REVIEW AND ALTERATION OF TRAINING MATERIAL

What follows is a brief explanation of the process that was followed in the alteration of this training material. A working group was formed after inviting interested parties to attend a meeting at SASSETA.

The working group was mandated to review the material and thereafter make the necessary changes so as to provide the industry with a more user friendly set of materials which better reflects the needs of the security industry.

It must be understood that this is the first review and by no means the final review. The working group was placed under enormous pressure to get a workable set of materials into the hands of the accredited security industry training providers as quickly as possible. We therefore have no doubt that even though the materials have been vastly improved upon, there are still areas that may require change. This we plan to do in the next renewal phase after we receive feedback from training providers who have used the material for approximately a year.

Our review process focused on the following:

- Removal of unnecessary information/duplication from the learning material.
- Ensure alignment with the unit standards.
- Re-draft all formative and summative assessments.
- Correct inappropriate use of language.

TASK TEAM

The task team that completed the work on this training material deserves a very special “thank you”, considering that all their time and efforts were provided free of charge. Nobody was paid for any of the work done on behalf of the task team. SASSETA provided funding for the expenses incurred in printing, typesetting, lunch and refreshments.

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A very sincere thank you to all of these individuals and the companies they work for, who allowed them to participate during business hours. This could not have been done without your commitment.

Sincerely

Andre Pretorius
Task Team Chairman
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1. **Introduction**

This learning program is part of a complete qualification. The qualification is General Security Practices NQF level 3.

2. **Purpose of this learning program**

A person credited with this unit standard will be able to:

- Describe legislation pertaining to the security industry.
- Describe common law principles that relate to the security industry.
- Apply legal prescripts to the private security industry.

2.1 **Target group**

This program is compiled for the following **target group**:

- Security members
- South African Defense Force members
- South African Police Force members
- Correctional Services
- Individuals who wishes to complete the NQF level 3 National Certificate in security practices.

3. **Standards and qualifications**

Unit standards are the “building blocks” of qualifications. All qualifications are plotted on the National Qualifications Framework (NQF).

Unit standards comprises of outcomes. An outcome is a statement that describes the required competency that must be demonstrated by the learner on successful completion of a training intervention.

4. **Assessments**

The assessment criteria in this unit standard describes the evidence that is needed that will show that you have demonstrated the outcome correctly.

Kindly refer to the unit standard attached hereto for the assessment criteria listed under each Specific Outcome in order for you to see what you will be assessed against.

You will be required to complete 2 written exams. The first is a formative assessment (open book exam) and the second is a summative assessment (closed book exam). The purpose of the formative assessment is to prepare you for the summative assessment.

The learner guide will remain the property of the learner once the LEARNING PROGRAM has been completed.
## Security program matrix

### SKILLS PROGRAM 1: SASSETA E

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<th>Code</th>
<th>Description</th>
<th>Level</th>
<th>Credits</th>
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<tbody>
<tr>
<td>1</td>
<td>246694</td>
<td>Explain the requirements for becoming a security service provider</td>
<td>Level 3</td>
<td>4 Credits</td>
</tr>
<tr>
<td>2</td>
<td>244184</td>
<td>Apply legal aspects in a security environment</td>
<td>Level 3</td>
<td>8 Credits</td>
</tr>
<tr>
<td>3</td>
<td>244182</td>
<td>Give evidence in court</td>
<td>Level 3</td>
<td>4 Credits</td>
</tr>
<tr>
<td>4</td>
<td>244176</td>
<td>Use security equipment</td>
<td>Level 2</td>
<td>2 Credits</td>
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<tr>
<td>5</td>
<td>244181</td>
<td>Perform hand over and take over responsibilities</td>
<td>Level 3</td>
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<td>6</td>
<td>244177</td>
<td>Conduct a security patrol in area of responsibility</td>
<td>Level 3</td>
<td>7 Credits</td>
</tr>
<tr>
<td>7</td>
<td>244179</td>
<td>Handle complaints and problems</td>
<td>Level 3</td>
<td>6 Credits</td>
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<tr>
<td>8</td>
<td>12484</td>
<td>Perform basic fire fighting</td>
<td>Level 2</td>
<td>4 Credits</td>
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<td>9</td>
<td>116534</td>
<td>Carry out basic first aid treatment in the workplace</td>
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### SKILLS PROGRAM 2: SASSETA D

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<th>Description</th>
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<td>1</td>
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<td>2</td>
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<tr>
<td>6</td>
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<tr>
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LEARNING OUTCOMES

On completion of this study unit you will be able to....

♦ Confirm that the Constitution of South Africa is the supreme law of the Republic, especially in relation to South African Legislation.

♦ Confirm that the Bill of Rights as contained in the Constitution of South Africa is the cornerstone of democracy from which all human rights are derived.
1. Introduction

Security Officers don’t have special powers in South Africa. Security Officers have the same powers as ordinary citizens.

Security Officers must understand the legal framework in which they operate, to protect themselves and the company for which they are working and rendering a service to. In this manual we are going to give a general and in certain circumstances a specific overview as to what is expected of security officers, when they are confronted with specific situations.

2. Human rights

Since 1994 there was a shift in the total ethics and value system in South Africa. For example the police moved away from being a “force” to a “service”. Bodies like the Independent Complaints Directorate (ICD) were established to investigate complaints against the police. In the security environment the Private Security Industry Regulatory Authority (PSIRA) regulates the security industry. Human Rights abuses will be investigated by PSIRA. It is thus clear on how important PSIRA is in their functioning as the regulator of the private security industry, as private security companies and security officers cannot be subjected to a different set of rules than the SAPS or police officers.

The purpose of the Bill of Rights is to protect the individual against abuses of the authority of the State (including the police) and, in some instances, imposes a duty on the State to provide citizens with certain social and economic rights. It acts as a set of checks and balances which protect citizens from the abuse of government power as well as imposing certain duties on

Some examples of rights contained in the Bill of Rights that are relevant to the security services are:

1. the rights to life (section 11)
2. the right to equality and equality before the law (section 9)
3. the rights to dignity (section 10)
4. the right to freedom and security of the person (section 12)
5. the right to privacy (section 14)
6. the right to freedom of association (section 18) and movement (section 21)
7. the right of access to the courts (section 34)
8. the right to health care, food, water and social security (section 27)
9. the right to a healthy environment (section 24)


2.1. Section 2 of the Constitution: Supremacy of the Constitution

This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and obligations imposed by it must be fulfilled.

The Constitution places an obligation on every security official to respect and protect the fundamental human rights of every person in South Africa.

The basic human rights principle in the Constitution is based on international law. This international law can be found in international conventions and treaties (these are documents that look like contracts and that are signed by the different countries, including the South African Government). It is therefore; also important for security officials to know the basic international human rights standards for law enforcement.
The question that most officials ask is -

♦ do police and security officials have any rights in terms of the Constitution?
♦ Do "criminals", as a result of the Constitution, have more rights now?

2.2. Do police officials and security officials have any rights in terms of the Constitution?

The answer is yes! As human beings and citizens of the RSA, police officials/security official's process all the rights set out in the Bill of Rights (chapter 2 of the Constitution). Security/Police officials in their private capacity are, therefore, entitled to, for example, equality before the law, the right to privacy, freedom of religion, administrative justice, etc.

In addition, the rights and obligations of security/police officials in their official capacity are embodied in section 205(3) of the Constitution, where it is stated that police/security officials are to:

♦ prevent, combat and investigate crime
♦ maintain public order
♦ protect and secure the inhabitants of the Republic and their property; and
♦ uphold and enforce the law.

Police officials therefore actually possess more rights in terms of the Constitution than ordinary citizens!

2.3. Do "criminals" as a result of the Constitution, have more rights now?

NO! Most of the rights that arrested, detained and accused persons have in terms of section 35 of the Constitution are not new to security and police officials in South Africa, for example:

♦ the right to remain silent is embodied in the Judges Rules in the Criminal Procedure Act;
♦ the right to a legal representative is recognized in section 73 of the Criminal Procedure Act; and
♦ the presumption of innocence is a well known principle in the South African common law

The only difference is that these rights are now part of the supreme law of the country, coinciding with our new human rights-oriented dispensation.

The right of arrested, detained and accused persons ensure a balance between policing powers and the constitutional rights of individuals: although security and police officials can limit the rights of individuals in certain circumstances, they also have the obligation to inform arrested, detained and accused persons of their rights in terms of the Constitution, and to treat them in accordance with these rights.

2.4. Limitation Clause

The Constitution places an obligation on every security/police official to respect and protect the fundamental human rights of every person in South Africa. In order to protect people's rights security/police officials have to know the laws of South Africa.

In order to protect human rights security/police actions may sometimes limit the people's human rights.

The question that security/police officials then ask is: Can security/police officials lawfully infringe the constitutional rights of others when performing their duties?
The answer is yes! Although every person possesses constitutional rights, it should be remembered that no right is absolute. All rights may be limited in terms of section 36 of the Constitution. This section provides that the rights contained in the Bill of Rights can be limited:

- by law which is applicable to everyone; and
- the limitation should also be reasonable and justifiable in an open and democratic society

All policing powers which will, in effect, limit the constitutional rights of others must therefore be judged against these provisions. The most well-known policing powers, namely those of arrest, detention, as well as search and seizure are contained in Acts such as the Criminal Procedure Act and the South African Police Service Act, which are laws that apply to everyone. These policing powers are found in all democratic countries.

The nature of their duties, therefore, causes security/police officials to be instrumental in limiting the rights of other persons, for example:

- Arrest entails infringing a person's right to freedom.
- Search and seizure restrict a person's right to privacy.
- Killing a person in private defense deprives such a person of his or her right to life.

We can now have a closer look at how the limitation has to be tested against the requirements in the limitation clause in section 36 of the Constitution.

The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including:

- the nature of the right;
- the importance of the purpose of the limitation;
- the nature and extent of the limitation;
- the relation between the limitation and its purpose; and
- less restrictive means to achieve the purpose

2.5. The rights in the Bill of Rights may be limited.

If a security/police official limits a person's (a suspected criminal's) rights through, for example, arrest, detention, search and seizure, the investigation of crime, etc, the limitation has to meet with the following conditions:

- The attempted limitation must firstly be contained in law of general application.
- This means there should be legislation or common law that gives you the power to limited a person's rights. The Criminal Procedure Act gives us the power, for example, to arrest, to use force, to detain, to search and seize and to question.
- It is therefore, important for every police official to know the law applicable to policing and how it empowers them to limit people's human rights while performing their duties.
- The rights in the Bill of Rights can only be limited to the extent that such a limitation is reasonable. This means that the limitation should be reasonable in the circumstances. If there is a less restrictive method that can be used, in other words if you do not, for example, need to arrest a person for a specific crime committed, you should use other methods to ensure attendance in court (for example, J127 or J534 new SAPS 69), or if you can use less force to arrest a person, you as a security/police official should do so.
The limitation should be justifiable in an open and democratic society based on human dignity, equality and freedom. This means that you should be able to justify your actions afterwards in a court of law. Open and democratic society means that police officials in other democratic societies will act the same under the same circumstances. You always have to treat everybody with dignity and respect and you may not discriminate against any person, no matter who he or she is. Remember a person is presumed innocent until proven guilty in a court in law.

In view of section 36(1) (a) to (e) the principle of proportionality should always apply. This means that any infringement of the person's right to privacy must be proportional (balanced) to the nature and seriousness of the harm caused. There should therefore be a balance between the individual's right to privacy and extent of the infringement. (For example, if you can summons a person J175 or J534, instead of arresting him or her, you should do so. There is also no need to arrest a person for minor offences)

3. Rights contained in the Bill of Rights

The right to equality and equality before the law (section 9)

Everyone is equal before the law and has the right to equal protection and benefit of the law.

Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

The rights to dignity (section 10)

Everyone has inherent dignity and the right to have their dignity respected and protected.

The rights to life (section 11)

Everyone has the right to life.

The right to freedom and security of the person (section 12)

1. Everyone has the right to freedom and security of the person, which includes the right:
   a. not to be deprived of freedom arbitrarily or without just cause;
   b. not to be detained without trial;
   c. to be free from all forms of violence from either public or private sources;
   d. not to be tortured in any way; and not to be treated or punished in a cruel, inhuman or degrading way.

2. Everyone has the right to bodily and psychological integrity, which includes the right:
   a. to make decisions concerning reproduction;
   b. to security in and control over their body; and
c. not to be subjected to medical or scientific experiments without their informed consent.

The right to privacy (section 14)

Everyone has the right to privacy, which includes the right not to have…….

a. their person or home searched;
b. their property searched;
c. their possessions seized; or
d. the privacy of their communications infringed.

The right to freedom of association (section 18) and movement (section 21)

1. Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
2. Religious observances may be conducted at state or state-aided institutions, provided that:
   a. those observances follow rules made by the appropriate public authorities;
   b. they are conducted on an equitable basis; and
   c. attendance at them is free and voluntary.
3.a This section does not prevent legislation recognising-
   i. marriages concluded under any tradition, or a system of religious, personal or family law; or
   ii. systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
   b. Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

The right of access to the courts (section 34)

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

The right to health care, food, water and social security (section 27)

1. Everyone has the right to have access to ….
   a. health care services, including reproductive health care;
   b. sufficient food and water; and
   c. social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.
3. No one may be refused emergency medical treatment.

The right to a healthy environment (section 24)

Everyone has the right-

a. to an environment that is not harmful to their health or well-being; and
b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that…..
i. prevent pollution and ecological degradation;
ii. promote conservation; and
iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

The right to freedom of expression

1. Everyone has the right to freedom of expression, which includes:
   a. freedom of the press and other media;
   b. freedom to receive or impart information or ideas;
   c. freedom of artistic creativity; and
   d. academic freedom and freedom of scientific research.

2. The right in subsection (1) does not extend to-
   a. propaganda for war;
   b. incitement of imminent violence; or
   c. advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

The right to assembly, demonstration, picket and petition

Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

The right to freedom of association

Everyone has the right to freedom of association.

The right to political rights

1. Every citizen is free to make political choices, which includes the right:
   a. to form a political party;
   b. to participate in the activities of, or recruit members for, a political party; and to campaign for a political party or cause.

2. Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.

3. Every adult citizen has the right-
   a. to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
   b. to stand for public office and, if elected, to hold office.

Slavery, servitude and forced labour

No one may be subjected to slavery, servitude or forced labour.

The right freedom of religion, belief and opinion

1. Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
2. Religious observances may be conducted at state or state-aided institutions, provided that:
   a. those observances follow rules made by the appropriate public authorities;
   b. they are conducted on an equitable basis; and c. attendance at them is free and voluntary.
3. This section does not prevent legislation recognising -
   i. marriages concluded under any tradition, or a system of religious, personal or family law; or
   ii. systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.

   b. Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

Citizenship

No citizen may be deprived of citizenship.

The right Freedom of movement and residence

1. Everyone has the right to freedom of movement.
2. Everyone has the right to leave the Republic.
3. Every citizen has the right to enter, to remain in and to reside anywhere in, the Republic.
4. Every citizen has the right to a passport.

The right to freedom of trade, occupation and profession

Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

Labour relations

1. Everyone has the right to fair labour practices.
2. Every worker has the right-
   a. to form and join a trade union;
   b. to participate in the activities and programmes of a trade union; and to strike.
3. Every employer has the right-
   a. to form and join an employers' organisation; and
   b. to participate in the activities and programs of an employers' organization.
4. Every trade union and every employers' organisation has the right-
   a. to determine its own administration, programmes and activities;
   b. to organise; and
   c. to form and join a federation.
5. Every trade union, employers' organization and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).
6. National legislation may recognize union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).
Property

1. No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
2. Property may be expropriated only in terms of law of general application.
   a. for a public purpose or in the public interest; and
   b. subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
3. The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including:
   a. the current use of the property;
   b. the history of the acquisition and use of the property;
   c. the market value of the property;
   d. the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
   e. the purpose of the expropriation.
4. For the purposes of this section-
   a. the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
   b. property is not limited to land.
5. The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
6. A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
7. A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
8. No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).
9. Parliament must enact the legislation referred to in subsection (6).

Housing

1. Everyone has the right to have access to adequate housing.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.
3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.
**Children**

1. Every child has the right-
   a. to a name and a nationality from birth;
   b. to family care or parental care, or to appropriate alternative care when removed from the family environment;
   c. to basic nutrition, shelter, basic health care services and social services;
   d. to be protected from maltreatment, neglect, abuse or degradation;
   e. to be protected from exploitative labour practices;
   f. not to be required or permitted to perform work or provide services that-
      i. are inappropriate for a person of that child's age; or
      ii. place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
   g. not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be-
      i. kept separately from detained persons over the age of 18 years; and
      ii. treated in a manner, and kept in conditions, that take account of the child's age;
   h. to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
   i. not to be used directly in armed conflict, and to be protected in times of armed conflict.
   j. A child's best interests are of paramount importance in every matter concerning the child.
   k. In this section "child" means a person under the age of 18 years.

**Education**

1. Everyone has the right-
   a. to a basic education, including adult basic education; and
   b. to further education, which the state, through reasonable measures, must make progressively available and accessible.

2. Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account:
   a. equity;
   b. practicability; and
   c. the need to redress the results of past racially discriminatory laws and practices.

3. Everyone has the right to establish and maintain, at their own expense, independent educational institutions that:
   a. do not discriminate on the basis of race;
   b. are registered with the state; and
   c. maintain standards that are not inferior to standards at comparable public educational institutions.

4. Subsection (3) does not preclude state subsidies for independent educational institutions.
Language and culture

Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

Cultural, religious and linguistic communities

1. Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community-
   a. to enjoy their culture, practise their religion and use their language; and
   b. to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

2. The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

Access to information

1. Everyone has the right of access to –
   a. any information held by the state; and
   b. any information that is held by another person and that is required for the exercise or protection of any rights.

2. National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

Just administrative action

1. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

2. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

3. National legislation must be enacted to give effect to these rights, and must....
   a. provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
   b. impose a duty on the state to give effect to the rights in subsections (1) and (2); and
   c. promote an efficient administration.

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
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 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.
4. **Enforcement of rights**

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are:

a. anyone acting in their own interest;
b. anyone acting on behalf of another person who cannot act in their own name;
c. anyone acting as a member of, or in the interest of, a group or class of persons;
d. anyone acting in the public interest; and
e. an association acting in the interest of its members.

5. **Interpretation of Bill of Rights**

1. When interpreting the Bill of Rights, a court, tribunal or forum -
   a. must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
   b. must consider international law; and
   c. may consider foreign law.

2. When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.

3. The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.
LEARNING OUTCOMES

On completion of this study unit you will be able to:

- Explain the security officers' obligation towards the Authority, clients, general public, and the private security industry.
As PSIRA regulates the private security industry they provided the industry with a code of conduct. This document ensures that security officers and companies act within the statutory and ethical boundaries as set out in the PSIRA Code of Conduct. Security officers must understand and adhere to the code of conduct.

