimited rights to deal with the joint property as he saw fit. Under the Matrimonial Affairs Act of 1953 (commonly known as "Bertha Solomon's Act," as it was introduced into Parliament by Mrs. Solomon), this right has been considerably restricted. A husband now requires his wife's written consent to dispose of property which she owned before the marriage, to receive or deal with money which she earns or to draw money from a savings bank account in her name.

If a marriage is out of community of property, the wife continues to own her own property separately. She is free to deal with her property and her husband has no control over it.

A woman married out of community is therefore in a far more advantageous position during the lifetime of her husband. If he dies, however, the advantage lies with the woman married in community. She has an inalienable right to receive half the joint property after her husband's death, irrespective of the terms of his will. The other half is his to leave to whom he pleases. The woman

married out of community has no such right, and her husband is at liberty to cut her off without a penny after his death.

A woman married in community of property has the further disability that she may not enter into contracts without the consent of her husband. This consent may be given specifically for a particular contract or generally for a class of contracts (e.g. the husband may permit his wife to run a business, in which case he is presumed to consent to all such contracts as would normally arise out of the

business). He is also presumed to consent to the purchase of household necessaries by his wife unless he specifically withdraws this consent. Whenever the husband has consented, directly or by implication, to a contract by his wife, he will be liable for the obligations which she undertakes, and the other party to the contract may sue the husband for fulfilment of it.

None of this applies to women married out of community of property, who may freely enter into independent contracts.

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### *Grounds for Divorce—Custody of children—Damages.*

## DIVORCE

A marriage is terminated by the death of one of the spouses, or by divorce. A decree of divorce can only be granted by the Supreme Court where Europeans, Coloured people and Asiatics are concerned. The Native Divorce Court has jurisdiction where both husband and wife are Africans, but not where only one of them is an African.

The main grounds for divorce are adultery and malicious desertion. If adultery is proved, a decree of divorce is granted straight away. In cases of malicious desertion, the first step is to obtain an order for the restitution of conjugal rights. This is an order calling upon the guilty party to return and to resume normal married life. A time limit is set, normally of one month. If the guilty party complies with the order, the matter is at an end and no divorce can be granted. If the guilty party fails to return, a divorce is granted.

The term "malicious desertion" covers quite a number of different circumstances. The simplest kind of case is where the husband or wife has left home and refused to

come back. There may, however, be cases in which the one who has left home is the innocent party and the one who has remained behind is guilty of desertion. For instance, if a husband ejects his wife by force from his home, he is guilty of desertion. Conversely, if the wife insists on remaining behind when the husband wishes to move and has made reasonable provision for a new home somewhere else, she is guilty of desertion.

### A HOME

A husband is under a duty to provide a home for his wife and, if he fails to do so, he will be guilty of desertion, unless he can prove that he was prevented from doing so by circumstances beyond his control. A husband who is sent to gaol is not automatically guilty of desertion, since he is acting under compulsion. He may, however, make it clear that he has no intention of returning to his wife after his release, in which case he could be sued for divorce. If a husband or wife is declared an habitual criminal and imprisoned for more than five years, this is a

ground for divorce, apart from desertion. The only other ground for divorce is incurable insanity which has lasted for seven years or more. "Cruelty" and "incompatibility" are not grounds for divorce in South Africa.

### **CUSTODY OF CHILDREN**

The Court has power to award custody of the children to either party after a divorce. The innocent party is not automatically entitled to custody; the Court must decide which party is best able to look after the children. The custody of very young children is almost invariably granted to the mother.

A wife may claim maintenance from her husband after divorce where she is the innocent party. This will not be granted automatically, however. The wife must prove that she is unable adequately to support herself.

Where the marriage is in community of property, the property will normally be divided equally

upon divorce. The innocent party may, however, claim forfeiture of the benefits of the marriage. This means that the guilty party will be entitled only to the property which he or she brought into the marriage, or has since earned. Where the marriage is out of community, each party will keep his or her own property, subject to the right of the innocent party to claim the return of any donations made at the time of marriage.

### **DAMAGES**

When divorce is claimed on the grounds of adultery, the innocent party may also claim damages from the co-respondent—i.e. the person with whom the guilty party has committed adultery.