1. **Purpose, application and interpretation of the code**

The purpose of this Code is to provide binding rules that all security service providers and employers of in-house security officers must obey in order to:

a) Promote, achieve and maintain a trustworthy and professional private security industry which acts in terms of the law applicable to the members of the industry;

b) promote, achieve and maintain compliance by security service providers with a set of minimum standards of conduct which is necessary to realize the objects of the Authority;

c) promote, achieve and maintain compliance by security service providers with their obligations towards the State, the Authority, consumers of security services, the public, and the private security industry in general;

d) ensure the payment of the applicable minimum wages and compliance with standards aimed at preventing exploitation or abuse of employees in the private security industry, including employees used to protect or safeguard merely the employer’s own property or other interests, or persons or property on the premises of, or under the control of the employer; and

e) provide for matters incidental to the above.

2. **Application of Code**

This Code applies to:

(a) all security service providers, whether registered with the Authority or not, in practicing the occupation of security service provider, in rendering a security service or carrying on business in the rendering of a security service, or in performing any other act or function which is subject to the Act;

(b) every person using his or her own employees to protect or safeguard merely his or her own property or other interests, or persons or property on his or her premises or under his or her control, to the extent provided for in the Act and this Code;

(c) every category or class of persons as contemplated in the Act, taking into account the nature of the relevant provisions of this Code as well as the juristic nature of such persons; and

(d) the relevant conduct of a security service provider at any place, irrespective of whether the conduct was committed within or outside the Republic.

3. **General obligations towards the Authority**

1. A security service provider must, within his or her ability, render all reasonable assistance to and co-operate with the Authority to enable the Authority to perform any function which it may lawfully perform.

2. A security service provider may not perform any act which is calculated or likely to prevent the Authority from performing a function which it may lawfully perform, or which is calculated or likely to cause or encourage disobedience or resistance to the Authority or to any function which the Authority may lawfully perform.

3. A security service provider must without undue delay furnish the Authority with all information or documentation lawfully required by the Authority from such a security service provider.

4. A security service provider must take all reasonable steps to ensure that any information provided to the Authority by such security service provider is true and accurate.
5. A security service provider may not perform any act which is calculated to bring the Authority into contempt or disrepute.

6. A security service provider must discharge all his or her financial obligations of whatever nature to the Authority whenever an amount is due and payable, and, without derogating from the generality of the foregoing, may not tender or deliver a cheque to the Authority that is not good for payment in respect of any amount owed to the Authority by any person.

7. A security service provider may not use any person or body as a front or nominee, and no security service provider may allow himself or herself to be used as a front or nominee, in order to hinder, obstruct or weaken the Authority in the performance of any of the functions of the Authority, or which is calculated or likely to mislead the Authority or cause harm to the interests of the Authority, the State or any person.

8. A security service provider must be honest in all his or her dealings with the Authority.

9. A security service provider must, without undue delay, provide the Authority with all relevant information which is in his or her knowledge concerning the rendering of a security service by a security business which is not registered with the Authority.

10. (a) A security business must keep full and proper financial records, available for inspection by the Authority, for a period of at least 3 years from the date of any transaction, of all income and expenditure of the security business on account of the rendering of any security service by it.

(b) The provisions of regulation 10(2), (3), (4), (5) and (6) of the Private Security Industry Regulations, 2002 are, with the necessary changes, applicable to the obligation contemplated in paragraph (a).

4. General obligations towards the Security Services and organs of State

1. A security service provider must, within his or her ability, render all reasonable assistance and co-operation to the members and employees of the Security Services to enable them to perform any function which they may lawfully perform.

2. A security service provider may not interfere with, resist, obstruct, hinder or delay a member or an employee of a Security Service or an organ of State in the performance of a function which such person may lawfully perform.

3. A security service provider must, without undue delay, furnish all the information and documentation to a member or employee of a Security Service or an organ of State which such member or employee may lawfully require.

4. A security service provider may not unjustly cast reflection upon the honesty, professional reputation, skill, knowledge, service or qualifications of any member of the Security Services.

5. A security service provider must be honest in all his or her dealings with a Security Service and with any organ of State.

6. A security service provider may not, whether directly or indirectly, request or use a member or former member of a Security Service or any employee or former employee of a Security Service or an organ of State, to obtain any information, document, object or assistance for the purposes of rendering a security service, where such member, former member, employee or former employee, will contravene a law or the conditions of his or her service, as the case may be, in providing such information, document, object or assistance.
7. A security service provider must, where the importance, nature or circumstances of a security service, or the nature or extent of the risks guarded against, or any other relevant fact, reasonably requires such a step, officially provide a responsible member of the Service with all relevant information regarding the rendering or proposed rendering of the security service, and maintain contact with such a member if this is reasonable and prudent in the circumstances or if so requested by such member.

5. General obligations towards the public and the private security industry

(1) A security service provider must at all times act in a manner which –
(a) does not threaten or harm the public or national interest;
(b) promotes the stability of the private security industry;
(c) promotes good discipline in the private security industry;
(d) maintains and promotes the status of the occupation of security service provider; and
(e) promotes efficiency in and responsibility with regard to the rendering of security services.

(2) A security service provider may not infringe any right of a person as provided for in the Bill of Rights and, without derogating from the generality of the foregoing:

(a) may not unfairly discriminate directly or indirectly against any person or unfairly deny any person equal service, employment or employment benefits on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; and
(b) may not break open or enter premises, conduct a search, seize property, arrest, detain, restrain, interrogate, delay, threaten, injure or cause the death of any person, demand information or documentation from any person, or infringe the privacy of the communications of any person, unless such conduct is reasonably necessary in the circumstances and is permitted in terms of law.

(3) Every security service provider must endeavour to prevent crime, effectively protect persons and property and refrain from conducting himself or herself in a manner which will or may in any manner whatsoever further or encourage the commission of an offence or which may unlawfully endanger the safety or security of any person or property.

(4) A security service provider may only use force when the use of force as well as the nature and extent thereof is reasonably necessary in the circumstances and is permitted in terms of law.

(5) A security service provider may not hold himself or herself or any other security service provider out to any person as having any authority, power, status, capacity, level of training, accreditation, registration, qualification or experience which he or she or the other security service provider does not have.

(6) A security service provider may only possess or carry a firearm, ammunition or a weapon, or possess or use any equipment, if such conduct is lawful.

(7) A security service provider may only use a firearm in circumstances and in a manner permitted by law.

(8) A security service provider may not act in any manner that threatens or poses an unreasonable risk to the public order or safety.
(9) A security service provider must, when performing functions in a public place, do so with due regard to the safety, security and other rights of the members of the public who are present in such a place.

(10) A security service provider may not through the medium of any other person or body, or by using such person or body as a front or nominee, do or attempt to do or achieve anything, which would not be permissible for him or her to do or to achieve, and no security service provider may allow himself or herself to be used as a front or nominee for such a purpose.

(11) A security service provider must in practicing this occupation, rendering a security service or carrying on business in the rendering of a security service, or when he or she is undergoing security training or assessment of security training, knowledge or skill, always act in an honest and trustworthy manner.

(12) A security service provider rendering a security service:

(a) must treat members of the public with whom he or she comes into contact with the respect and courtesy that is reasonable in the circumstances;

(b) may not incite, encourage or help any person to use force unlawfully or commit any unlawful act; and

(c) may not use abusive language or language which may be reasonably construed as the advocacy of hatred or contempt that is based on race, colour, ethnicity, sex, religion, language or belief.

(13) A security service provider may not use or be under the influence of alcohol or a narcotic drug while rendering a security service.

(14) Without derogating from any provision in this regulation, a security service provider may not intentionally commit a delict against any person while rendering a security service.

(15) A security service provider may not unjustly cast reflection upon the honesty, professional reputation, skill, knowledge, quality of service, background or qualifications of any other security service provider, and, without derogating from the generality of the foregoing, may not intentionally or negligently disseminate false information concerning another security service provider or lay a false charge or make a false complaint against or concerning another security service provider.

(16) A security service provider may not:

(a) in any unlawful manner infringe the goodwill of another security service provider, and, without derogating from the generality of the foregoing, may not make false statements regarding a security service provider, instigate a boycott against a security service provider, or unlawfully exercise physical or psychological pressure on clients, employees or suppliers of a security service provider;

(b) engage in an act of unlawful competition in competing with another security service provider, and, without derogating from the generality of the foregoing, may not mislead the public, copy the distinguishing signs or misappropriate the performance of another security service provider, exploit the reputation of another security service provider, unduly influence the public with regard to his or her own services, bribe an employee or agent of a client or potential client of another security service provider, obtain or use the trade secrets or confidential business information of another security service provider or compete with another security service provider in breach of a statutory or contractual obligation;
(c) interfere with, hinder or obstruct another security service provider or his or her personnel in the rendering of a security service or the administration of his or her business affairs; or

(d) interfere with or tamper with the equipment, firearms, ammunition, or weapons used by another security service provider in the rendering of a security service, or intercept or interfere with the communications of another security service provider.

6. General obligations towards clients, and issues related thereto

(1) A security service provider may not use any misrepresentation, duress, unreasonable pressure or undue influence, or unfairly or unreasonably exploit or misuse the circumstances of any client, or use any method or act prohibited in terms of legislation or common law dealing with corruption, when communicating, negotiating or contracting with a client.

(2) A security service provider must, whenever a client reasonably needs information to make an informed decision or to exercise or protect a right or comply with a duty, furnish sufficient and correct information which is or should reasonably be within the knowledge of the security service provider, to the client, including such information concerning the following:

(a) the risks to which the client is exposed and the client’s needs in respect of a particular security service;

(b) the client’s needs in respect of the use of equipment, firearms and weapons in the rendering of a security service to the client;

(c) the security service that he, she or any other security service provider that will be used to render the security service, is entitled, able and qualified to render;

(d) the correct and full remuneration, reward, fee or benefit payable by the client in respect of the relevant security service;

(e) the registration status as security service provider, training level and relevant conditions of service of the security officers used or to be used in rendering the security service;

(f) the management, control and supervision of the rendering of the security service as well as reasonable contact particulars of security officers performing such functions;

(g) the procedures, firearms, ammunition, weapons and equipment used or to be used by security officers in the rendering of the security service;

(h) any contractor or sub-contractor used or to be used in connection with the rendering of the security service, as well as the control and supervision of such contractor or sub-contractor;

(i) any matter on which the security service provider is by law obliged to furnish information to the client; and

(j) any matter on which the client lawfully and reasonably requests information.

(3) A security service provider may not:
(a) make a contractual offer, conclude a contract or make himself or herself available for the rendering of a security service or the performance of any function, that requires a legal power, license, permit, authorization, accreditation, level of training, skill, knowledge, qualification, registration, security officers, firearm, ammunition, weapon, equipment, infrastructure, capacity or premises, which he or she does not have or is not likely to have when he or she has to commence rendering such a service or perform such a function;

(b) render or purport to render a security service or perform any function that requires a legal power, license, permit, authorization, accreditation, level of training, skill, knowledge, qualification, registration, security officers, firearm, ammunition, weapon, equipment, infrastructure, capacity or premises, which he or she does not have;

(c) submit tender documentation for the rendering of a security service to any person or body that contains any materially false or misleading information, or that omits any information of a material nature;

(d) make a contractual offer to or conclude a contract with a client containing any term, condition or provision that-

(i) excludes, limits or purports to exclude or limit the legal liability of the security service provider towards the client in respect of any malicious, intentional, fraudulent, reckless or grossly negligent act of the security service provider, his or her security officers or other personnel, or any other person used by the security service provider or recommended by him or her to the client;

(ii) places a duty or purports to place a duty on the client to indemnify or compensate the security service provider or any other person in respect of any act referred to in subparagraph (i) by a person for whose conduct the client is not independently responsible in law;

(e) make a contractual offer to or conclude a contract with a client containing any term, condition or provision that excludes or limits or purports to exclude or limit any duty on the security service provider in terms of the Act or this Code or any right which a client has in terms of the Act or this Code, or which constitutes or purports to constitute a waiver of any such right by the client; or

(f) make a contractual offer to or conclude a contract with a client containing any term, condition or provision that is prohibited in terms of any legislation dealing with unfair or unconscionable contractual provisions.

(4) A security service provider must ensure, at his or her own cost, that the full contractual agreement with the client in respect of the rendering of a security service is reduced to writing and signed by or on behalf of the security service provider and that a true copy thereof is provided to the client without undue delay.

(5) A security service provider-

(a) must render the security service for which he or she has bound himself or herself contractually in accordance with the terms and conditions of the contract, the Act and this Code;

(b) must render the security service for which he or she has bound himself or herself contractually, and perform any related function or work, with such a degree of skill, diligence and care as may be expected of a reasonable, competent and qualified security service provider in the circumstances; and
may not demand a larger performance from a client for the rendering of a security service than that which is legally owed by the client, or receive such a performance, unless the client voluntarily decides to render an additional performance.

A security service provider must without undue delay furnish a client who has paid any amount for the rendering of a security service with a correct and full receipt, or similar adequate written or electronic proof, in respect of such payment.

A security service provider must protect the rights and legally recognized interests of a client in a reasonable manner, in accordance with all applicable law and with due regard to the rights and legally recognized interests of all other parties concerned.

A security service provider may not in rendering a security service make any person available or use or permit the use of any firearm, ammunition, weapon or equipment if this exposes the client or any other person to any unlawful harm, or the unreasonable risk of unlawful harm, of which the security service provider is aware or should reasonably be aware.

A security service provider may not-

(a) use or make any person available for the rendering of a security service, whether directly or indirectly, unless such a person -

(i) is registered as a security service provider in terms of the Act and may render the relevant security service in terms of the Act; and

(ii) has successfully completed the security training required in terms of law in respect of the rendering of the relevant security service;

(b) use another security service provider than the one provided for in the contract with the client to render the security service or part thereof to a client, unless:

(i) the client has given consent thereto; and

(ii) such security service provider is registered with the Authority and is entitled, able and equipped, and has the infrastructure and capacity, to render the security service in question.

A security service provider may not, where a conflict of interests of the security service provider and the client, or a conflict of interests of different clients of the security service provider, exists, arises or is reasonably foreseeable in the rendering of a security service, act or continue to act without prior full disclosure to and the consent of the interested parties.

A security service provider may not in any manner whatsoever disclose confidential information concerning a client, including information relevant to the security, safety or protection of a client or of his or her legally recognized interests, that has come to his or her knowledge on account of the rendering or negotiating the rendering of a security service to such client, without having obtained prior consent for the disclosure, unless the security service provider is legally obliged to disclose the information or the disclosure is made in circumstances in which it is not reasonably possible to obtain the client’s consent and the disclosure is made in the interests of the client.

A security service provider may not in any manner whatsoever, without the written consent of a client, use confidential information concerning the client that has come to his or her knowledge on account of the rendering or negotiating the rendering of a security service:
(a) to obtain or retain an unfair financial benefit at the expense of the client; or
(b) to unfairly compete with the client in business.

(14) A security service provider must take all reasonably necessary steps to protect and safeguard any confidential information concerning a client, including information relevant to the security, safety or protection of the client or of his or her legally recognized interests, that has come to his or her knowledge on account of the rendering or negotiating the rendering of a security service to such client.

(15) A security service provider may not:
(a) without a legal ground justifying such conduct, use, alienate, hand over, be in possession of, or retain any property of a client, or be or remain on the premises or any part thereof of a client; or
(b) intentionally or through gross negligence damage or lose any property of a client.

(16) Without derogating from any provision in this regulation, a security service provider may not commit a delict against his or her client in the rendering of a security service to the client or in any act related to the rendering of a security service.

7. **Provisions regarding certain categories and classes of security service providers and different types of security services.**

7.1 **Employers**

(1) A security service provider employing any person in the private security industry must comply with every obligation imposed by law towards or in respect of such employee, and, without derogating from the generality of the foregoing:
(a) may not abuse or exploit the employee;
(b) must ensure that the employee receives the full wages and all other service benefits due to him or her as provided for in terms of any applicable legal provision, agreement, contract or determination;
(c) must comply with all obligations imposed by law on employers to ensure that their employees qualify for or receive any social security benefits or other financial benefits provided for in terms of law;
(d) must comply with all obligations imposed by law on employers aimed at the training and skills development of such an employee; and
(e) must comply with all obligations imposed by law on employers relating to the deduction of annual amounts as contemplated in section 43 of the Act, or levies as contemplated in section 4(2)(b) of the Levies Act, from the employee’s wages, remuneration or reward, as well as the payment thereof to the Authority.

(2) A security service provider must, before employing any person as a security officer, take all reasonable steps to verify the registration status as security service provider, level of training, qualifications and all other relevant facts concerning such a person.

(3) A security service provider may not directly or indirectly order, allow or use a security officer in his or her employ to render a security service which requires a legal power, status, license, permit, authorization, accreditation, registration, level of training, skill, knowledge or qualification that the security officer does not have.
(4) A security service provider may not directly or indirectly order or allow a security officer in his or her employ to possess or use a firearm, ammunition, weapon or any equipment, unless such possession and use is lawful and the security officer has been successfully trained as required by law in the possession and use thereof and is able to use it lawfully, safely and correctly in the relevant circumstances.

(5) A security service provider must take reasonable steps to ensure that a security officer in his or her employ who is used or made available to render a security service to any person -

(a) has been properly informed about the nature and scope of his or her functions and duties as well as his or her legal powers in this regard;

(b) is properly managed, controlled and supervised;

(6) A security service provider must, at his or her own cost, provide all assistance reasonably necessary and possible to security officers in his or her employ to ensure the receipt by them of all relevant information from the Authority regarding any matter relevant to the regulation of the private security industry, including their financial obligations towards the Authority and the renewal of registration as security service provider as contemplated in the Act.

(7) A security service provider must, at his or her own cost and as often as it is reasonable and necessary, but at least once a year, provide training or cause such training to be provided, to all the security officers in his or her employ to enable them to have a sufficient understanding of the essence of the applicable legal provisions regarding the regulation of the private security industry and the principles contained in this Code.

(8) (a) A security service provider must draw up, or caused to be drawn up, and properly and consistently enforce a disciplinary code in respect of all security officers in his or her employ.

(b) The disciplinary code contemplated in paragraph (a) must contain rules which adequately reflect the relevant values and principles contained in this Code as well as any further rules that are reasonably necessary to ensure disciplined, honest, safe, reasonable, professional and competent conduct by security officers in the circumstances in which they are employed and made available by the security service provider for the rendering of one or more security services.

(c) The obligation contemplated in paragraph (a) comes into operation 30 days after promulgation of these regulations.

(9) A security service provider must, without undue delay, officially provide a responsible member of the Service with all relevant information which is in his or her knowledge concerning the commission or alleged commission of any offence specified in the Schedule of the Act by a security officer in his or her employ.

7.2 Persons occupying certain offices or positions

A security service provider who is a director, member, partner, trustee, administrator or a person in control of any security business, as the case may be, and any person performing executive or managing functions in respect of a security business, must at all times while he or she is occupying such office or having such position, take all reasonably practicable steps within his or her powers and capacity to ensure that the security business complies with the provisions of the Act, the Levies Act and this Code.
7.3 Management, control and supervision

(1) A security business must ensure that its business affairs, the rendering of a security service by it, the security officers used or made available by it and its compliance with obligations in terms of the Act, the Levies Act and this Code, are properly managed, controlled, supervised and administered by appropriately trained, experienced or skilled persons.

(2) Without derogating from the generality of sub-regulation (1), a security business must implement systems and practices of management, control, supervision and administration that are reasonably necessary in view of the nature and size of the security business, the number of security officers used or made available and the nature and scope of the security services rendered, to ensure-

(a) effective control over the rendering of security services by the security business; (b) lawful, trustworthy, disciplined and competent conduct by security officers used or made available by the security business; and

(c) compliance with the obligations of the security business in terms of the Act, the Levies Act and this Code.