In the case of African marriages, the divorce court may also deal with the question of lobola. The general rule is that when a divorce is granted on the grounds of the wife's misconduct, her family must return the lobola to the husband.

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## *Maintenance and support—Guardianship—Minors.*

# **CARE OF CHILDREN**

The legal position of children was briefly mentioned in the last article, but there are a number of additional questions which can arise in this connection.

Every child is entitled to receive maintenance and support from both its parents from the time of its birth until it is old enough to support itself. This applies both to legitimate and illegitimate children, and continues to apply to both parents after a divorce, even though custody of the child may have been awarded to one of them.

The amount which has to be provided for maintenance will de-

pend on the financial circumstances of the parents. They must provide for their children to the best of their ability, and can be compelled to pay whatever amount they can afford. The time at which the child will be regarded as self-supporting will also depend on the circumstances. Rich parents could be compelled to keep their child at school until Matric or even to send him to University. In the case of poorer people, a child would be considered self-supporting at the age of about sixteen.

### **HOW TO GO ABOUT IT**

The procedure for compelling a father to support his children is

very simple. The mother, or any other person who is looking after the children, must simply lay a complaint at the office of the local magistrate (or, in the case of Africans, the Native Commissioner). A summons will then be issued and a case brought against the father. The mother will not have to pay costs for this.

The first essential in such a case is, of course, to prove that the man who has been summonsed is in fact the father of the child. If he is married to the mother, or was married to her at the time of the child's birth, he will be presumed to be the father unless he proves the contrary, and he will need very strong evidence to prove he is not the father.

If there has been no marriage, the mother will have to prove that he is the father. Her word alone will not be regarded as sufficient proof. It must be confirmed by some independent evidence. Evidence that the two of them were living together at the relevant time, or that the man has admitted responsibility, or has paid maintenance for the child in the past, will normally be sufficient.

Once it is established that the man is the father, the court will hear evidence as to his financial position and will order him to pay a certain amount. Failure to obey this order is a criminal offence, for which a sentence of imprisonment can be imposed.

The mother of a child could be summonsed and compelled to pay maintenance in exactly the same way, though this happens much less often in practice.

## GUARDIANSHIP

The father of a legitimate child is its natural guardian. He can be deprived of his guardianship by the court, but this will only be done for very exceptional reasons—e.g. persistent cruelty and neglect. In the case of an illegitimate child, the mother is the sole guardian. The fact that the father is liable to pay maintenance for the

child does not give him any rights of guardianship.

The guardian of a child is entitled to determine where the child is to live, what religion it shall be taught and (within the limits allowed by Government restrictions) what school it shall go to. Generally, it is the right and the duty of a guardian to supervise the child's upbringing and education. After the father's death, the mother becomes guardian. If both parents die, they may have appointed a guardian in their wills, falling which a guardian may be appointed by the court.

Until the age of 21, a person remains a minor in the eyes of the law. The most important consequence is that a minor is not capable of entering into certain legal transactions without assistance.

A minor can own property in his own name. If a minor acquires property of his own, e.g. inheritance, his guardian must keep this property separately and hand it over when the minor reaches full age. The guardian may use the minor's money for his education and upbringing, but not for any other purpose. When substantial amounts are left to minors, the property is often kept by the Master of the Supreme Court and paid out by him from time to time, as it is needed.

## PROPERTY

A minor cannot sell or give away his property without his guardian's approval. If he does so, the person to whom the property is sold or given can be compelled to return it. The assistance of the guardian is also required when a minor enters into any contract which imposes obligations on him. If the contract is entirely for the minor's benefit, it will be valid without the guardian's consent. In other words, a minor may acquire benefits by his own action, but may not acquire obligations without assistance. The guardian's consent to a contract may be given in a variety of ways. He may approve of it formally, or he may simply know about it and

raise no objection. His approval may be given in advance or retrospectively. It may be given for one particular contract, or for a whole series or class of contracts. For example, if a father permits his minor son to open a shop, he would be presumed to approve of all contracts involved in the running of the business.

A contract entered into by a minor without his guardian's consent may become valid if it is ratified by the minor after he reaches the age of 21. If, for example, a young man of 20 buys a motor cycle on instalments without his father's approval, he can cancel the contract at any time before he turns 21. If after his 21st birthday he continues to ride the cycle, having taken no steps to cancel the contract, he has then ratified the contract and can be held liable for future instalments.