7.4 Security service providers making security officers available to others.

(1) A security service provider who makes a security officer or the services or the assistance of a security officer available to any other security service provider with a view to the rendering of a security service to a third party, is bound by all the provisions of this Code that are applicable to security service providers generally as well as to employers specifically as contemplated in regulation 11 of this Code, with the necessary changes.

(2) Without derogating from the generality of sub-regulation (1), a security service provider contemplated in sub-regulation (1) must ensure that a security officer who, or whose services or assistance, is thus made available by him or her, receives the full wages and all other service benefits due to the security officer as provided in terms of the applicable law.

(3) A security service provider who makes a security officer or the services or the assistance of a security officer available to any other security service provider as contemplated in sub-regulation (1), may only do so if such security service provider is registered with the Authority and is otherwise entitled to render the security service in respect of which the security officers are made available.

7.5 Private investigators

A security service provider performing the functions of a private investigator:

(a) may not perform any act which interferes with, hinders or obstructs a Security Service or an organ of State in performing any function that it may lawfully perform, or advise or agree with a client to perform such an act;

(b) may not advise, assist or incite a client or any other person to commit an offence, a delict, breach of contract or any other type of unlawful act;

(c) may not undertake or assist in the entrapment of any person for the purposes of obtaining evidence of an offence, a delict or breach of contract unless such conduct is permitted in terms of law and any official permission that may be legally required, has been obtained;

(d) may not conceal facts regarding the commission of an offence from a Security Service or any organ of State, or agree with a client to conceal such facts from a Security Service or any organ of State;
(e) may not employ a corrupt, illegal or unlawful method or technique, or use unlawful threats, intimidation, misrepresentation or false pretences, to gather information, gain access to premises or secure the assistance or co-operation of any person;

(f) may not possess or use a monitoring device or any other equipment for the purposes of surveillance, counter-surveillance or any other aspect of an investigation where such possession or use is in conflict with any legal provision or any provision of this Code or constitutes an unlawful act against any person;

(g) may not possess or use a specialised device used for the opening, closing or engaging of locking mechanisms, or possess or use any specialised device used to reproduce or duplicate keys, or possess any key code or key, unless he or she is able to provide a justifiable reason to the Authority or the Service, as the case may be, for such possession or use;

(h) may not possess, carry or use any document or object for the purposes of providing a false or incorrect indication of his or her identity, status, powers or functions, unless he or she is able to demonstrate to the Authority or the Service, as the case may be, that such conduct-

(i) is essential for the purposes of conducting a lawful investigation which has been properly mandated by a client; and

(ii) is not in conflict with any legal provision and does not constitute an unlawful act against any person

(i) may not falsify, distort, manufacture, destroy or unlawfully interfere with any evidence of an offence, delict, breach of contract or any other legally relevant fact;

(j) may not request or obtain information, assistance or co-operation from any person in circumstances where such person contravenes or would contravene the law, the conditions of his or her service, a binding code of ethics, acts in breach of trust or a contractual obligation, or infringes a person’s right to privacy, in providing such information, assistance or co-operation;

(k) may not promise, offer or give any consideration to a person in order to obtain information, assistance or co-operation from such person in circumstances where the person contravenes the law, the conditions of his or her service, a binding code of ethics or acts in breach of trust or a contractual obligation in agreeing to or accepting such offer or consideration;

(l) may only undertake an investigation on behalf of a client in terms of a proper mandate reduced to writing and signed by or on behalf of the client containing at least the name and address of the private investigator, the name and address of the client, a description of the subject matter of the investigation, the date of the mandate, the remuneration, reward, fee or benefit in respect of the investigation, and details of any prepayment to be made by the client;

(m) must keep the mandate contemplated in paragraph (l) for a period of at least three years in a secure place;

(n) may not demand from a client any amount or performance which is not in accordance with the amount contemplated in paragraph (l), or otherwise legally due to him or her;

(o) may not demand, receive or retain any payment, performance or property which is not due and payable from a client or any other person, or which serves as remuneration in respect of any act by the private investigator that is prohibited in terms of this Code;
may not provide false or misleading information to a client regarding an investigation mandated by the client, including information relating to the cost of such investigation or any part thereof, the time spent on the investigation and the methods used or to be used for the purposes of the investigation; and

must provide a client without undue delay with a written and signed report regarding any investigation mandated by the client, if so requested by the client and if there is no legal ground on which the client’s request may be denied.

7.6 Locksmiths

A security service provider performing the functions of a locksmith –

(a) must perform all his or her functions in a trustworthy and competent manner;

(b) must take all reasonable steps necessary to eliminate or minimize any risk of harm to a client as a result of any service rendered by him or her to the client;

(c) may only open, close or engage a locking mechanism of any nature, or reproduce, duplicate, manufacture or provide a key, start any vehicle or cause a vehicle to be capable of movement by unlocking a locking mechanism, if the person requesting such action furnishes written proof of his or her identity with sufficient contact particulars as well as the authority to make the request, and, if relevant in the circumstances, the consent of any other person required by law in respect of the requested action, has been furnished;

(d) must make reasonable enquiries, if reasonably necessary in the circumstances, to verify the proof and information contemplated in paragraph (c);

(e) must keep a proper record of the information contemplated in paragraph (c) for a period of at least three years in a secure place;

(f) may not perform any act, unless duly authorized thereto, that compromises or may probably compromise the security of a client or of any other person, including an act which affects the security and efficiency of any locking mechanism, key, vehicle, door, gate or security system;

(g) may not duplicate, reproduce, manufacture or possess any key or key code, or modify a key blank, unless this is done for lawful purposes;

(h) must exercise effective and reasonable control over a specialized device, belonging to or utilized by him or her, which is used to open, close or engage locking mechanisms;

(i) must exercise effective and reasonable control over a specialized device, belonging to or utilized by him or her, to reproduce or duplicate keys;

(j) may only provide a key code, ready cut keys or a specialized device contemplated in paragraph (h) and (i), belonging to or utilized by him or her, to a person who is entitled to receive and possess it in terms of a ground recognized by law;

(k) may only provide information or training or impart skills regarding the opening, closing or engaging of locking mechanisms of any nature to a person that is registered as a security service provider, enrolled to receive training at a security training establishment, or entitled to receive such information, training or skills in terms of some other ground recognized by law; and
(l) must acquire any key or key code, or any specialised device contemplated in paragraph (h) and (i), in a lawful manner

7.7 Security consultants and advisers

A security service provider giving advice on the protection or safeguarding of a person or property, any other type of security service, or on the use of security equipment:

(a) must provide a client with sound, honest and objective advice which is in the best interests of the client;

(b) must timeously disclose to a client any direct or indirect benefit of whatever nature that he or she or any business in which he or she has any direct or indirect interest may obtain if the client acts upon the advice provided by the security service provider;

(c) must comply, with the necessary changes, with the provisions of regulation 15(a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (o), (p) and (q);

(d) may not advise a client to use any corrupt, unlawful or illegal method, system or practice;

(e) may not advise a client to use or obtain the services of a security service provider who is not registered with the Authority, trained up to the level required by law and otherwise entitled by law to render the security service in question;

(f) may not advise a client to use or obtain the services of any person who is untrustworthy or incompetent; and

(g) may not advise a client to obtain, use or provide any equipment, firearm, ammunition or weapon, or implement any system, which is faulty or has a defect that may render it an inherent source of danger to any person.

7.8 Security service providers ensuring order and safety on premises used for sporting, recreational, entertainment or similar purposes

A security service provider who has contracted to render a service aimed at ensuring order and safety on premises used for sporting, recreational, entertainment or similar purposes, whether on his or her own or in conjunction with any other person, and any security officer used to render such a service, must act in accordance with all the obligations imposed by the Act and all other applicable legal provisions.

7.9 Security service providers providing security training

A security service provider providing security training –

(a) must provide security training which is of a high quality;

(b) must employ training methods and materials which are the most suitable in the circumstances in order to promote and achieve the officially approved outcomes in respect of the security training;

(c) may only provide security training in terms of his or her own qualifications and official accreditation or authorization, and must comply with every condition attached to such accreditation or authorization;
(d) must provide security training in accordance with all legal provisions applicable to such training;

(e) must provide security training in accordance with any relevant and officially approved or accredited syllabus, program, standards and training material;

(f) must, when assessing or testing the knowledge, insight or skills of any person undergoing security training, or the outcomes of such training, use the applicable officially approved methods and procedures, act in an objective manner without showing any prejudice or favour, and may not employ any method or practice that would distort the actual knowledge, insight or skills of the person undergoing the assessment or testing; and

(g) must take reasonable steps to ensure that the security training in question is only provided to a person entitled in terms of the Act to undergo such training.

7.10 Security service providers installing, servicing or repairing security equipment or performing certain functions regarding monitoring devices

A security service provider installing, servicing or repairing security equipment

(a) must perform all his or her functions in a reasonable, trustworthy and competent manner;

(b) may not install, service or repair any security equipment if the client’s possession or use thereof, is or will be unlawful;

(c) must make reasonable enquiries, if reasonably necessary in the circumstances, to verify the lawfulness of a client’s possession and use of security equipment as contemplated in paragraph (b);

(d) may not install, service, repair or modify any security equipment if he or she would act unlawfully in doing so;

(e) may only install security equipment if it has been acquired in a lawful manner by him or her or by the client, as the case may be;

(f) may not install security equipment if he or she knows or should reasonably know that it is faulty, untrustworthy or defective, or that it poses an unreasonable risk to the legitimate interests of the client or any other person;

(g) must, when he or she installs security equipment, provide the client with all information reasonably necessary in regard to the care of and the effective use of the security equipment, unless the client is already in possession of such information;

(h) must take all reasonable steps necessary in the circumstances to eliminate or minimize any risk of harm to a client as a result of the service rendered by him or her;

(i) may not perform any act, unless duly authorized thereto, that compromises or may probably compromise the security of a client or any other person entitled to security;

(j) may only provide information or training or impart skills concerning the operation, installation, repair or servicing of security equipment to a person who is registered as a security service provider, enrolled to receive training at a security training establishment, or is otherwise entitled to have access to such information, training or skills;

(k) may not make a misrepresentation to a client regarding any security equipment provided to the client by him or her; and
must without undue delay officially report to the Service the unlawful possession or use of security equipment by any person that he or she is aware of:

A security service provider manufacturing, importing, distributing, advertising, possessing or using a monitoring device:

(a) may only manufacture, import, distribute, advertise, possess or use a monitoring device in compliance with all applicable legal provisions;

(b) must keep proper records as may be prescribed in terms of the Act;

(c) must submit information to the Authority on all transactions regarding monitoring devices as may be prescribed in terms of the Act;

(d) may not supply a monitoring device to any person if the identity and sufficient contact particulars of such person as well as the identity and sufficient contact particulars of the end user thereof are not confirmed in writing to him or her before he or she supplies such a monitoring device;

(e) may not supply a monitoring device to any person if such person’s possession or use thereof and the possession or use thereof by the end user, is or will be unlawful

(f) must make reasonable enquiries, if reasonably necessary in the circumstances, to verify the lawfulness of a person’s possession and use of a monitoring device as contemplated in paragraph (e), as well as the accuracy of any relevant information provided by the client to him or her; and

(g) must comply, with the necessary changes, with the provisions of regulation 15(a), (b), (c), (d), (e), (f), (g), (h), (i), (j) and (k), and regulation 17(d) and (e).

8. Obligations on employers of in-house security officers

8.1 General obligations

An employer of in-house security officers:

(a) must comply with the Act and with all other legal provisions and obligations, whether they are based on or form part of common law or statutory law, that are applicable or relevant to the employment and use of in-house security officers as contemplated in section 28(2) of the Act, or for any other function that is subject to the Act;

(b) is, in addition to any other provision of this Code which is on account of its wording applicable to him or her, subject to regulations 6, 7, 8, 11, 12 and 13, to the extent that they are applicable, with the necessary changes.

(2) The general obligations contemplated in this regulation do not derogate from the specific obligations contained in this chapter.

8.2 Specific obligations

An employer of in-house security officers:

(a) may only use, permit or direct an employee to protect or safeguard merely his or her own property or other interests, or persons or property on his or her premises or under his or her control, or to perform any other function that is subject to the Act, if such employee is registered as a security service provider in terms of the Act, has successfully completed the
security training required by law relevant to this function, and is otherwise entitled by law to perform the function in question;

(b) must, before using, permitting or directing an employee to render a security service contemplated in paragraph (a), take all reasonable steps necessary to verify the registration status as security service provider, level of training, qualifications and any other relevant facts concerning such employee;

(c) must appoint and use, subject to paragraph (a), a responsible person to manage, supervise and control all employees used, permitted or directed to render a security service as contemplated in paragraph (a);

(d) must appoint and use a responsible person to ensure that the obligations of the employer of in-house security officers towards the Authority are discharged in terms of law;

(e) may not, whether for reward or not, except to the extent allowed in section 28(2) of the Act, make any employee or his or her services available for the purposes of rendering a security service to any other person;

(f) must, in respect of all employees used, permitted or directed to render a security service as contemplated in paragraph (a), comply with the relevant provisions of the Levies Act as well as all applicable laws and measures promulgated in terms of law regarding minimum wages and standards aimed at preventing exploitation or abuse of employees in the private security industry; and

(g) must take all reasonable steps to ensure that the employer of in-house security officers does not act as a security service provider, and that the impression is not created that the employer of in-house security officers is, or acts, as a security service provider.

9. **Provisions regarding improper conduct, the enforcement of the code and other matters relating thereto,**

9.1 **Improper conduct by a security service provider**

A security service provider who-

(a) contravenes or fails to comply with a provision of the Act;

(b) commits an offence contemplated in the Schedule to the Act;

(c) contravenes or fails to comply with a provision of the Levies Act; or

(d) contravenes or fails to comply with a provision of this Code,

**is guilty of improper conduct and on conviction liable to any penalty contemplated in regulation 25.**

(2) Any conspiracy, incitement or attempt to commit any act contemplated in sub-regulation (1)(a), (c) or (d) constitutes improper conduct as contemplated in sub-regulation (1).

(3) The intentional provision of assistance by a security service provider to another security service provider to commit any act referred to in sub-regulation (1)(a), (c) or (d) constitutes improper conduct as contemplated in sub-regulation (1).
Every contravention or failure to comply as contemplated in sub-regulation (1), (2) or (3), constitutes a separate count of improper conduct in respect of which any penalty contemplated in regulation 25 may be imposed.

9.2 Penalties in respect of improper conduct by a security service provider

A security service provider who has been found guilty of improper conduct in terms of the procedures contemplated in regulation 29, is subject to the following penalties:

(a) a warning or a reprimand;
(b) suspension of registration as security service provider for a period not exceeding 6 months;
(c) withdrawal of registration as security service provider;
(d) a fine not exceeding R10 000, which is payable to the Authority;
(e) publication of appropriate details of the conviction of improper conduct and any penalty imposed; or
(f) any combination of the above.

(2) The penalty contemplated in sub-regulation (1)(b), (c) or (d) may be suspended on any condition that is reasonably likely to promote compliance with this Code by the security service provider.

(3) In addition to any other relevant fact, the following must be considered and properly taken into account in imposing any penalty contemplated in this regulation:

(a) the gravity and nature of the improper conduct;
(b) the known relevant circumstances of the security service provider, and such other relevant circumstances as the security service provider may prove to exist;
(c) the national interest as well as the interest of the public and of the private security industry;
(d) the risk posed by the improper conduct to the rights or legitimate interests of any person;
(e) any previous conviction of the security service provider of improper conduct in terms of this Code or the repealed code of conduct;
(f) the financial or other benefit or likely benefit obtained or that may be obtained by the security service provider through the commission of improper conduct; and
(g) any actual or potential harm caused by the security service provider through the commission of improper conduct.

9.3 Improper conduct by an employer of in-house security officers

(1) An employer of in-house security officers who –

(a) contravenes or fails to comply with a provision of the Act;
(b) contravenes or fails to comply with a provision of the Levies Act; or

(c) contravenes or fails to comply with a provision of this Code,

is guilty of improper conduct and on conviction liable to any penalty contemplated in regulation 27

(2) Any conspiracy, incitement or attempt to commit any act contemplated in sub-regulation (1)(a), (b) or (c) constitutes improper conduct as contemplated in sub-regulation (1).

(3) Every contravention or failure to comply as contemplated in sub-regulation (1), or (2) constitutes a separate count of improper conduct in respect of which any penalty contemplated in regulation 27 may be imposed.

9.4 Penalties in respect of improper conduct by an employer of in-house security officers

(1) An employer of in-house security officers who has been found guilty of improper conduct in terms of the procedures contemplated in regulation 29, is subject to the following penalties:

(a) a warning or a reprimand;

(b) a fine not exceeding R10 000, which is payable to the Authority;

(c) publication of appropriate details of the conviction of improper conduct and any penalty imposed; or

(d) any combination of the above.

(2) The penalty contemplated in sub-regulation (1)(b), (c) or (d) may be suspended on any condition that is reasonably likely to promote compliance with this Code by the employer of in-house security officers.

(3) In addition to any other relevant fact, the following must be considered and properly taken into account in imposing any penalty contemplated in this regulation-

(a) the gravity and nature of the improper conduct;

(b) the known relevant circumstances of the employer of in-house security officers, and such other relevant circumstances as the employer of in-house security officers may prove to exist;

(c) the national interest as well as the interest of the public;

(d) the risk posed by the improper conduct to the rights or legitimate interests of any person;

(e) any previous conviction of the employer of in-house security officers of improper conduct in terms of this Code;

(f) the financial or other benefit or likely benefit obtained or that may be obtained by the employer of in-house security officers through the commission of improper conduct; and
any actual or potential harm caused by the employer of in-house security officers through the commission of improper conduct.

**9.5 Improper conduct also a criminal offence**

Any person who commits improper conduct in terms of this Code, is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 24 months, or to both a fine and such imprisonment.

**9.6 Procedures**

(1) The procedures for the enforcement of this Code by the Authority are contained in the Improper Conduct Enquiries Regulations.

(2) The procedures contained in the Improper Conduct Enquiries Regulations are incorporated into this Code.

**9.7 Rules of evidence and related matters**

(1) (a) For the purposes of the enforcement of this Code through an enquiry, the rules of evidence in this regulation and in the Improper Conduct Enquiries Regulations will apply.

(b) The rules of evidence contained in the Improper Conduct Enquiries Regulations are incorporated into this Code.

(2) For the purposes of imposing upon any person who is a security service provider or an employer of in-house security officers, liability for improper conduct in terms of this Code, any act is deemed to have been performed by such security service provider or employer of in-house security officers if:

(a) it is performed by or on the instruction or with the permission, express or implied, given by a person who-

(i) performs executive or managing functions in respect of the security service provider or employer of in-house security officers;

(ii) is a director, member, partner, trustee, administrator or person in control, as the case may be, of the security service provider or employer of in-house security officers;

(iii) is an employee of the security service provider or employer of in-house security officers; and

(b) the person contemplated in paragraph (a) acts: (i) in the exercise of his or her powers; (ii) in the performance of his or her functions or duties; (iii) within the scope of his or her employment; or

(iv) in furthering or endeavoring to further the interests of the security service provider or employer of in-house security officers.

(3) A security service provider and an employer of in-house security officers may be found guilty of improper conduct at an enquiry if the presiding officer is of the opinion that on the basis of all the evidence tendered at the enquiry, the prosecutor has proved the charge of improper conduct on a balance of probabilities.

(4) If, at an enquiry, an element of the improper conduct in question consists of a finding or decision by a court of law or by any other tribunal or an official of the State, a certificate purporting to have been signed by the director recording such finding or decision and the source on which the information in the certificate is based, will be *prima facie* evidence of such a finding or decision.
(5) The provisions of sub-regulation (4) do not exclude any other evidence that may be adduced by the prosecutor in terms of law to prove a charge of improper conduct or any element of improper conduct and do not derogate from the power of a presiding officer to make a finding regarding any element of improper conduct on any such evidence.

(6) (a) The provisions of the Computer Evidence Act, 1983 (Act No. 57 of 1983) are applicable, with the necessary changes, to an enquiry.

(b) For the purposes of the application of the Computer Evidence Act, 1983 in terms of paragraph (a), the Authority is deemed to be a "public institution" as contemplated in the said act.

(7) If in any enquiry it is an element of the improper conduct that a person referred to in the charge sheet rendered a security service or was used or made available to render a security service and the prosecutor shows that the respondent is a security business and employed the person in question at the relevant time, it will be accepted that the said person rendered the security service or was used or made available to render the security service as alleged in the charge sheet, unless there is evidence to the contrary which raises a reasonable doubt.

(8) If in any enquiry the prosecutor produces a document provided to the Authority by the respondent, an official or employee of the respondent, a person apparently in the employ of the respondent, or by a person apparently assisting the respondent in his or her business or activities, or if the document was found by an inspector at premises apparently used by the respondent in connection with the rendering of a security service or the administration or management of the rendering of a security service or security officers, the document will be proof of the information contained therein to the extent that the prosecutor expressly relies on the truthfulness or accuracy of such information, unless there is evidence to the contrary which raises a reasonable doubt.

(9) If in any enquiry the prosecutor produces evidence of an oral statement made to an inspector by the respondent, an official of the respondent, a person apparently in the employ of the respondent, or by a person apparently assisting the respondent in his or her business or activities, the oral statement will be proof of the information contained in such oral statement to the extent that the prosecutor expressly relies on the truthfulness or accuracy of such information, unless there is evidence to the contrary which raises a reasonable doubt.

(10) Evidence submitted at an enquiry which has been obtained in an unlawful manner, is admissible at an enquiry unless the admission thereof would render the enquiry materially unfair or would be prejudicial to the public interest.

(11) No provision or penalty contained in this Code, with the exception of criminal proceedings in respect of an offence contemplated in regulation 28, may be construed as indemnifying any person against a prosecution, conviction or imposition of a penalty in respect of any offence in a court of law.

(12) No criminal proceedings or any other legal proceedings of whatever nature, whether such proceedings are anticipated, pending or concluded will indemnify a security service provider or an employer of in-house security officers against an enquiry, a conviction of improper conduct or the imposition of a penalty in respect of improper conduct in terms of the procedures contemplated in regulation 29.
LEARNING OUTCOMES

On completion of this study unit you will be able to:

- Explain the legal requirements to use force under the definition of private defence.
- Explain the conditions that an attack on any human being must comply with according to the common law principles before a defensive action will be considered lawful.
- Explain the term “necessity”.
- Explain the conditions that an Act of necessity must comply with according to the common law principles before it will be considered lawful.
1. Introduction

Intervention by the criminal law may be traumatic. It can easily happen that criminal law is turned into a tool of suppression, as occurred during the Middle Ages. It is therefore important that mechanisms exist to protect the rights of the individual against abuse by organs of the state. The principle of legality plays an important role in this regard, as the principle is based on principles of constitutional democracy and fairness.

Before the interim Constitution (Act 200 of 1993) came into operation, no Act of Parliament could be declared null and void, as the legislature was sovereign. The principle of legality was to a large extent only an ideal to be aspired to, but that could not be enforced. However, chapter 3 of the Constitution contains provisions which incorporate certain aspects of the legality principle. As a result these aspects of the principle of legality can be enforced by the Constitutional Court.

2. The requirements of a crime

2.1 The concept of legality

In determining whether a person is criminally liable, the first question to be asked is whether the type of conduct allegedly committed by him is recognized by the law as a crime. Certain conduct may be wrong from a moral or religious point of view, yet may not be prohibited by law. Again, even if it is prohibited by law, it does not necessarily follow that it is a crime: it may perhaps only lead to a civil action (i.e. an action or court case in which one private party claims damages from another party) or it may result only in certain administrative measures being taken by some authority (where, for example, a local authority orders me to break down a wall which I have constructed upon my property in such a way that it contravenes the local building regulations). Not every contravention of a legal rule constitutes a crime. It is only if a certain kind of conduct is defined by the law as a crime that there can be any question of criminal liability for that type of conduct.

It is this very obvious consideration which lies at the root of the principle of legality. The principle of legality is also known as the *nullum crimen sine lege* principle. The Latin expression means “no crime without a legal provision”.

**Definition**

A definition of the principles of legality embodying its most important facets can be formulated as follows: **An accused ought not be found guilty of a crime and sentenced unless the type of conduct with which he is charged:**

- has been recognized by the law of the land as a crime.
- in clear terms and
- before the conduct took place,
- the particular conduct of the accused can be brought under the definition of the crime without interpreting the words or concepts in the definition too widely, and
- after conviction the imposition of punishment also complies with the four principles set out immediately above

2.2 Act or Omission

Once it is clear that the type of crime with which X is charged is recognized in our law (in other words once it is clear that the principle of legality has been complied with), the first requirement which must be complied with when determining criminal liability is that there must be an act (in the legal sense of the word).

The requirement of an act forms the basis of criminal liability, since it means that mere thoughts or even decisions are not punishable. If X merely decides to kill Y, he does not commit a punishable act. Before there can be any question of criminal liability, X must have started converting his thoughts into actions. Even the uttering of words may be sufficient to constitute a crime, as is
evident from the fact that incitement and conspiracy (which we shall discuss later) are punishable.

You should not infer, from what has just been said, that a person’s thoughts (or state of mind) have no significance in criminal law. Once a person’s thoughts have been converted into an act they are of the utmost importance: indeed, his state of mind at the time when the act was committed may determine whether he will be punished or not. We shall return to this point later.

However, what do we mean by “act”? Does this term cover all conceivable forms of conduct?

The term “act” as used in criminal law, means a voluntary, human act or omission.

The act may take the form of either an act in the sense of a commission (positive conduct or commissio) or an omission (failure to act positively or an omission).

Strictly speaking, the term “act” is too narrow to serve as a synonym for “act or omission”, because “to act” does not mean the same as “to omit to do something”.

In fact, in our everyday speech an omission is the exact opposite of an act. When the word “act” is used in the terminology of criminal law, it bears a different meaning to the meaning it has in everyday speech. “Act” must be seen as a technical term which is wide enough to include both positive conduct and an omission. One can, of course, use the term “conduct” as a general term comprising both an act and an omission.

Act must be a human act or omission

The act must be a human act; in other words, the perpetrator of the act must be a human being.

The rule that the act must be committed by a human being is subject to the exception that a juristic person or corporate body can also commit an act which may result in criminal liability. A corporate body is not a human being, but an abstract body of persons, such as a company, a church or a university.

An act or an omission (i.e. “conduct”) is only punishable if it is voluntary. The conduct is voluntary if X is capable of subjecting his bodily movements to his will or intellect. If conduct cannot be controlled by the will, it is involuntary, such as, for example, when a sleep-walker tramples on somebody, or an epileptic swings his hand while having an epileptic fit and hits someone in the face.

The concept of a voluntary act should not be confused with the concept of a willed act. To determine whether there was an act in the criminal-law sense of the word, the question is merely whether the act was voluntary.

2.3 “Unlawfulness”

In all probability, a lay person will be of the opinion that once it is clear that the prerequisites for liability set out above (namely that the law prohibits certain conduct as criminal and that X had committed an act which falls within the definition of the proscription) have been complied with, X will be liable for the crime and may be convicted.

However, a person trained in the law will realize that there are still two very important further requirements that must be complied with, namely the requirements of unlawfulness and of culpability.

The reason why, in all probability, a lay person will be unaware of the two last-mentioned requirements, is because they are, as it were, “unwritten” or “invisible”: that which is understood by “unlawfulness” and “culpability” does not (ordinarily) form part of the “letter” or “visible part” of the legal provision in question, that is, a statute, one will normally not even come across the word
“unlawful”; neither expressed, such as “intentional” or “negligent”. Nevertheless a court will never convict anybody of a crime unless it is convinced that the act which complies with the definition of the proscription is also unlawful and accompanied by culpability, in other words, that the s-called “unwritten” or “invisible” requirements have also been complied with.

The mere fact that there is an act which corresponds to the definition of the proscription does not mean that the person who performs the act is liable for the particular crime.

Satisfying the definition of the proscription is not the only general requirement for liability. The next step with the definition of the proscription is also unlawful.

Acts that comply with the definition of the proscription are not necessarily unlawful

An act which complies with the definition of the proscription is not necessarily unlawful. This will immediately become clear if one considers the following examples:

♦ In respect of murder the definition of the proscription reads: “the intentional killing of another human being”. Nevertheless a person is not guilty if he kills somebody in self-defense; his act is then not unlawful.

♦ X inserts a knife into Y’s body. Although his act may satisfy the definition of the proscription of assault, it is not unlawful if X is a medical doctor who is performing an operation on Y with Y’s permission, in order to cure him of an ailment.

♦ X exceeds the speed limit while driving his motor car. His conduct satisfies the definition of the proscription of the crime of exceeding the speed limit. However, if he does so in order to get his gravely ill child to hospital for emergency treatment his conduct is not unlawful (Pretorius 1975 (2) SA 85 (SWA)).

3. Private defense

A person acts in private defense: and his conduct is therefore lawful:

♦ if he uses force to repel an unlawful attack which has already commenced;
♦ or which immediately threatens his or somebody else’s life, bodily integrity, property or other interest that ought to be protected by the law;
♦ provided the defensive action is necessary to protect the threatened interest;
♦ is directed against the attacker;
♦ and is no more harmful than is necessary to ward off the attack.

3.1 Requirements of Private defense

<table>
<thead>
<tr>
<th>Requirements of attack: The attack</th>
<th>Requirements of defense: The defensive action</th>
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<tr>
<td>Must be unlawful</td>
<td>Must be directed against the attacker</td>
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<tr>
<td>Must be against interests which ought to be protected</td>
<td>Must be necessary</td>
</tr>
<tr>
<td>Must be threatening but not yet completed</td>
<td>Must not be more harmful than is necessary</td>
</tr>
</tbody>
</table>
3.1.1 Requirements of the attack

The attack must be unlawful: Private defense against lawful conduct is not possible. For this reason, a person acts unlawfully if he attacks a policeman who is authorized by law to arrest somebody. If the policeman is not authorized by law to perform a particular act, or is he exceeds the limits of his authority, he may lawfully be resisted.

HOW

Can X rely on private defense if he kills Y in the course of a pre-arranged duel? In Jansen 1983 (3) SA 534 (NC) X and Y decided to “settle their differences” in a knife duel.

During the fight Y first stabbed at X, and then X stabbed Y in the heart, killing him. The court held, quite justifiably, that X could not rely on private defense, and convicted him of murder. X’s averting the blow was merely part of the execution of an unlawful attack which he had planned beforehand.

The following three considerations are irrelevant as regards the question whether the attack is unlawful or not.

Firstly the attack need not be accompanied by culpability. It is therefore also possible to act in private defense against somebody who is not criminally responsible, such as a drunk person, a mentally disturbed person, a child (as happened in Kt 1956 (3) SA 353 (A)) or somebody who acts in error, as in the following example: Y mistakenly thinks that he is entitled to arrest X. Y’s act, although not accompanied by culpability, is unlawful, and X may act in private defense against it. As the law does not address itself to animals, and animals are therefore not subject to the law, they cannot act unlawfully. Therefore a person does not act in private defense if he defends himself against an attack by an animal, but here he can rely on the ground of justification known as necessity (which will be discussed below).

Secondly the attack need not be directed at the defender. X may also act in private defense to protect a third person (Z), even if there is no family or protective relationship between X and Z (Patel 1959 (3) SA 121 (A)).

Thirdly the attack need not necessarily consist in a positive act (commissio), despite the fact that it nearly always does. Although unlikely to occur often, an omission (omissio) may also qualify as an “attack”, provided the other requirements for private defense are present. An example in this respect is that of the convict who assaults prison warders and escapes when his term of imprisonment has expired but he has not yet been released.

3.1.2 The attack must be directed against interests which in the eyes of the law, ought to be protected.

Private defense is usually invoked in protection of the attacked party’s life or physical integrity, but in principle there is no reason why it should be limited to the protection of these interests. Thus the law has recognized that one can also act in private defense in protecting property (Ex parte die Minister van Justice: in re S v Van Wyk 1967 (1) SA 488 (A)) and dignity (Van Vuuren 1961 (3) SA 305 (EC)), and in preventing unlawful arrest (Mluseni 1923 NPD 68) and attempted rape (Mokoena 1976 (4) SA 162 (O) 163)).

Read the following decision in the Case Book: Ex parte die Minister van Justisie: in re S v Van Wyk 1967 (1) SA 488 (A)

As far as protection of property is concerned, it was held in Van Wyk supra that a person may, in extreme circumstances, rely on private defense even if he kills another in protecting his property
The most important decision in our case law regarding private defense is *Ex parte die Minister van Justisie: in re S v Van Wyk* 1967 (1) SA 488 (A). The Appeal Court not only held that, in extreme circumstances, a person is entitled to kill another person in defense of property, but also had to apply most of the requirements of private defense referred to above.

As far as protection of dignity is concerned, it was held in *Van Vuuren supra* that a person may rely on private defense in order to defend someone’s dignity. In this case Y insulted X’s wife in public. Thereupon X dealt Y a few blows. The court held that X was not guilty of assault. There was a distinct possibility that Y would have continued insulting X’s wife, and X wanted to prevent this.

### 3.1.3 The attack must be threatening but not yet completed

X cannot attack Y merely because he expects Y to attack him at some time in the future. He can attack Y only if there is an attack or immediate threat of attack by Y against him; in this case, it is, of course, unnecessary that he wait for Y’s first blow – he may defend himself by first attacking Y, with the precise object of averting Y’s first blow (*Patel* 1959 (3) SA 121 (A)).

Private defense is not a means of exercising vengeance; neither is it a form of punishment. For this reason X acts unlawfully if he attacks Y when Y’s attack upon himself is already something of the past.

When automatic defense mechanisms are set up (such as a shot-gun which will go off during the night if the shop is entered by a thief), there is, at the time when the device is set up, no immediate threat of attack, but the law recognizes that to set up such mechanisms which will be triggered the moment the threatened “attack” materializes may constitute valid private defense in certain narrowly-defined circumstances.

Such a case was *Van Wyk supra*, in which X, a shopkeeper whose shop was burgled repeatedly, set a shot-gun to go off and injure prospective burglars in the lower part of the body. One night Y broke into the shop and was fatally wounded. The Appeal Court held that X could rely on private defense.

In *Mogohlwane* 1982 (2) SA 587 (T) Y tried to take a paper bag containing clothes, a pair of shoes and some food, from X. X resisted, but Y threatened X with an axe and gained possession of the bag. X immediately ran to his house, some 350 meters away, fetched a table knife, returned to Y and tried to regain his property. When Y again threatened X with the axe, X fatally stabbed Y with his knife, in order to prevent him (Y) from absconding with his bag. The court decided that X acted in private defense: the attack on X was not completed, because when X ran home and fetched the knife, it was part of one and the same immediate and continued act of resistance. X was a poor man, and the contents of the bag were of value to him. If Y had run off with the bag, X would never have seen it again. (This was a case of private defense in the protection of property).

### 3.2 Requirements of the act of defense

#### 3.2.1 It must be directed against the attacker

If Y attacks X, X cannot direct his act in private defense against Z.

#### 3.2.2 The defensive act must be necessary

This is in order to protect the interest threatened, in the sense that it must not be possible for the person threatened to ward off the attack in another, less harmful way (*Attwood* 1946 AD 331 340). If, on the termination of the lease, the obstinate lessee refuses to leave the house, the lesser is not entitled to seize him by the collar and expel him from the premises. The lesser can protect his right and interest by availing himself of the ordinary legal remedies, which involve obtaining an ejectment order from a court, and possibly also the claiming of damages. The basic concept underlying private defense is that a person is allowed to “take the law into his own hands”, as it were, only if
the ordinary legal remedies do not afford him effective protection. He is not allowed to arrogate to
himself the functions of a judge and a sheriff.

On the other hand, a threatened person need not acquiesce in an attack upon his person or rights
merely because he will be able to claim damages afterwards. The present rule merely means that the
threatened person may not take the law into his own hands summarily if the usual legal remedies
afford him adequate protection.

It would seem that our courts require an assaulted person to flee if possible rather than kill his
assailant unless such an escape would be dangerous.

3.2.3 The act of defense may not be more harmful than is necessary to ward off
the attack

Our courts usually frame this requirement as follows: the means used in defense must be
commensurate with the danger anticipated (Hele 1947 (1) SA 272 (EC) 275; Van Wyk supra 501 A).

It is not always easy to ascertain whether an act of defense complies with this requirement. May X, if
Y assaults him with his fists, use a fire-arm to ward off Y’s attack, or must X rely only on his own fists?
Our Roman-Dutch authors formulated certain rules stipulating which weapons may be used. It is
impossible, however, to apply hard-and-fast rules. The question can be answered only after all the
surrounding circumstances have been considered. The weapon used to attack represents only one
aspect. It may, however, be a good indication of how the attacked person is entitled to defend
himself. If Y fired a revolver at X, X would ordinarily be justified in defending himself by means of a
fire-arm. Much depends on the relationship in which the parties stand towards each other. If the
person assailed is a woman, or a person who is physically weak, one may assume that such a person
may avail herself or himself of the most extreme means of warding off the attack.

A person who is threatened with grievous bodily harm and who has no other means of repelling the
attack, may use a fire-arm and kill the assailant (Jackson 1963 (2) SA 626 (A)). A person may assault
and, in extreme cases, even kill another in defense of property (Van Wyk supra), and a woman who is
about to be raped may defend her chastity even by killing her assailant. Dissimilar interests may
therefore be weighed against each other in private defense.

3.2.4 The attacked person must be aware of the fact that he is acting in private
defense

There is no such thing as inadvertent or accidental private defense. Private defense cannot succeed
as a defense in cases where it is pure coincidence that the act of defense was in fact directed at an
unlawful attack.

For example: X decides to kill Y, whom he dislikes, and shoots and kills him while he is sitting in a
bus together with other passengers. Only afterwards is it discovered that Y was an urban terrorist
who was on the point of blowing up the bus and all its passengers by means of a hand grenade. If X
had not killed Y in time, he (X) himself would have been killed in the explosion. X would, however, not
be allowed to rely on private defense in such circumstances. (There is, thus far, no direct authority in
our case law dealing with these requirements for private defense).