#### **A MINOR'S MARRIAGE**

A minor also requires his guardian's consent to get married. If he marries without consent, his guardian can apply to court to have the marriage declared invalid. The guardian must act immedi-

ately he hears about the marriage, since he will be presumed to have consented if he knows of the marriage and takes no action.

Although a person becomes independent at the age of 21, the relationship between parent and child still continues to have legal consequences. A person who is unable to support himself, e.g. a cripple, can claim maintenance and support from his parents even after he is of age. Conversely, when the parents become old and unable to work, they have a legal right to be supported by their children.

#### **INHERITANCE**

Upon the death of the parents, the children will inherit their property in equal shares, unless there is anything to the contrary in the parents' wills. In many countries, the children's right of inheritance is an absolute one, of which they cannot be deprived except for certain definite reasons. By South African law, however, everyone is at liberty to leave his property as he pleases upon his death, and children may be disinherited for any reason which may come into the minds of their parents.

## ACCIDENTS

**I**NJURY in accidents is a frequent event which can cause very serious loss and hardship to the victim. In a large proportion of cases, the victim has a right to claim compensation, but he is often ignorant of his rights and allows the matter to go by default.

In the case of motor accidents, the most important feature is third party insurance. Every motor vehicle must carry an insurance policy by which the insurance company undertakes to pay compensation to anyone, other than a passenger carried free of charge on the vehicle, who is injured as a result of the driver's negligence. Thus a pedestrian who is run over can sue the company which insured the car concerned, and a driver who is injured in a collision can sue the company which insured the other car. A passenger in a bus can sue the insurance company if an accident is caused by the fault of the bus driver, but a person who accepts a lift from a friend cannot sue the company if his friend causes an accident. He can sue the driver himself, but this may not be satisfactory, as the driver may not have enough money to pay the compensation awarded.

The owner of a vehicle which is involved in an accident is obliged to disclose the name of his insurance company to any person who has been injured in the accident. If the injured party wishes to take action, he must do so within two years of the date of the accident. When a person is killed in an accident, compensation is payable to his wife, children and other dependants.

### WHOSE FAULT?

In every case, the right to compensation depends on proving that the driver of the insured vehicle was at fault. If the accident was entirely due to the negli-

gence of the injured party himself, there can be no claim for compensation. If both parties were at fault, the amount of compensation payable will be reduced in proportion to the degree of negligence on each side.

Third party insurance applies only to compensation for injury or death in an accident. If the owner of a car wishes to obtain compensation for damage done to his car in a collision, he must sue the other driver personally and not the insurance company.

### WORKMEN'S COMPENSATION

Another important class of accidents are those which happen to workmen in the course of their work. These are governed by the Workmen's Compensation Act. The Act applies to workers of all races, with certain exceptions, of which the following are the most important:

1. Those earning more than £750 per year.
2. Domestic servants employed in a private household or in a boarding house or hotel which does not employ more than five servants.
3. Agricultural labourers who do not operate motor vehicles or machinery.

Subject to these exceptions, compensation is payable to any worker who is injured in an accident arising out of his employment, and compensation is payable to his dependants if he is killed. Trivial injuries resulting in less than four days off work are excluded.

The right to obtain workmen's compensation is not dependent on proving that any particular person was to blame for the accident. Where negligence can be proved against the employer, this may lead to an increase in the amount of compensation payable, but

compensation at the ordinary rates is payable without any proof of negligence. The worker will forfeit his own right to compensation if it is proved that the accident was due to his own "serious and wilful misconduct," but this will not affect his family's rights if he is killed.

The rates at which compensation is payable are laid down in the Act, and the rules applicable are too long and complicated to be summarised here. In general, compensation is calculated as a proportion of the workman's normal earnings, the proportion varying according to the type of injury suffered, and subject to certain maximum totals.

### HOW TO GET IT

The procedure for recovery of workmen's compensation is first to report the accident to the employer. This must be done immediately. The employer is then obliged to report the matter to the Workmen's Compensation Commissioner and, in the case of an African worker, to the Native Commissioner. Within six months of the accident, a claim must be lodged with the Workmen's Compensation Commissioner by the worker or someone acting on his behalf. In the case of African workers, it is the duty of the Native Commissioner to assist the worker in lodging his claim. The amount of compensation payable is then determined by the Workmen's Compensation Commis-

sioner, who hears witnesses and representations, and may order the worker to be medically examined.