4. The test for private defense

The question whether X’s acts fell within the limits f private defense must be considered objectively,
that is in the light of the actual facts, and not according to what X (at the time) took the facts to be. A
person cannot rely on private defense it if appears that he was not, in fact, exposed to any danger,
but merely thought that he was.

Example: Y goes out one evening to play cards with his friends. On his way home he loses his keys,
perhaps because he has had one or two drinks too many. Arriving at his home, he decides not to
wake his wife X by knocking at the door, but to climb through an open window. She does not expect it
to be her husband, and takes it to be a burglar.

She seizes a pistol and fires at the “burglar” – her husband – killing him. X cannot rely on private defense because, from an objective point of view, she did not find herself in danger. She merely though she was in danger. One may refer to this type of situation as putative private defense. This is not actual private defense. However, the fact that X cannot rely on private defense does not mean that she is therefore guilty of murder. She may, as a defense, rely on absence of culpability, because she was mistaken and because her mistake includes the intention to murder her husband. We shall return to this point later.

Whether there actually was danger or an attack warranting the exercise of private defense, must be determined objectively ex post facto (after the event). Here the rule is that the court should not act as an armchair critic, but should try to visualize itself in the position of the attacked person at the critical moment, when he possibly had only a few seconds to make a decision which was of vital importance to him.

5. Exceeding the limits of private defense

If X is attacked by Y but in retaliating exceeds the limits of private defense (e.g. because he causes the attacker more harm or injury than is justified by the attack) he himself becomes an attacker and acts unlawfully. Whether he is then guilty of a crime such as murder, assault or culpable homicide will depend on his culpability, in other words, his possible intention or negligence. For this reason the whole question relating to the effect of exceeding the limits of private defense will be discussed later at the end of the discussion of culpability.

6. Summary

Once is it clear that X has committed an act which complies with the definition of the proscription, it must be determined whether that act is unlawful.

- Conduct is unlawful if it is in conflict with the good morals (boni mores) or legal convictions of society.
- The grounds of justification are practical aids for determining unlawfulness. They represent situations encountered most often in practice which have come to be known as easily-recognizable grounds for the exclusion of unlawfulness.
- Definition of private defense: see definition above
- The requirements with which the attack and the act of defense must comply in order to succeed with a plea of private defense are: see the diagram above in 3.3.1.
- In Ex parte die Minister van Justisie: in re S v Van Wyk the Appeal Court held X may, in extreme circumstances, even kill another in private defense to protect his (X’s) property.
- Putative private defense occurs when X thinks that he is in danger but in fact he is not in any danger. This is no actual private defense, but may exclude X’s culpability.

7. Necessity

A person acts out of necessity, and his conduct is therefore lawful:

- if he acts in the protection of his own or somebody else’s life, property or
- other legally recognized interest which is endangered by a threat of harm which has already begun or is immediately threatening and which cannot be averted in any other way;
- provided that the person who relies on the necessity is not legally compelled to endure the danger,
- and the interest protected by the act of defense is not out of proportion to the interest threatened by such an act.
7.1 Private defense and necessity distinguished

The two grounds of justification known as necessity and private defense are closely related. In both cases the perpetrator (X in the examples which follows) protects interests which are of value to him, such as life, physical integrity and property, against threatening danger. The distinction between these two grounds of justification is drawn with reference to:

- the origin of the situation of emergency: In private defense it always stems from an unlawful (and therefore human) attack, in necessity it may stem either from an unlawful human act, or from chance circumstances, such as natural occurrences.
- The object at which the act of defense is directed: In private defense it is always directed at an unlawful human attack: in necessity it is directed at either the interest of another innocent third party or it merely amounts to a violation of a legal provision.

**EXAMPLE**

- While X is in Y’s backyard, Z attacks him (X) with a knife. X finds himself unable to ward off the attack, because he (X) is slightly built and unarmed whereas Z is strong and armed with a knife. There is one possible way to escape, and that is to kick a part of the fence (which belongs to Y) to pieces and then run away through the broken fence. This is exactly what X then does. If X is subsequently charged with malicious injury to property in that he broke a fence belonging to Y, he can successfully rely on the defense of necessity. In this example, the emergency situation arose from an unlawful act, but the act of defense is directed not against the attacker, but against the interest of an innocent third party, namely Y.

- The facts of Goliath 1972 (3) SA 1 (A) are as follows: Z orders X to kill Y, and threatens to kill X if he does not carry out the order. There is no means of escape for X, and he kills Y. X was found not guilty. This type of situation is known as “compulsion” or “coercion”.

- The ship on which X is a passenger sinks during a gale. X ends up in the ocean, clinging to a piece of driftwood. Another former passenger, Y, clings to the same piece of wood. However, the two of them are too heavy to be kept afloat by the wood. X pushes Y into the ocean in order to save his own life. Here the reason for the emergency was an act of nature and the act of defense was directed against an innocent person.

- The facts in Pretorius 1975 (2) SA 85 (SWA) are as follows: X’s baby swallows an overdose of Dispirit tablets. X rushes the child to the hospital by car for emergency treatment. While driving to the hospital, he exceeds the speed limit. On a charge of exceeding the speed limit he relies successfully on the defense of necessity. Here, strictly speaking, the reason for the situation of emergency was a series of change circumstances; the act committed out of a necessity was directed not against some person’s interests, but amounted merely to a violation of a legal provision, namely the prohibition on speeding. If X acts in a situation of necessity, he acts lawfully.

7.2 Requirements for the plea of necessity

The requirements for a successful plea of necessity resemble, to some extent, the requirements for a successful plea of private defense. In order to assist you we first summaries the requirements in the following scheme:

**Requirements for a plea of necessity**

- legal interest threatened
- ma also protect another
- emergency already begun but not yet terminated
- may rely on necessity even if personally responsible for emergency
- not legally compelled to endure danger
7.3 Killing another person out of necessity

Possibly the most perplexing question relating to necessity as a ground of justification. Is whether a threatened person may kill another in order to escape from the situation of emergency. Naturally, this question arises only if the threatened person finds himself in mortal danger. This mortal danger may stem from compulsion, for example where Y threatens to kill X if X does not kill Z, or from an event not occasioned by human intervention, for example where two shipwrecked persons vie for control of a wooden beam which can keep only one of them afloat and one of them eventually pushes the other away in an attempt to survive.

7.4 The test to determine necessity

The question whether X’s acts fell within the limits of the defense of necessity, must be considered objectively, that is in the light of the actual facts, and not according to what X (at the time) took the facts to be. If he is not actually (that is objectively) in such a situation, but merely thinks that he is, he cannot rely on necessity as a justification. If he merely thinks that he is acting out of necessity and, while thus mistaken, directs his action against another person’s interests, his action remains unlawful, but he may escape liability because he lacks culpability. This will become clear in the course of the discussion of culpability further on, more particularly with regard to the effect of mistake and awareness of unlawfulness. Such a situation may be described as putative necessity.

8. Consent

8.1 Requirements of consent

When does a person consent to something? Consent is a manifestation or expression of the state of mind of a person towards another, from which it is clear that the formed desires or is at least reconciled to a certain act or a certain state of affairs.

8.2 Requirements for plea of consents

The consent

1. must be given voluntarily
2. must be based on a true knowledge of the material facts
3. must be given by a person who is capable in law of consenting
4. must not be mere submission
5. may be given expressly or tacitly
6. must be given by the complainant
7. must be given before the act

To be accepted as consent, the expression of the complainant’s state of mind must comply with the following requirements:

it must be made voluntarily, without compulsion. Although the Romans held that voluntas coacta voluntas est (a forced will is nevertheless a will), it is generally accepted today that a declaration which is not made voluntarily cannot operate as consent. In McCoy, supra, X, who was the manager of an airline, gave a hiding to an air hostess who had contravened a regulation. According to the evidence X gave her the choice of either submitting to punishment in this form or being dismissed from her job. The court held that there was no consent since she submitted to the punishment under coercion.
9. Summary

- Although private defense and necessity are closely related, there are the following important differences between them:

<table>
<thead>
<tr>
<th>Private Defense</th>
<th>Necessity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stems from human conduct</td>
<td>Stems from either human conduct or non-human intervention (i.e. chance circumstances)</td>
</tr>
<tr>
<td>Directed against an unlawful attack</td>
<td>Directed against the interest of an innocent third party or consists in the violation of a legal provision</td>
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</table>

- Only relative compulsion qualifies as necessity – in the case of absolute compulsion there is no act
- The requirements for a successful plea of necessity – see diagram above
- In *Goliath 1972* (3) SA 1 (A) it was held that the killing of an innocent person can be justified by necessity
- The test for necessity is objective. However, a mistaken belief in the existence of an emergency (putative necessity) may exclude X’s culpability
- Consent to harm or injury is a ground of justification provided it is not contrary to the legal convictions of society
- The requirements for a successful plea of consent – see the diagram above
- Spontaneous agency takes place when X performs an act in Y’s interests, in his (Y) absence, and without his knowledge and consent
- Parents are entitled to inflict moderate corporal punishment on their children to maintain order and discipline
- An act in obedience to an unlawful order can only be justified if the order is not manifestly unlawful
- An act which could otherwise be unlawful is justified if the person hold a public office which authorizes him to perform such an act, if he performs the act in the execution of his official duties.
LEARNING OUTCOMES

On completion of this study unit you will be able to....

♦ Interpret the meanings of the various definitions of first schedule offences correctly, by interrelating them with the relevant sections of the Criminal Procedure Act that deal with arrest and the use of force in order to affect the arrest, searching and seizure of articles.
1. Introduction

Having discussed the general principles of criminal law, we now proceed to have a close look at some of the most important specific crimes. At the outset we wish to stress that we shall not – indeed cannot – discuss every specific crime known in our law. There are literally hundreds and perhaps thousands of offences, most of them of statutory origin. It is not even possible to discuss every common-law crime. It is not uncommon for a practitioner to learn of the existence of a statutory offence for the first time when his client walks into his office with a summons in his hand.

For the sake of convenience, crimes are divided into broad categories according to the object which is sought to be protected by the legal norm reflected in the definition of the crime. We shall divide the specific crimes into four broad categories, namely crimes against the state and the administration of justice, crimes against the community, crimes against the person and crimes against property. The exact classification of the crimes will become clear to you if you consult the table of contents at the beginning of the study guide.

2. Crimes against the state

2.1 High treason

High treason consists in any act or omission within or outside the borders of the Republic of South Africa by a person owing allegiance to the Republic, with the intention unlawfully of overthrowing, coercing or endangering the existence, independence or safety of the Republic.

Elements of the crime: The elements of the crime are the following:

♦ the perpetrator: this means somebody who owes allegiance to the Republic
♦ conduct
♦ unlawfulness
♦ hostile intent

The Perpetrator

Only a person owing allegiance to the Republic of South Africa can be guilty of high treason (Tsotsobe 1983 (1) SA 856 (A); Magwela-lisa 1984 (2) SA 314 (N).

♦ South African citizen
♦ People who are domiciled here
♦ People who are resident here even though they do not intend staying here permanently.

The conduct

Any act or omission engaged in with the required hostile intent (animus hostilis, see below) constitutes high treason. The act need not necessarily consist in violence, either actual or contemplated, against the state (Mayekiso 1988 (4) SA) 738 (W)).

Unlawfulness

It is this element of the crime which ensures that a member of the opposition who strives for a change in government or amendment of the constitution does not commit high treason provided that he attempts to effect these changes in a constitutional manner (Banda supra 474). A ground of justification of particular importance in time of war is compulsion. In this case the general principles governing compulsion will apply (see general principles) (Vermaak (1900) 21 NLRD 204).
**Intent**
The requirement of intent expresses the essence of the crime of high treason the intent required for high treason is known as hostile intent or *animus hostilis*. What constitutes this intent?

**EXAMPLE**

- supports the enemy by, for example fighting for the enemy against South Africa (*Vermaak* (1900) 21 NLR 204; *Leibbrandt* 1944 AD 253), or
- assist the enemy by fighting on the side of that enemy against another of its enemies (*Mardon* 1947 (2) SA 768 (Special Court)), or
- provides invading forces who have occupied the country with food, housing, or military equipment (*Gowthorpe* (1900) 21 NLR 221)
- accepts a post in the service of such forces, for example, as an interpreter (*Randelhoff* (1901) 22 NLR 59), or a military cook (*Done* (1901) 22 NLR 175).
- the organization of or participation in an armed rebellion against the government (*De Wet* 1915 OPD 157)
- inviting a foreign power to invade the country (*Phillips* (1896) OR 216 – this was the Jameson Raid)
- taking up arms in an attempt to force the government to act in a certain way (*Erasmus* 1923 AD 73; *Viljoen* 1923 AD 90)

2.2 Sedition

A person commits sedition if he unlawfully and intentionally:

- Participates in a concourse of persons violently resisting or challenging the authority of the state, or
- Causes such a concourse

**Elements of the crime.** The elements of the crime are the following:

- participation in or causing of a concourse of persons
- to offer violent resistance to or to challenge violently the authority of the state
- unlawfully and
- intentionally

**Differences between the two crimes may be distinguished:**

- High treason requires a hostile intent (*animus hostilis*, the definition of hostile intent in the discussion of high treason above); sedition requires no such intent; all that is required for sedition is intent to resist or challenge the authority of the state.
- High treason may be committed by a single individual; sedition can only be committed by a group or number of persons.
- High treason can only be committed by a person owing allegiance to the Republic; sedition can be committed by a person owing no such allegiance.

In *Twala* 1979 (3) SA 864 (T) eleven persons were convicted of sedition. They were student leaders in Soweto who organized unlawful gatherings and demonstrations. Their initial aim was to abolish the whole system of education for blacks, demonstrations turned into riots and bloody clashes with the police, in which there was loss of lives and damage to property. The court found that the accused had foreseen these results of their action. At page 869 the course defined the crime as follows: “A gathering which is unlawful, with intent (not necessarily hostile) to two persons were sufficient to cause a gathering for the purposes of sedition, and also that no violence is necessary to commit the crime.
In *Zwane* (3) 1989 (3) SA 253 (W) the accused were convicted of sedition on the grounds of *inter alia* the following conduct: in a certain residential area, they established a so-called “people’s court” in which alleged “law-breakers” were tried and also punished by, for example, the imposition of corporal punishment. In this way they undermined the authority of the state.

**Note that an individual acting alone cannot commit the crime.**

### 2.3 Public violence

Public violence is the wrongful and intentional performance of an act or acts by a number of persons, which assumes serious proportions and is intended to disturb the public peace and order by violent means, or to infringe the rights of another.

**Elements of the crime:** The elements of the crime are the following:

- an act
- performed by a *number* of persons
- which assumes *serious proportions*
- which is *unlawful*, and
- *intentional*, and more specifically, included an intention to disturb the public peace and order by violent means, or to infringe the rights of another.

### 3. Crimes against the administration of justice

#### 3.1 Perjury at common law

Perjury at common law consists in the unlawful, intentional making of a false declaration under oath (or in a form allowed by law to be substituted for an oath) in the course of a legal proceeding.

**Elements of the crime:** The elements of this crime are

- the making of a *false declaration*
- *under oath or in a form* equivalent to an oath
- in the course of a legal *proceeding*
- in a *unlawful* and
- *intentional* manner

### 4. Crimes against the community

#### 4.1 Corruption

At the outset it is advisable to differentiate between the active and the passive forms of the offence. (this terminology is not used in the Act; it is ours). The active form refers to the *giving or offering* of a benefit to somebody such as an official or a representative. The passive form refers to the *receiving* by the latter person of the benefit or offer. Both types of conduct constitute corruption.

**EXAMPLE**

A university has a certain amount of money which is utilized to award bursaries to meritorious students. Y is an official of the university whose task it is to decide which students qualify for the bursaries. X, a student, gives Y an amount of money in order to influence him (Y) to award him (X) a bursary. Y receives the money fully aware of the reason why it was given. Both X and Y commit the crime. What is more, the crimes of both are completed the moment the money is given by X and received by Y. the prosecution need not, in order to secure a conviction, further prove that Y indeed awarded the bursary to X.
4.2 Extortion

Extortion is the wrongful and intentional acquisition of a benefit, from some other person, by applying pressure to that person which induces him to part with the benefit.

Elements of crime: The elements of this crime are

- the acquisition of
- a benefit
- by applying pressure
- a casual link (between the pressure and the acquisition of a benefit)
- unlawfulness, and
- intention

4.3 Summary

Corruption

- Corruption was previously known also as bribery. The definition of this crime is now governed by the provisions of section 1 of the Corruption Act 94 of 1992.

- It is customary to differentiate between two forms of corruption, namely active and passive corruption. Active corruption consists in give or offering to give a benefit to somebody such as an official or a representative. Passive corruption consists in the latter person’s accepting the benefit or offer.

- Generally stated, in active corruption X gives (or offers to give) a benefit to another with the intention of influencing him to commit or to omit to perform any act in relation to his power or duty.

- The person to whom the benefit is given may be an official of either the state or a private enterprise.

- The benefit may be of whatever nature and must not be legally due to the person to whom it is given or offered.

- The offence is completed the moment the offer is made or the benefit given.

- Briefly stated, passive bribery is committed when a person accepts a benefit with the intention of committing or of omitting to perform any act in relation to his power or duty.

Extortion

- In extortion X must apply pressure to Y to do or to omit to do something, and Y must yield to the pressure.

- The benefit which Y obtains need not be of a patrimonial nature.

- There must be a causal link between the pressure and the acquisition of the benefit.

- The act must be unlawful. Although it is perfectly in order for a policeman to inform an accused that he intends prosecuting him, it is both irregular and unlawful for the policeman to state that he will prosecute the accused unless he pays him a sum of money.

- The act must be intentional.

5. Crimes against moral values

5.1 Sodomy

A male person commits sodomy if he unlawfully and intentionally has anal intercourse with another male person, in circumstances in which the latter has not consented to the act.
It is, however, important to bear in mind that…….

♦ anal intercourse with a man without his consent may also be punished as indecent assault, and
♦ anal intercourse with a woman without her consent is punishable as indecent assault

6. Crimes against life and potential life

6.1 Murder

Murder is the unlawful and intentional killing of a human being.

The elements of this crime are:

♦ the causing of the death of another person unlawfully and intentionally

6.2 Culpable homicide

Culpable homicide consists in the unlawful, negligent causing of the death of another human being.

The elements of this crime are:

♦ the causing of the death of another person unlawfully and negligently

You will notice that the only difference between murder and culpable homicide lies in the form of culpability required for each. In the case of murder, intention is required, while in the case of culpable homicide the perpetrator must have acted negligently in causing the death of the deceased.

7. Crimes against bodily integrity

7.1 Assault

A person commits assault if he unlawfully and intentionally

♦ applies force, directly or indirectly, to the person of another, or
♦ inspires a belief in another person that force is immediately to be applied to him.

Elements of the crime: The elements of this crime are the following:

♦ the application of force (or the inspiring of a belief that force is to be applied)
♦ unlawfulness
♦ intention

Ways in which the crime can be committed

The act of assault may take different forms. First, it may consist in the application of force to the person (body) of another. Secondly, it may consist in inspiring fear in Y, and more particularly a belief in Y that force is immediately to be applied to him. The first possibility may in turn be subdivided into direct and indirect application of force. The different ways in which the crime can be committed may thus be illustrated as follows in a diagram:
For a person to be convicted of assault in this form the following rules apply:

- The treat must be one of violence to the person of Y. Thus a threat by X to damage Y’s property is not sufficient.
- The treat must be one of immediate violence. Thus a threat by X to cause Y some physical harm in the future (for example, the next day) would not qualify as assault in this form.
- The threat must be one of unlawful violence. If X is entitled by law to threaten Y with violence should Y not behave in a certain manner (such as to leave X’s house or premises), he does not commit assault if he threatens Y. Thus X may always threaten Y to use force to defend himself or his property.
- Y (the complainant) must subjectively believe that X intends to carry out his threat and that he is able to do so. The essence of this type of assault is the intentional inculcation of fear into Y. If Y does not in fact fear the threat, no assault is committed.

Consider the following example:

X threatens to shoot Y, but Y knows that the fire-arm X is brandishing is only a toy pistol (or an unloaded pistol). Consequently Y is not put in any fear. X does not then commit assault, even if he (X) believes it to be a real, loaded pistol he is brandishing. (If X does believe it to be a real, loaded pistol, however, he may be convicted of attempted assault).

In previous descriptions of this type of assault it was required that X’s conduct should contain some “act or a gesture” and that the crime could accordingly not be committed by words alone. However, the general consensus of opinion among modern writers is that X commits this form of assault even though he does not perform any act or gesture but merely threatens Y verbally. This if Y turns a corner to be confronted by a motionless X who, with a gun in his hand, commands: “Hands up!” X commits assault.

8. Crimes against dignity, reputation and freedom of movement

8.1 Theft

Theft is the unlawful, intentional appropriation of moveable, corporeal property which

- belongs to, and is in the possession of, another
- belongs to another but is in the perpetrator’s own possession, or
- belongs to the perpetrator but is in another’s possession and such other person has a right to possess it which legally prevails against the perpetrator’s own right of possession provided that the intention to appropriate the property includes an intention permanently to deprive the person entitled to the possession of the property, of such property.

General characteristics of the crime

It covered the appropriation not merely of another’s property in the possession of such other person, but also of another’s property which is already in the perpetrator’s own possession.

Fearing that his house may be burgled while he is away on holiday, my neighbour requests me to keep a bottle of precious wine belonging to him in my house and to look after it while he is away. I agree to do so, receive the bottle of wine and put it away in my house. However, before my neighbour returns from holiday, I drink all the wine myself. This type of conduct, which consists in appropriating someone else’s property already in the perpetrator’s possession or control, is known as embezzlement.
Different forms of theft

It is clear from the discussion above that theft can be committed in a variety of ways. Depending upon the way in which it is committed, it is possible to speak of and distinguish between the following different forms of theft in our law:

♦ The removal of property: here X removes property belonging to somebody else from that person’s possession and appropriates it. This is the most common form of theft.
♦ Embezzlement: here X appropriate another’s property which he already has in his possession.
♦ Arrogation of possession: here X removes his own property which is in the lawful possession of another (such as a pledge) and appropriates it.

Four basic requirements

Four basic requirements must be complied with before a person can be convicted of theft in any of its forms. These four requirements are the following:

♦ an act of appropriation
♦ in respect of a certain type of property (or thing)
♦ which takes place unlawfully and
♦ intentionally (more particularly, with the intention to appropriate)

8.2 Summary

♦ The act of stealing consists in the appropriation of the property.
♦ The act of appropriation consist in any act whereby X
  ♦ deprives the lawful owner or possessor of his property, and
  ♦ himself exercises the rights of an owner in respect of the property
♦ A person can commit theft of another’s property either in circumstances in which the property is in the owner’s possession or in circumstances in which it is in the perpetrator’s own possession. The former form of theft is known as the removal of property and the latter as the removal of property and the latter as embezzlement.
♦ It is possible for the perpetrator (X) to commit theft even in respect of property belonging to himself. This happens if he removes his own property from the possession of a person (such as a pledge) who has a right to possess it which legally prevails over the owner’s right of possession. This form of theft is known as the arrogation of possession.
♦ For property to be capable of being stolen, it must
  ♦ be movable
  ♦ be corporeal
  ♦ be capable of forming part of commerce (which means that it should not fall into one of the following categories: (i) res communes – things belonging to everybody; (ii) res derelictae – abandoned property; (iii) res nullius – things belonging to nobody
  ♦ belong to somebody else (except in cases of the arrogation of possession)
♦ In order to be unlawful, the act of stealing must take lace inter alia without the permission of the person who has a right to possess it.
♦ In order to have the intention required for theft, X’s intention (which includes his knowledge) must:
relate to the nature of property
relate to the unlawfulness
furthermore he must have the intention permanently (and not merely temporarily) to deprive the person entitled to the possession of the property, of such property

The intention relating to the act means that X must intend to appropriate the property. The intention relating to the nature of the property (i.e. the property requirement) means that he must know that the thing he is appropriating is a movable, corporeal thing belonging (in principle) to another. The intention in respect of the unlawfulness requirement comprises inter alia a knowledge on the part of X that the person who is entitled to the possession of the property has not consented to the taking of the property.

The intention permanently to deprive the person entitled to the possession of such property means that X does not commit theft if he takes the property with the intention merely of using it temporarily and then of returning it to the person entitled to its possession.

In theft in the form of embezzlement X appropriates another’s property which already happens to be in his (X’s) possession. Here it is not necessary for X first to remove the property from another’s possession, since he is already in possession of it.

In theft in the form of the arrogation of possession the owner steals by removing his own property from the possession of the person who has a right to possess it and whose right legally prevails over the owner’s own right of possession.

8.3. Robbery

Robbery is the unlawful, intentional, violent removal and appropriation of a movable corporeal thing belonging to another. The crime may also be briefly defined as theft by means of violence.

In essence, therefore, robbery is no more than a form of theft.

Elements of the crime: The elements of the crime of robbery are the following:

- the removal and appropriation
- by means of violence
- of a things capable of being stolen
- which takes place unlawfully
- and intentionally

All the requirements set for theft apply for robbery. We do not intend repeating all of these; the following is sufficient: As in the case of theft, only a corporeal, movable thing can be the object of robbery. It goes without saying that the owner must not have consented to the removal, and the perpetrator must be aware of this lack of consent. A person will thus not be guilty of robbery if he forcibly removes from the possession of some other person a thing which he mistakenly but bona fide believes is an object which he has lost and is looking for.

The bag-snatching cases

Does X commit robbery if in a quick, unexpected movement he snatches the handbag of Y, who is clutching it under her arm, and runs away with it?

In Sithole 1981 (1) SA 1186 (N) the Natal court decided that the handbag-snatcher commits robbery and not merely theft. In this case, Y carried her bag under her armpit. X was behind her and grabbed it suddenly, before running off with it. Thirion J found that “it is sufficient if the culprit intentionally uses force in order to overcome the hold which the victim has on the bag for the
purpose of ordinarily carrying or holding it” (not the kind of grip that is so firm that it would normally prevent a thief from taking it). The judge emphasized that it is not necessary that the complainant should have offered resistance or have attempted to retain possession of her bag. In Mofokeng 1982 (4) SA 147 (T) the judgments in Mogala and Sithole were cited with approval by the Transvaal Provincial Division. Sithole’s case was also followed in Witbooi 1984 (1) SA 242 (C); in this case the person who snatched the handbag was convicted of robbery.

If Y does offer resistance, because (for example) she clings to her handbag while X drags her, there is, of course, no difficulty in holding X liable for robbery.

8.4 Receiving stolen property

Receiving stolen property is the unlawful and intentional receipt of stolen property while knowing it to be stolen.

Elements of the crime: The elements of this crime are the following:

◆ receiving
◆ stolen goods
◆ unlawfully and
◆ intentionally (which includes knowledge of the fact that the goods are stolen)

8.5 Summary

Robbery

◆ Robbery can be defined very succinctly as theft by violence. The violence may be either actual or in the form of a threat of violence.
◆ There must be a casual connection between the violence and the obtaining of the property. This means inter alia the following: X merely wishes to assault Y, and in fact does so. After the assault Y lies unconscious on the ground. At that stage X discovers for the first time that Y is wearing a valuable watch. X takes the watch for himself. X is then not guilty of robbery, but of assault and theft.
◆ If X snatches Y’s handbag, which she is clasping under her arm, away from her and runs away with it, he does not, according to the courts, commit only theft, but in fact robbery, because he intentionally forestalls any possibility of Y’s offering any resistance.
◆ It is not required for robbery that the property should necessarily be on the person of the victim or in his presence when the violence takes place.

Receiving stolen property (The correct, complete name of this crime is “receiving stolen property, knowing it to have been stolen”.)

◆ A person who commits this crime renders himself, at the same time, guilty of being an accessory after the fact to theft. Since persons who are accessories after the fact to theft are usually regarded as thieves (i.e. perpetrators of theft), the crime of receiving overlaps the crime of theft.
◆ The crime can be committed only in respect of property that is capable of being stolen.
◆ X need not necessarily touch the property when he receives it. Neither is it necessary for him to receive the property with the intention of keeping it for himself: he also commits the crime if he receives it with the intention of keeping it temporarily for somebody else.
◆ X must know that the property is stolen, or he must foresee the possibility that it may be stolen and reconcile himself to such possibility.

8.6 Fraud

Fraud is the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another.
Elements of the crime: The elements of the crime are

- misrepresentation
- which causes or may cause prejudice, and which is
- unlawful and
- intentional

The misrepresentation

The primary requirement for fraud is that there must be a misrepresentation, or deception by means of a falsehood. X must represent to Y that a fact or set of facts exists while this in fact not the case.

9. Crimes against damage to property

Criminal law protects interest in property by punishing those who damage property. The general crime used for this purpose is malicious injury to property. Malicious injury to property overlaps with the crime of arson, which is merely a particular form of malicious injury to property (Motau 1963 (2) SA 521 (T) 523).

9.1 Malicious injury to property

Malicious injury to property consists in unlawfully and intentionally

- damaging property belonging to another person
- damaging one’s own insured property with the intention of claiming the value of the property from the insurer

Elements of crime: The elements of the crime are the following:

- damaging
- property
- unlawfully and
- intentionally

The property

The property must be corporeal and may be either movable or immovable. In principle one cannot commit the crime in respect of one’s own property, because it stands to reason that the owner is free to do with his property what he likes. However, in Gervais 1913 EDL 167 the court held that X commits malicious injury to property if he sets fire to his own insured property in order to claim its value from the insurance company. If X falsely represent to the insurance company that somebody else has destroyed his property, he commits fraud. It has been contended that it is unnecessary to broaden the ambit of the crime of malicious injury to property so as to include this type of situation

9.2. Summary

Malicious injury to property

- The property must be corporeal and may be either movable or immovable
- It will usually be assumed that there is damage if the property has been tampered with in such a way that it will cost the owner money or at least some measure of effort or labour to restore it to its original form
- Intention is a requirement for the offence. The perpetrator conduct need not be accompanied by an evil motive
Arson

- Arson can only be committed in respect of immovable property. If a moveable thing is set on fire, it amounts to malicious injury to property.
- Intention, and more particularly intention to damage the property by setting fire to it, thereby causing patrimonial harm to somebody, is required.

9.3 Housebreaking

Housebreaking with intent to commit a crime consists in unlawfully and intentionally breaking into and entering a building or structure, with the intention of committing some crime in it.

Elements of crime: The elements of the crime are the following:

- breaking and entering
- a building or structure
- unlawfully and
- intentionally

Breaking and entering

The act can be subdivided into separate components, namely (1) breaking into the structure and (2) entering it.

Breaking

For breaking to take place, no actual damage to the structure need be inflicted, although in practice it usually is. The “breaking” consists of the removal or displacement of any obstacle which bars entry to the structure and which forms part of the structure itself (Meyesa 162 (3) SA 386 (N)). Thus to push open a closed (though not locked) door or window or even to push open a partially closed door or window will amount to breaking (Faison 1952 (2) SA 671 (R); Moroe 1981 (4) SA 897 (O)), but there is no breaking if one merely walks through an open door, climbs through an open window or stretches one’s arm through an open hole (Chalala 1947 (3) SA 62 (O)).

Entering

Mere “breaking” without “entering” is not sufficient to constitute the crime (Maruma 1955 (3) SA 561 (O)), although it may amount to an attempt to commit the crime. Like the concepts “building” and “breaking”, entering also has a technical meaning. The entry is complete the moment X has inserted any part of his body, or any instrument he is using for that purpose, into the opening, with the intention of thereby exercising control over some of the contents of the building or structure (Melville 1959 (3) SA 544 (E)).

Building or structure

The house, structure or premises in respect of which the crime is committed can be any structure which is or might ordinarily be used for human habitation or for the storage or housing of property. If it is the former, it probably does not matter whether the structure is movable or immovable, but if it is the latter it seems that it must be immovable. It has been held that the crime can be committed in respect of a tent wagon used as a residence (M'Tech 1912 TPD 367) and also in respect of a cabin on a ship (Lawrence 1954 (2) SA 408 (C)), but not in respect of the following: a railway truck for conveying goods (Johannes 1918 CPD 488); a fowl-run made of tubes and wire netting (Charlie 1916 TPD 367); and an enclosed backyard (Makoelman 1932 EDL 194). In Madyo 1990 (1) SACR 292 (E) it was held that a caravan qualifies as a structure in respect of which the crime of housebreaking can be committed, even if the caravan was broken into while nobody was living in it.
9.4 Summary

◆ the act consists in the (a) housebreaking and (b) entering of a building or structure.
◆ The “breaking” consist in the removal or displacement of any obstacle which bars entry to the structure and which forms part of the structure itself.
◆ The entering is complete the moment X has inserted any part of his body, or any instrument he is using for that purpose, into the opening, with the intention of thereby exercising control over some of the contents of the building or structure.
◆ The building or structure may be any movable or immovable structure which is, or might ordinarily be used for human habitation, or any immovable structure which is or might be used for storage or housing of property.
◆ The intention required for housebreaking comprises the following two distinct components, which must both be present:
  ◆ X must have the intention of unlawfully breaking into and entering the building or structure
  ◆ X must have the intention of committing some other crime inside of the building or structure.
LEARNING OUTCOMES

On completion of this study unit you will be able to:

♦ Explain how to apply the provisions of the Criminal Procedure Act 51 of 1977, which explains the manner in which an arrest should be executed.

♦ Explain how to apply the provisions of section 49 of the Criminal Procedure Act 51 of 1977, which deals with the use of force, including lethal force and the use of a firearm when executing a lawful arrest.

♦ Explain how to handle a lawfully arrested person correctly, in accordance with the requirements of the Criminal Procedures Act 51 of 1977.

♦ Explain under which conditions the security officer must assist a police official in effecting an arrest according to the Criminal Procedures Act 51 of 1977.

♦ Understand Schedule 1 offences.
1. The rights of a Lawful citizen

The Constitution guarantees my right to life, freedom of movement, speech, association etc. as long as my rights do not infringe on the rights of another individual or the State. If someone infringed on my rights, I can demand the police to intervene. If there is not sufficient time to notify the police, I can sometimes, within the limits of the law, act to defend myself against the perpetrator who endangers my life or my property.

The Criminal Procedure Act (sec 42) gives private persons the right to arrest someone, without a warrant, in the following circumstances:

- Any person who commits or attempts to commit in his presence or whom he reasonably suspects of having committed a First Schedule offense (that is serious offenses like murder, rape, robbery, etc.)
- Any person whom he reasonably believes to have committed any offense and to be escaping from and to be hotly pursued by a person whom such private person reasonably believes to have authority to arrest that person for the offense;
- Any person who he sees engaged in an affray;

The Lawful Occupier / owner or person in charge of property or premises may also arrest a person, on behalf of the owner, who contravened certain offenses with reference to the arms and ammunition and the drug trafficking act.

Examples of statutory provisions conferring special powers of arrest on private persons are the National Parks Act and the Civil Aviation Offenses Act.

In the event of resistance to the arrest of a suspect for the contravention of a First Schedule offense, the private person may use the necessary force which should enable him/her to effect the arrest.

There are however limitations (strict rules) which have to be complied with before an alleged offender may be stopped in such a way.

Before the amendment to sec 49 of the CPA, the arrestor could have used maximum force to overcome resistance to the arrest. That includes the killing of the accused which, if the killing of an alleged suspect complied with the requirements set out in the Criminal procedure Act, could be considered as justifiable homicide. The way in which the law has now been changed means in effect that not only a private person, but even police officials, may only use force to effect the arrest if that force is immediately necessary for the purposes of protecting the arrestor, any person lawfully assisting the arrestor or any other person from imminent or future death or grievous bodily harm;

Arrest severely infringes certain rights of a person. For this reason, this drastic method must be used only when it is duly authorized by the relevant legislation, and then only as a last resort. Always keep in mind that arrest is only one of the methods ensuring the presence of an accused in court.

2. Arrest

Although this is the part of the Criminal Procedure Act that deals with the bread and butter of the security industry, namely the process of bringing before the law all individuals who have posed a risk to the property or person under its protection, it must be noticed that arrest is only one of the methods of ensuring the accused's presence in court and it will in many instances be unnecessary to make use of this drastic method which infringes on a person’s freedom.
Because arrest severely infringes certain rights of the accused which are protected in the Bill of Rights in the Constitution, such as his or her right to freedom of movement, the right to privacy, the right to human dignity, the right to freedom and security of the individual, the right to arrest must be exercised very cautiously and only in certain prescribed circumstances.

Although the only method available for a security official to bring an accused before a court is to arrest him or her, the security official must also keep in mind that he or she also have the option of laying a charge against a suspect at the nearest SAPS Client Service Centre. The police will then take the docket to the local prosecutor to make a decision whether to prosecute the suspect or not. If the prosecutor finds that there is a prima facie case against the suspect he or she may issue a summons which the police will serve on the accused. The term *prima facie* means “at first sight” or “on the face of it”. Alternatively the police will apply for a warrant of arrest in terms of section 43 of the Criminal Procedure Act.

If you are a security investigating officer and you open your own docket at the company you work for and you do your own consequent investigation, you can also take the docket to the local prosecutor yourself for a decision after having completed your investigation.

Section 35 of the Constitution, sections 38, 39 and 40 of the Criminal Procedure Act, all deal with arrest. If the arrest is unlawful, the subsequent detention of the accused may also be unlawful. The arrest may take place with or without a warrant. The security official will always arrest a person without a warrant. However, he or she may in some rare instances be requested by a police official to assist when executing a warrant of arrest. In this regard read section 47 of the Criminal Procedure Act which deals with the assistance private persons must give police officials during an arrest.

The Criminal Procedure Act sets out the limited cases in which an arrest may take place without a warrant, and also those instances a private person such as the security official may arrest a person without a warrant. When a security official arrests someone, it is also important that he or she complies with the principle of using minimum force, thereby recognizing the fundamental rights mentioned above of the individual being arrested. Remember that the person who is being arrested is innocent until convicted by a competent court (section 35(3)(h) of the Constitution).

In this section of the learning guide we will discuss the various areas of the Criminal Procedure Act applicable to and outline the procedures and requirements for effecting an arrest. At various stages, reference will be made to effecting an arrest with a warrant; this is for information purposes only and is included in order to complete the picture.