When an accident falls neither under the provisions of third party insurance nor under those of workmen's compensation, the injured party may still be able to claim compensation from any person whose negligence caused the accident. One aspect of this rule which is not very widely known is that a person injured by defects in mechanical appliances or buildings may have a claim against the manufacturer of the appliance or the owner of the building. For example, a person who is electrocuted while using a defective electric iron may have a claim against the manufacturer. It is, of course, essential to prove that there was a defect in the manufacture of the iron. If it is very old and has become defective through natural wear and tear, there will be no claim.

With regard to buildings, it is the duty of the owner of any building to which other people normally have access, to keep the building in a reasonably safe condition. A person injured as a result of slippery floors, rotten stairs etc. will have a claim against the owner, provided he can prove that the owner knew or ought to have known that the building was dangerous.

## THE RIGHT TO STRIKE

Like so many other rights, the right of a South African worker to strike depends on the colour of his skin.

The rights of European, Coloured and Asiatic workers are governed by the Industrial Conciliation Act. This Act allows the right to strike, though subject to certain limitations. The main limitations are as follows:

1. Workers in essential services, such as water, light and public transport undertakings, must refer their disputes to arbitration and are not allowed to strike.

2. Workers may not strike over a question which is directly covered by a valid industrial agreement or Wage Board determination. Thus, for instance, if an agreement has been negotiated covering wages, there can be no strikes about wages until the agreement expires. If a dispute arises on some subject with which the agreement does not deal, however, the existence of the agreement will not prevent a strike.

3. When a dispute arises on a point not covered by any agreement, the workers must first refer the dispute to the industrial council, if there is one, or in the absence of an industrial council they must apply to the Minister of Labour for a conciliation board. A period of 30 days must then be allowed for these measures to take effect. If at the end of 30 days the industrial council or conciliation board has failed to consider the matter, or if no conciliation board has been appointed, or if negotiations have taken place but have failed, the workers are free to strike.

4. No trade union may instigate or organise a strike unless strike action has been approved by a majority of the members concerned in a secret ballot.

### INDUSTRIAL COUNCILS

Industrial councils and conciliation boards consist of representa-

tives of both employers and employees. Their function is to hear both sides of any dispute which arises and to endeavour to reach an agreement. If an agreement is reached, it may with the approval of the Minister of Labour be declared binding on those employers and employees who are parties to it, or on the industry as a whole. The agreement then has the force of law, and any employer who fails to abide by its terms can be prosecuted.

### AFRICAN WORKERS

Although African workers are excluded from the operation of the Industrial Conciliation Act and can have no representation on an industrial council or conciliation board, their conditions of work may nevertheless be dealt with by an industrial agreement. A mixed trade union may therefore negotiate on behalf of its African members, provided that it does so in the course of negotiations involving its European members as well. An exclusively European trade union may also put forward demands relating to the conditions of work of Africans in its industry. Though African workers have often benefited from this position, it is hardly necessary to point out the injustices which might result from the determination of African working conditions by bodies on which the Africans have no vote.

The Native Labour (Settlement of Disputes) Act governs the questions of strikes and industrial disputes involving Africans. The Act contains a total prohibition on strikes. No matter how strong the grievances of African workers may be, and no matter what efforts may have been made to settle the dispute, it is a criminal offence for the workers to strike. The maximum penalty is a fine of fifty pounds or six months imprisonment.

### NOT ALL STRIKES

A strike requires the participa-

tion of more than one person, according to the definition in the Act. A refusal to work by a single person does not amount to a strike. Nor does it amount to a strike if workers simply refuse to do something which, according to their contracts or an industrial agreement, they are not obliged to do. For instance, if workers are entitled to knock off at 4 p.m. and their employer tells them to remain at work until 5, they would not be striking if they ignored his order and stopped at 4. Similarly, it would not be a strike if workers refused to enter a workshop in which safety measures required by law had not been adopted.