3. **Manner of effecting an arrest**

While the classical arrest technique is for the arrester to place his or her hand on the shoulder of the person being arrested, this is not essential and the physical application of a hand may in fact take place on other parts of the body (e.g. the arm, shoulder, belt). However, remember that if the arrest is performed by a male on a female (or vice versa), it must be ensured that the arrest is made with all due propriety. The danger of charges of indecent assault and crimen injuria must be borne in mind and exposure to risks of this nature should be avoided.

The necessity for security officers to act professionally, calmly and objectively cannot be stressed enough. Actions taken in the heat of the moment expose not only the security official but also his or her employer to potential bad press, possible civil and criminal actions and the associated expenses.

The requirements of a lawful arrest may appear to be straightforward and self-explanatory.

Remember that any failure to meet these requirements set by section 39 of the Criminal Procedure Act will have the result that an arrest has not been lawfully effected. Should the arrest be unlawful, the arrester will not be able to rely on various ensuing rights given in terms of the law to the arrester (such as the right of pursuit in terms of section 42(2) and the use of force in terms of
section 49(1) of the Criminal Procedure Act).

4. Offences committed in the presence of the arrestor

The first requirement of section 42(1)(a) is that the Schedule 1 offence must be committed in the presence of the arrestor. This does not mean that the perpetrator must be face-to-face with the potential arrester, but rather the arrestor must be in a position where he or she can be certain that a crime has been committed. An example of this would be a security official who observes an individual forcing entry into a motor vehicle in the parking area of a shopping centre. Another example may be that of a security official who catches a person red handed in a shop or office after the suspect breaks into the building. The second requirement of this section is that the arrestor must reasonably suspect the perpetrator of having committed a Schedule 1 offence. A vague suspicion that a crime could possibly have been committed, which could be investigated after the arrest of the suspect, is not sufficient (Kriegler, 2001:102).

Remember that the decision to perform an arrest must be based on objective criteria and that the arrestor must be certain that he or she can, if necessary, justify his or her decision to perform an arrest.

Bear in mind that the standard of reasonableness required is that of the reasonable man in the position of the arrestor and who is aware only of the facts known to the arrestor.

To take the example of the previous paragraph, if the perpetrator had surveyed the parking area prior to attempting to open the vehicle and was then observed tampering with the ignition switch of the vehicle, the arrestor would be justified in his belief. However, if the perpetrator had approached the vehicle, patted his pockets and then bent, removed a key from a magnetic holder, opened the vehicle, deactivated the alarm and started the vehicle, an arrest would be inappropriate, since the arrestor may just have arrested the owner of the vehicle. Effectively, what is required is that the arrestor considers the problem before him or her and apply reasoned, logical assessment to the situation.

Take note that the arrestor may also arrest a suspect who has attempted to commit a Schedule 1 offence.

The final requirement of the section is that the offence in question be a Schedule 1 offence. We strongly suggest that although the rest of the requirements of section 42(1) are met, that unless you, as the arrestor, are certain that the offence in question is listed in Schedule 1, you should not perform the arrest. Therefore it is very important for you to know which offences are listed in Schedule 1.

5. Commission of an offence

Section 42(1)(b) of the Criminal Procedure Act is very widely framed in that it authorizes a private person to arrest any person whom he or she reasonably believes to have committed any offence no matter how petty and whom he or she reasonably believes to be escaping or pursued. According to Kriegler (2001:102) this subsection relates to the voluntary exercising of the duty which rests on male person to assist the police with an arrest (compare section 47 of the Criminal Procedure Act). Note that no reference is made to Schedule 1 offences. However, the following requirements must be met:

- The arrestor must reasonably believe that the person has committed an offence;
- The arrestor must also reasonably believe that the person is escaping and is being pursued;
- By a person he or she reasonable believes to be entitled to pursue and arrest the fleeing person.
It must, however, be strongly emphasized that the arrest must have been effected in good faith, in other words without malice (meanness) in an attempt to hide behind the protection of the law under circumstances that the legislature would not have approved, and that the person is required to have assisted by pursuing and effecting an arrest of a suspect whom he or she believes to be pursued.

A court, when judging whether the person’s acts were reasonable, will not take into account facts that only became known after the incident had taken place.

The courts fully realize that a person acting in such a situation as depicted in section 42(1)(b) normally acts under pressure and without the ability to reflect on the situation with the wisdom of hindsight. The courts judge the validity of the actions of the arrestor compared with those of a reasonable man in the position the arrestor found himself or herself in when he or she made the arrest.

Section 42(1)(c) relates to the specific powers given to individuals in terms of specific legislation. An example of such legislation is the National Key Points Act 102 of 1980.

6. Pursuit in order to effect an arrest

Section 42(2) empowers a private person who is entitled by section 42(1)(a) to effect an arrest without a warrant, to pursue that person and effect an arrest. Note that this section and section 42(1)(a) are both limited to Schedule 1 offences. Therefore you must take care to distinguish these two sections from section 42(1)(b) where the type of offences are not specified.

To protect the Good Samaritan who wants to join in the chase and assist, section 42(2) also empowers any private person to whom the purpose of the pursuit has been made known to join in and assist.

In essence therefore, this section permits private individuals who observe the commission or attempted commission of a Schedule 1 offence, or who reasonable suspect an individual of having committed a Schedule 1 offence, to pursue the offender for the purpose of making an arrest. It also empowers other private individuals who are aware of the reason for the pursuit to join the pursuit and assist in making an arrest.

7. Arrest by owner, lawful occupier or person in charge or person authorized

Section 42(3) of the Criminal Procedure Act is an area that could well cause the most problems for persons employed in the security industry. The provision appears to be simple enough. The owner, lawful occupier, person in charge or any person authorized by them, is empowered to arrest without a warrant any person found committing any offence on or in respect of the property. Note that there is no reference to Schedule 1 offences.

Take note that the powers given to a person in terms of this subsection is in addition to those conferred upon him or her in terms of section 42(1)(a). This subsection consequently enhances section 42(1)(a) in the sense that it also covers offences which does are not listed in Schedule 1. The following areas need to be clarified:

<table>
<thead>
<tr>
<th></th>
<th>Property: includes both movable and immovable property</th>
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<tbody>
<tr>
<td></td>
<td>Place: the arrest does not have to be performed at any particular place</td>
</tr>
<tr>
<td>3.</td>
<td>Arrest: the power of arrest includes the right of pursuit, provided that the pursuit takes place as soon as possible after the offence has been committed</td>
</tr>
<tr>
<td>4.</td>
<td>Offences: this section covers any offence committed</td>
</tr>
</tbody>
</table>

It is essential that security officers take note that this section does not entitle them to arrest individuals as the result of investigations conducted or reports made to them.
8. Assisting in performing an arrest

Section 47 of the Criminal Procedure Act requires certain male persons to assist in the execution of an arrest when called upon to do so by a member of the SAPS. Any police official (whether wearing uniform or not) may, after identifying himself or herself as a police official, call upon any male inhabitant of the prescribed age (between 16 and 60 years) to assist him or her in arresting a person and, when necessary in detaining the person arrested.

The Act makes no provision for refusal and in terms of section 47(2). Any person who refuses to assist when called upon to do so is subject to imprisonment or a fine. However, the following reasons may be accepted by a court in excusing a person from assisting the police official requesting assistance:

- an inability to understand any of the official languages of South Africa;
- if a person is physically unfit to assist or disabled; and
- if the person can prove that he honestly believed that the person requesting his assistance was not a police official.

However, all able bodied male security officials would be well-served by assisting members of the police when called upon to do so, if satisfied that such a person requesting assistance, is a police official.

9. Use of force to effect an arrest

As we have seen above section 39(1) of the Criminal Procedure Act provides for a person effecting an arrest to forcibly confine the body of the arrested person. According to the provisions of section 49(1) of the same Act, a person who is authorised to arrest or to assist in the arrest of another (the arrester) may use the force that is reasonably necessary to overcome any resistance against the arrest or to prevent such a person (the suspect) from fleeing. Police officials (as peace officers) are authorised by sections 40, 41 and 43 of the Criminal Procedure Act, whereas private persons may arrest and assist in terms of sections 42 and 47.

An arrester is thus entitled to use force in certain circumstances to effect an arrest. However, in order to justify the use of force, and for the arrester not to be guilty of a crime (if he or she, for example, caused injuries to the suspect), the arrest must have been a lawful one and the use of force must have been reasonable (Burchell, 1997:123-124).

In this regard, the considerations a court would take into account are:

- whether the suspect could have been arrested without the use of force, or by using less force than was used;
- whether the arrester had reasonable grounds for suspicion, and
- the amount of force applied by the arrester when weighed against the seriousness of the offence committed by the suspect.

(Matiou v Makhubedu 1978 (1) SA 946 (A))

10. The influence of the Constitution on section 49(1)

Recently, the Supreme Court of Appeal in Govender v The Minister of Safety and Security 2001 (2) SACR 197 (SCA) was asked to examine the objects and purport of section 49(1) of the Criminal Procedure Act in light of the Constitution. This caused the court to recognize that the Constitution requires that ‘all statutes must be interpreted through the prism of the Bill of Rights’. Amongst other things, this entails that if it is reasonably possible to interpret an Act in such a manner that it conforms to the Constitution, i.e. by protecting the rights therein protected, effect must be given to such an interpretation. Since section 49(1) provides for the limitation of a suspect's rights, it was emphasized
by the court that the limitation needs to be reasonable and justifiable in an open and democratic society.

The court then applied this principle to section 49(1) by quoting the decision of the US Supreme Court in *Tennessee v Garner* 471 (1985) US1 where it was held that the use of deadly force will only be justified if the suspect poses a threat of serious bodily harm to the arrester or others. In addition, the court mentioned that this ‘threat’ or ‘danger’ requirement is also used in countries such as Canada and Germany.

The court concluded that in applying the constitutional standard of reasonableness, the existing test of proportionality (between the seriousness of the offence committed and the force used) should be expanded to include a consideration of proportionality between the nature and degree of the force used and the threat posed by the fugitive to the safety and security of the arrestor and others.

Consequently, the court held that a firearm or similar weapon may not be used unless the person authorized to arrest (or assist in arresting) a fleeing suspect has reasonable grounds for believing that the suspect:

- poses an immediate threat of serious bodily harm to him/her, or a threat of harm to members of the public; or
- has committed a crime involving the infliction or threatened infliction of serious bodily harm.

Shortly after the Govender judgment (above), the Transkei High Court in *S v Walters and Another* 2001 (2) SACR 471 (Tk) decided not to follow the precedent created by the Supreme Court of Appeal regarding the interpretation of section 49(1) in light of the Constitution. The said High Court declared both subsections of section 49 of the Criminal Procedure Act to be unconstitutional and referred the declaration to the Constitutional Court for confirmation.

In *Ex parte Minister of Safety and Security and Others: In re S v Walters and Another* 2002 (4) SA 613 (CC) Judge Kriegler, delivering the unanimous judgment of the Constitutional Court, agreed with the Supreme Court of Appeal’s interpretation of section 49(1) in Govender (above) and found it in line with the Constitution. However, the provisions of section 49(2) that justifies the killing of a person resisting arrest or fleeing, were declared to be unconstitutional.

**11. The use of lethal force**

Although the Constitutional Court deleted section 49(2) of the Criminal Procedure Act from the statute books, it did not completely rule out the use of lethal force when attempting to arrest a fleeing suspect. However, it qualified it considerably to bring our law into line with that of comparable open and democratic societies. In order to be justified, the use of such force now needs to meet the requirements mentioned in section 49(1) as interpreted by the court.

The judgment in *Ex parte Minister of Safety and Security and Others: In re S v Walters and Another* (above) went to great lengths to clarify the situation in which that ruling as well as the Supreme Court of Appeal’s finding in Govender (above) are applicable, namely the use of force merely to stop a fleeing suspect from getting away. It was emphasized that although arrest is one of the duties of the police, it is not an objective in itself, but merely an optional means of bringing a suspected criminal before court.
“Therefore, resistance or flight does not have to be overcome at all costs.”

In a direct address to police officials, Judge Kriegler reiterated that they may not shoot a fleeing suspect merely because he/she will otherwise get away. They may not shoot at their suspect unless:

- they believe; and
- have reasonable grounds for believing that their suspect either
- poses an immediate threat of serious bodily harm to them or members of the public, or
- has committed a crime involving the infliction or threatened infliction of serious bodily harm.

The law regarding this topic now is by tabulating the following 9 issues:

- The purpose of arrest is to bring persons suspected of having committed offences before court for trial.
- Arrest is not the only means of achieving this purpose, nor always the best.
- Arrest may never be used to punish a suspect.
- Where arrest is called for, force may be used only where it is necessary in order to carry out the arrest.
- Where force is necessary, only the least degree of force reasonably necessary to carry out the arrest may be used.
- In deciding what degree of force is both reasonable and necessary, all the circumstances must be taken into account, including the threat of violence the suspect poses to the arrester or others, and the nature and circumstances of the offence the suspect is suspected of having committed; the force being proportional in all these circumstances.
- Shooting a suspect solely in order to carry out an arrest is permitted in very limited circumstances only.
- Ordinarly such shooting is not permitted unless the suspect poses a threat of violence to the arrester or others or is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of carrying out the arrest, whether at that time or later.
- These limitations in no way detract from the rights of an arrester attempting to carry out an arrest to kill a suspect in self-defense or in defense of any other person.

In the meanwhile the new section 49 was enacted and reads as follows:

For purposes of this section-

a. “arrestor” means any person authorized under this Act to arrest or to assist in arresting a suspect; and
b. “suspect” means any person in respect of whom an arrestor has or had a reasonable suspicion that such person is committing or has committed an offence.

If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome resistance or to prevent the suspect from fleeing: Provided that the arrestor is justified in terms of this section to use deadly force that is intended or is likely to cause death or grievous bodily harm to a suspect, only if he or she believes on reasonable grounds:
that the force is immediately necessary for the purpose of protecting the arrestor, any person lawfully assisting the arrestor or any other person from imminent of future death or grievous bodily harm;

that there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed; or

that the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening violence or a strong likelihood that it will cause grievous bodily harm.

It is essential that you, as a security official, know what offences are listed in Schedule 1.

12. Schedule 1 offences: (Sections 40, 42)

1. Treason.
3. Public violence.
4. Murder.
5. Culpable homicide.
6. Rape.
7. Indecent assault.
8. Sodomy.
10. Robbery.
11. Kidnapping.
13. Assault, when a dangerous wound is inflicted.
15. Malicious injury to property.
16. Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence.
17. Theft, whether under the common law or a statutory provision.
18. Receiving stolen property knowing it to have been stolen.
19. Fraud.
20. Forgery or uttering a forged document knowing it to have been forged.
21. Offences relating to the coinage.
22. Any offence, except the offence of escaping from lawful custody in circumstances other than the circumstances referred to immediately hereunder, the punishment where for may be a period of imprisonment exceeding six months without the option of a fine.
23. Escaping from lawful custody, where the person concerned is in such custody in respect of any offence referred to in this Schedule or is in such custody in respect of the offence of escaping from lawful custody.
24. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

13. The concept of lethal force is described in line with common law principles

The Constitutional Court judgment has clarified that under South African law a person carrying out an arrest may use the force which is reasonably necessary to overcome resistance to the arrest or to prevent the person concerned from fleeing.

However, while the person carrying out the arrest may use force, they may only shoot a firearm or similar weapon if they have reasonable grounds for believing either (1) that the suspect poses an immediate threat of serious bodily harm to them, or a threat of harm to members of the public; or (2) that the suspect has committed a crime involving the infliction or threatened infliction of serious bodily harm.'
The difference between ‘force’ and ‘lethal force’ (i.e. a firearm or other weapon which is likely to cause fatal injury) is therefore crucial to understanding the present legal situation. The Walters’ judgment impacts only on the use of lethal force.

Ordinarily in carrying out arrests the police do not need to fire their weapons. In most arrests, people submit without violent resistance or the police are able to subdue them without shooting.

In all situations where they are involved in carrying out arrests the police are entitled to use the force necessary to overcome resistance except that firearms may only be used where there is a direct and serious threat to a person's physical safety or where the person being arrested is reasonably believed to be someone who has committed a crime involving the use or threat of serious physical harm, where there is no other way of apprehending them.

The firing of a gun is the most extreme measure which is available to the police and its use can only be justified in extreme circumstances. The courts in South Africa have recognised the major dangers which people in South Africa face. They have provided the police, and ordinary people, with a legal framework which authorises the use of these extreme measures in situations where people need to protect themselves or others, as well as for the purpose of apprehending people believed to have engaged in acts which pose a serious danger to people's physical safety.

This is obviously not to say that people can use the protection of the law to use firearms recklessly. All people who are armed with firearms need to be willing to be held fully responsible for their use, and to account for the use of these weapons in terms of the law What has also been clarified by the Constitutional Court judgment is that, where suspected criminals have not inflicted or threatened serious physical harm, it is justifiable to use force, but not lethal force, to apprehend them. Therefore you may not shoot at people who are suspected of property crimes that did not involve the use or threat of violence, in order to prevent them from fleeing.

14. The concept of private defense is described in line with common law principles

Private defence

Deprivation of a person's life by the arrester may in terms of the new section 49(2)(a) be justified under the so-called private defence. Due to the concern of the basic right to life and physical safety, one would expect that a law enforcement official who is attacked or threatened when executing his/her duties to be accorded the liberty to repel that attack to preserve his own life or the lives of others (Asworth 1995:133). The attacker forfeits his/her right to life and bodily integrity when he mounts an attack on others or on the arresting officer. Our view is that the proviso mentioned codifies the common law justification of private defence, making section 49(2) well within the bounds of the Bill of Rights and constitutional. In relying on private in terms of the new section 49(2) defence the accused will basically have to prove the common law requirements of the defence of private defence.

Legal requirements when using lethal force for private or self defence

(a) the attack must be unlawful;

(b) must have either begun or must have been imminent;

(c) the force used must be directed only against the unlawful attacker

(d) it must necessary to resort to force to avert the attack and

(e) means used to avert the attack must be reasonable (Snyman. 1995:97 - 106).
However, it should not be concluded that the common law private defence is such codified by section 49(2) that we no longer have the defence at common law. The proper understanding of section 49(2) would be that the South African Criminal Justice System provides two sets of ‘private defence’ justifications in relation to the SAPS justifiable homicide cases, namely the ‘common law private defence’ and the ‘statutory private defence.’ The possible co-existence of these two defences in the realm of law enforcement is indicated the Regulation of Gatherings Act 205 of 1993. Section 9(3) provides that: ‘No common law principles regarding self-defence, necessity and protection of property shall be affected by the provisions of this Act.’ Though there is no such proviso in the new section 49 of CPA, the view is that the proper construction of section 49 is that there is a common law and statutory self-defence justification existing alongside each other.

15. Use of force by Law Enforcement Officials

Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving intended results. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
(b) Minimise damage and injury, and respect and preserve human life

under the common law, the court may view the acts or omissions of an accused person in terms of a legal test by comparing it to the actions of a reasonable man under similar circumstances. This test requires the behavior of the accused to be of the standard which a reasonable or ordinary man would exhibit.

A defendant will be negligent by falling under the standards of the “ordinary” or “reasonable” person in his/her situation, i.e. by doing something which the reasonable man would not do, or failing to do something which the reasonable man would do.