A "go-slow" movement, if organised for the purpose of enforcing demands, is a strike in terms of the Act. And, though an individual worker may be perfectly entitled to leave his job on a week's notice, a mass movement to give notice, organised for the purpose of enforcing demands, is a strike.

The Native Labour (Settlement of Disputes) Act provides for the setting up of various bodies, the function of which is to investigate and endeavour to settle labour disputes involving Africans. These are "works committees," consisting of workers in a particular undertaking, elected by the workers; "regional committees" consisting of Africans with a

European chairman, all nominated by the Minister, and a "Central Native Labour Board" consisting exclusively of Europeans nominated by the Minister.

### THE WAGE BOARD

The theory of the Act is that the existence of a dispute should be reported through the works committee to an inspector, who will, together with the regional committee, endeavour to reach a settlement. If no settlement is reached, the matter is then referred to the Wage Board. This is the only body which has any real powers. It can issue a ruling which the Minister must proclaim and which then becomes binding upon employers.

The Wage Board is a body which has existed for many years for the purpose of determining wages and working conditions in industries which are not governed by industrial councils. It consists of three permanent members nominated by the Governor-General and for the purpose of investigating any particular industry, an additional member may be nominated by the trade union concerned and by the employers' organisation concerned. The trade union representative must be nominated by registered (i.e. European) trade unions, and there is no provision for a representative of African workers on the Wage Board.

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*Government and police power to ban meetings — Municipal bye-laws.*

## FREEDOM OF ASSEMBLY?

In theory, the rule of South African law is still freedom of assembly—i.e. that anyone is free to hold a meeting unless the meeting is one which contravenes a specific law. But there are now so many restrictions that the right of assembly is becoming the exception rather than the general rule.

The restrictions on freedom of assembly fall under three headings. Firstly, there are powers vested in various authorities to ban meetings in advance, or to prohibit individuals from attending meetings. A magistrate has power to ban a meeting if he considers "that the public peace

would be seriously endangered" by it.

### MINISTER OF JUSTICE

The Minister of Justice has power to ban a meeting if he considers "that feelings of hostility would be engendered between the European inhabitants of the Union on the one hand and any other section of the inhabitants of the Union on the other hand" or if he considers "that the achievement of any of the objects of Communism would be furthered" by the meeting.

**In none of these cases does the magistrate or the Minister have to justify his action in public, or in a court. His ruling is conclusive and cannot be challenged by evidence that he had insufficient grounds for his opinion.**

This means that the Government has power to ban virtually any meeting if it wishes. If by any chance it should find its existing powers insufficient, it need only declare an emergency under the Public Safety Act, and such restrictions on its power as exist under the ordinary law will fall away.

In practice, these powers are used comparatively seldom, and the necessity for publishing formal proclamations in advance makes it impossible for them to be used in every case. A number of other techniques are therefore used for restricting less important meetings.

### BYE-LAWS

Almost every municipality has bye-laws and regulations restricting public meetings. The form which these laws usually take is that all meetings or processions in streets or public places must have the permission of the Town Clerk. This permission usually has to be applied for several days in advance, and the names and

addresses of the organisers of the meeting must be supplied. The Town Clerk may refuse permission if he anticipates any disturbance or obstruction of traffic.

Most cities and towns also have a clause in their location regulations prohibiting the holding of meetings in the streets, squares or public halls of locations without the permission of the superintendent.

### POLICE POWERS

The third main class of restriction on the freedom of assembly consists of the powers of the police to intimidate and interfere when meetings are lawfully held. The police now have power to enter any meeting, whether it is held in a public place or in private, if they believe that anything is being done which might constitute a danger to the security of the Union. Once inside, they may search the premises, take names and addresses, or "take such reasonable steps as they may consider necessary for the preservation of the internal security of the Union or the maintenance of law and order or for the prevention of the commission of any offence." These powers would include the dispersal of the meeting, though such action could be challenged in the courts on the ground that it was not reasonable.

The above is not a complete list of the restrictions which exist on the holding of meetings. There are some municipal bye-laws which go a good deal further than most, and apply to private meetings as well as public ones. There are also regulations dealing with Native Trust land and with various individual reserves. The freedom of assembly may also be hindered by laws prohibiting certain classes of person from being in certain places—e.g. non-residents of a location may contravene permit regulations if they attend a meeting in a location.

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