To prove negligence on the part of an accused employer, the following questions must be asked:

• Could any reasonable man in the same position as the accused, have foreseen the possibility that the actions and omissions of the accused could have caused harm?
• Could any reasonable man in the same position as the accused have taken positive action to prevent the harm from occurring in the first place?

Did the actions of the accused deviate in any degree from that of a reasonable man? If it does, negligence is proven.

Who could be Liable?

The person whose negligent and wrongful act or omission caused the death should be held liable for culpable homicide. The liability falls outside the scope of health and safety legislation and does not depend on appointments in terms of the OH&S Act or MH&S Act. A contravention of the provisions of these Acts can influence a conviction of culpable homicide, as it establishes the element of what is an act or omission. In South African law, it is possible for a company (as an employer) to be found guilty of culpable homicide. Workers, Supervisors, managers and the Company itself can all be found guilty of culpable homicide under certain circumstances.

Case Studies R v Benett and Co. (Pty) Ltd 1941

In this case the company was found guilty of culpable homicide when a construction worker fell to his death. The accident was caused by the negligent act of another employee following an unsafe work procedure. The court said if an employer is able to control a physical act of which he is aware, and he fails to prevent it, such a failure amounts to implied authority to commit the act. Even if an employee acts outside the scope of his authority, but in furthering or trying to further the interests of the company, this liability can arise.
LEARNING OUTCOMES

On completion of this study unit you will be able to....

♦ Understand the purpose of the Liquor Act.
♦ Explain the important legislative requirements pertaining to the Explosives Act.
♦ Define the term “dangerous weapon.
♦ Explain the requirements for carrying a firearm in a public place.
1. Security officers role in enforcing the liquor Act

1.1 Purpose of the Act

a. To establish national norms and standards in order to maintain economic unity within the liquor industry;
b. to provide for essential national standards and minimum standards required for the rendering of services;
c. to provide for measures to promote co-operative government in the area of liquor regulation; and
d. to provide for matters connected therewith.

Security Officers should take note that it is prohibited to supply liquor to a minor.

2. Prohibitions to supply liquor or ethylated spirits to a minor

SECTION 10.

(1) A person must not sell or supply liquor or methylated spirits to a minor.

(2) Despite subsection (1), the parent, adult guardian of a minor or a person responsible for administering a religious sacrament, may on occasion supply to that minor a moderate quantity of liquor to be consumed by the minor in the presence and under the supervision of that parent, guardian or other person.

(3) A person must take reasonable measures to determine accurately whether or not a person is a minor, before selling or supplying liquor or methylated spirits to that person.

(4) A minor must not make a false claim about age in order to induce a person to sell. (5) A person must not make a false claim about the age of a minor in order to induce or supply liquor or methyl

3. Functions of inspectors

A liquor inspector may;

(a) investigate complaints submitted to the inspector in the prescribed manner. (b)

(b) subject to this Act or any other law that authorizes the inspector may conduct an inspection:

(i) monitor and enforce compliance with this Act or that law; or
(ii) conduct an inspection under this Act or that law.

An inspector may question any person whom the inspector believes may have information to the relevant inspection; question any person present on any premises being inspected.

An inspector may enter any premises if a magistrate has issued a warrant to do so. A magistrate may issue a warrant to inspect any premises on the basis of information provided in writing and under oath, and the magistrate has reason to believe that

(a) this Act is not being complied with; and
(b) the entry and inspection are necessary, in the interest of the public, to obtain information:

(i) that is related to the alleged failure to comply with this Act; and
(ii) that cannot be obtained without entering those premises.
4. Role of the security officer

Any liquor at Hotels; Functions etc may only be sold and consumed in the licensed area. Security officers must make sure that no liquor are sold to minors, that no persons consume liquor outside the licensed area i.e. at the Rand Easter Show there are beer gardens. Liquor may be consumed in the beer gardens as it is under license, no liquor may however be taken out of the beer garden, or be consumed outside the beer garden. Security Officers must cooperate with liquor inspectors when they inspect any premises under control of the security service provider.
5. **Purpose of the Explosives Act**

To consolidate the laws relating to the manufacture, storage, sale, transport, importation, exportation and the use of explosives.

6. **Important legislative Requirements**

Security officers should take note of the following important sections;

6.1 **Prohibition of manufacture of unauthorized explosives except in small quantities for chemical experiment**

1) No person shall manufacture any unauthorized explosive unless it is manufactured not for sale and solely for purposes of chemical experiment or for practical trial as an explosive and in such quantities and under such conditions as in small quantities may be prescribed in writing by an inspector.

2) Any person who contravenes the provisions of this section or any condition prescribed there under shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years, and the explosive in respect of which the contravention has taken place shall be forfeited.

3) The owner and the occupier of any premises in or on which an unauthorized explosive is manufactured in contravention of this section shall be deemed to be the manufacturer, unless such owner or occupier (as the case may be) proves that he was unaware that any such contravention occurred.

4) The burden of proving that any manufacture of an unauthorized explosive was solely for purposes of chemical experiment or practical trial and not for sale, shall, in any prosecution under this section, be upon the accused.

6.2 **Prohibition of storage or possession of unauthorized explosives save in accordance with section three**

1) No person shall keep, store or be in possession of any unauthorized explosive unless it has been manufactured as provided by sub-section (1) of section 3 and is kept, stored or possessed in such manner and in such quantities as have been approved in writing by an inspector.

2) The provisions of sub-sections (2), (3) and (4) of section 3 shall apply _mutatis mutandis_ in the case of any contravention of this section or of any of the conditions prescribed there under.

6.3 **Prohibition of storage of authorized explosives except in licensed premises**

1) No person shall keep, store or be in possession of, any authorized explosive in or on any premises-

a) except in an explosives factory or explosives magazine; or

b) unless the explosive be kept for private use, and not for sale or other disposal, and in accordance with regulation; or

c) unless the explosive be kept by the State for use in the construction of any railway, road, or other public work, and be stored in a temporary magazine approved by an inspector and under conditions prescribed in writing by an inspector; or
d) unless authorized thereto by a permit issued by an inspector and the explosive be kept in quantities not exceeding 500 kilograms, and be stored in an isolated place approved by an inspector and under conditions prescribed in writing by an inspector; or

e) unless the explosive be kept by a person in possession of a license, as provided in section 7, to deal in explosives, and in accordance with any conditions attached to that license, or prescribed by regulation.

2) Any person who contravenes the provisions of this section or any condition prescribed there under or referred to therein, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years, and the explosive in respect of which the contravention has taken place shall be forfeited.

3) The owner and the occupier of any premises in, at, or on which any contravention of this section occurs, shall be liable to the penalties prescribed for any such contravention, unless such owner or occupier (as the case may be) proves that he was unaware that any such contravention occurred.

6.4 Prohibition of storage of authorized explosives except in licensed premises

1) No person shall keep, store or be in possession of, any authorized explosive in or on any premises-
   a) except in an explosives factory or explosives magazine; or
   b) unless the explosive be kept for private use, and not for sale or other disposal, and in accordance with regulation; or
   c) unless the explosive be kept by the State for use in the construction of any railway, road, or other public work, and be stored in a temporary magazine approved by an inspector and under conditions prescribed in writing by an inspector; or
   d) unless authorized thereto by a permit issued by an inspector and the explosive be kept in quantities not exceeding 500 kilograms, and be stored in an isolated place approved by an inspector and under conditions prescribed in writing by an inspector; or
   e) unless the explosive be kept by a person in possession of a license, as provided in section 7, to deal in explosives, and in accordance with any conditions attached to that license, or prescribed by regulation.

2) Any person who contravenes the provisions of this section or any condition prescribed there under or referred to there in shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years, and the explosive in respect of which the contravention has taken place shall be forfeited.

3) The owner and the occupier of any premises in, at, or on which any contravention of this section occurs, shall be liable to the penalties prescribed for any such contravention, unless such owner or occupier (as the case may be) proves that he was unaware that any such contravention occurred.
7. **Purpose of the Dangerous Weapons Act**

To provide for certain prohibitions and restrictions in respect of the possession, manufacture, sale or supply of certain objects; to provide for the imposition of prescribed sentences where dangerous weapons or firearms have been used in the commission of offences involving violence; to repeal sections 10 and 10bis of the General Law Amendment Act, 1949; and to provide for incidental matters.

8. **Definitions**

Dangerous weapon' means any object, other than a firearm, which is likely to cause serious bodily injury if it were used to commit an assault;

Firearm' means an arm as defined in section 1 of the Arms and Ammunition Act, 1969 (Act 75 of 1969);

9. **Prohibitions of the possession of dangerous weapons, firearms and certain other objects**

Any person who is in possession of any dangerous weapon, or of any object which so resembles a firearm that, under circumstances such as those under which such person is in possession thereof, it is likely to be mistaken for a real firearm, shall be guilty of an offence, unless he is able to prove that he at no time had any intention of using such weapon or object for any unlawful purpose, and shall on conviction be liable to a fine or to imprisonment for a period not exceeding two years.

The Minister may from time to time by notice in the Gazette and subject to such terms, conditions, restrictions, directions or exemptions as may be specified in such notice or as may be provided for therein, prohibit any person or any person belonging to any class of persons specified in such notice, from being in possession at any time or during any period so specified and either generally or at or in any place or area so specified or at a specified gathering or at any gathering belonging to any class specified in such notice, of any object belonging to a class, type, kind or category of object which, in the opinion of the Minister, is a dangerous weapon and which is specified in such notice.

The Minister may, notwithstanding anything to the contrary in any law contained, from time to time by notice in the Gazette and subject to such terms, conditions, restrictions, directions or exemptions as may be specified in such notice or as may be provided for therein, prohibit any person or any person belonging to any class of persons specified in such notice, from being in possession at any time or during any period so specified and either generally or at or in any place or area so specified or at a specified gathering or at any gathering belonging to any class specified in such notice, of any firearm, or a replica thereof, in general or any firearm, or a replica thereof, belonging to a class, type, kind or category specified in such notice.

Any person who is in possession of any object, firearm or replica of a firearm in contravention of the provisions of any notice issued shall be guilty of an offence and liable on conviction to the penalties prescribed in subsection (1).

10. **Penalties when dangerous weapons or firearms are used in the commission of offences involving violence**

Whenever any person above the age of eighteen years is convicted of an offence involving violence to any other person and it has been proved that he killed or injured such other person by using a dangerous weapon or a firearm, he or she shall, except when he or she is in terms of section 286 of the Criminal Procedure Act, 1977 (Act 51 of 1977), declared an habitual criminal, notwithstanding anything to the contrary in any law contained, be sentenced to imprisonment for a period of not less than two years and, if he or she is so convicted by a magistrate's court, not exceeding eight years:
Provided that if the court is of the opinion that there are circumstances which justify the imposition of a lighter sentence than the punishment prescribed by this section, it shall enter those circumstances on the record of the proceedings and may thereupon impose such lighter sentence on the person so convicted: Provided further that in the case of a magistrate's court, such lighter sentence shall not exceed a fine of R40 000 or imprisonment for a period of two years.
11. Storage and transport of firearms and ammunition

CHAPTER 9: Storage, transport and carrying of firearms and ammunition

SECTION 83. Firearms and ammunition must be stored and transported in the prescribed manner.

12. Carrying of firearm in public place

SECTION 84: (1) No person may carry a firearm in a public place unless the firearm is carried-

(a) in the case of a handgun.

(i) in a holster or similar holder designed, manufactured or adapted for the carrying of a handgun and attached to his or her person; or

(ii) in a rucksack or similar holder; or

(b) in the case of any other firearm, in a holder designed, manufactured or adapted for the carrying of the firearm.

(2) A firearm contemplated in subsection (1) must be completely covered and the person carrying the firearm must be able to exercise effective control over such firearm.

13. Conditions imposed on transporter of firearm

SECTION 85. (1) The Minister may prescribe conditions which the Registrar may impose on the holder of a permit issued in terms of section 86.

(2) The conditions which the Registrar imposes must be specified in the permit.

14. Firearm transporter's permit

SECTION 86. (1) No person may transport any firearm or ammunition for reward without being in possession of a firearm transporter’s permit issued in terms of this Act.

(2) A firearm transporter’s permit may be issued to a person who is a fit and proper person to conduct business as a firearm transporter.

(3) The Registrar may issue a firearm transporter’s permit-

(a) on receipt of an application completed on the prescribed form and containing the prescribed information; and

(b) for such period as the Registrar may determine.

15. Duties of holder of permit

SECTION 87. (1) The holder of a permit issued in terms of this Chapter, must at the request of any police official, produce for inspection:

(a) any firearms or ammunition in his or her possession or under his or her control; (b) his or her permit; and

(c) any register or electronic data that may be kept by him or her in terms of this Act.

(2) The Registrar may direct the holder of a permit issued in terms of this Chapter to keep and maintain registers containing such information as he or she may direct.
(3) The holder of a firearm transporter’s permit must comply with any conditions imposed under section 85.

16. **Cancellation of firearm transporter’s permit**

**SECTION 88.** (1) The Registrar may, by written notice, cancel a firearm transporter’s permit if the permit holder:

(a) no longer qualifies to hold the permit; or
(b) has contravened or failed to comply with any provision of this Act or any condition specified in the permit.

(2) The former holder of a permit must dispose of his or her cargo of firearms and ammunition in accordance with the directions of the Registrar.

17. **Records to be kept**

**SECTION 89.** The Office of the Central Firearms Register must keep a record of prescribed information in respect of all firearm transporter’s permits issued in terms of this Chapter.
LEARNING OUTCOMES

On completion of this study unit you will be able to:

- Interpret the definition of trespass according to the Trespass Act, Act 6 of 1959 within its rightful context and application by a security officer.

- Explain what is meant by the term “the lawful owner” as used in the Trespass Act, Act 6 of 1959.
1. Control of Access to Public Premises and Vehicles Act 53 of 1985

The above must also be read with the stipulations of the Control of Access to Public Premises and Vehicles Act 53 of 1985 when applicable. The purpose and aim of this Act is to provide for the safeguarding of certain public premises and vehicles and for the protection of the people on or in these premises and vehicles, and for related matters. It is your duty as a security officer to give effect to the purpose of the Control of Access to Public Premises and Vehicles Act. As a security service provider it will also be your duty to enforce the stipulations of the above statute by:

- safeguarding public premises and vehicles
- protecting the people on or in these premises and vehicles
- controlling access regarding any public premises or public vehicles
- removing a person from public premises or a public vehicle under certain circumstances

2. Definitions

'authorized officer' means any person authorized by the owner of any public premises or any public vehicle to act in terms of the provisions of section 2;

'dangerous object' means any explosive or incendiary material, any explosive or incendiary device, any firearm, and any gas, material, weapon or other article, object or instrument which may be employed to cause bodily harm to a person, or to render a person temporarily paralyzed or unconscious, or to cause damage to property, as well as anything which the Minister may by notice in the Gazette declare to be a dangerous object for the purposes of this Act;

'owner of any public premises or any public vehicle' means the head of the department of State, division, office or other body which occupies or uses those premises or that vehicle or is in charge thereof, as the case may be.

Trespassing: Section 1(1) of the Trespass Act 6 of 1959 provides that any person who without the permission:

(a) of the lawful occupier of any land or building or part of a building ; or

(b) of the owner or person in charge of any land or any building or part of a building that is not lawfully occupied by any person,

(c) enters or is upon such land or enters or is in such building or part of a building, shall be guilty of an offence unless he has lawful reason to enter or be upon such land or enter or be in such building or part of a building.

INTERPRETATION OF THE DEFINITION

From the above, one can gather that a person can only legally enter a building, part of a building, land or part of land if the following has taken place:

He must have permission to enter the land or building or any part of it for a certain period of time. If, for instance, the lawful occupier or owner of land or a building gives permission for a person to be on the land or in the building from 10 AM until 16:00 PM; if that person remains in the building after those hours, even though he had permission to enter the building and to be in it, he will be committing the crime of trespassing.

In the course of his career, the security officer will find himself engaged to do security work in a variety of locations.
A security officer may be appointed to guard a shopping centre, industrial site, museum or office building, which normally opens and closes at a certain time. If a member of the public enters the site or library at a time other than the times specified on the Trading Hours Signboard, that person is trespassing and excuses such as “I am lost” should be viewed with suspicion!

'public premises' means any building, structure, hall, room, office, convenience, land, enclosure or water surface which is the property of, or is occupied or used by, or is under the control of, the State or a statutory body, and to which a member of the public has a right of access, or is usually admitted or to which he may be admitted;

'public vehicle' means any vehicle, conveyance, ship, boat, craft or aircraft which is the property or under the control of the State or a statutory body, and which is used for the transport, for profit or otherwise, of members of the public;

LAWFUL OCCUPIER

The lawful occupier of land or a building could be the owner who lives in the building. Any tenant of a property can also be the lawful occupier of a building or a part thereof. According to subsection (2) of section 1 of the Act a servant of the lawful occupier of the land on which a building is situated is not viewed as the lawful occupier of that building or a part thereof.

The person occupying the land on which a building is built is also not the lawful occupier of the building. If a person has permission to enter a flat in a building, it means he only has permission to enter only that one flat and not the other flats.

PEOPLE WHO HAVE LAWFUL REASONS TO ENTER LAND AND BUILDINGS

These may include Police, Municipal Department water meter readers, a Sheriff who needs to serve a summons, a servant of the lawful occupier by virtue of an agreement between himself and the lawful occupier.

3. Access to public premises and vehicles

SECTION 2 OF THE ACT STATES

Notwithstanding any rights or obligations to the contrary and irrespective of how those rights or obligations arose or were granted or imposed, the owner of any public premises or any public vehicle may-

(a) take such steps as he may consider necessary for the safeguarding of those premises or that vehicle and the contents thereof, as well as for the protection of the people therein or thereon;
(b) direct that those premises or that vehicle may only be entered or entered upon in accordance with the provisions of subsection (2).
(c) No person shall without the permission of an authorized officer enter or enter upon any public premises or any public vehicle in respect of which a direction has been issued under subsection (1) (b), and for the purpose of the granting of that permission an authorized officer may require of the person concerned that he-

(a) furnish his name, address and any other relevant information required by the authorized officer;
(b) produce proof of his identity to the satisfaction of the authorized officer;
(c) declare whether he has any dangerous object in his possession or custody or under his control;
(d) declare what the contents are of any vehicle, suitcase, attaché case, bag, handbag, folder, envelope, parcel or container of any nature which he has in his possession
or custody or under his control, and show those contents to him;

(e) subject himself and anything which he has in his possession or custody or under his control
to an examination by an electronic or other apparatus in order to determine the presence of
any dangerous object;

(f) hand to an authorized officer anything which he has in his possession or custody or under his
control for examination or custody until he leaves the premises or vehicle;

(g) in the case of premises or a vehicle or a class of premises or vehicles determined by the
Minister by notice in the Gazette,2* be searched by an authorized officer.

(3) (a) Where an authorized officer grants permission in terms of subsection (2), he
may do so subject to conditions regarding the carrying or displaying of some form of proof
that the necessary permission has been granted, the persons on or in the premises or vehicle
with whom he may not come into contact, the part of the premises or vehicle which he may
not enter upon, the duration of his presence on or in the premises or vehicle, the escorting of
the person concerned while he is on or in the premises or vehicle, and such other
requirements as he may consider necessary.

(b) Without prejudice to the provisions of the Trespass Act, 1959 (Act 6 of 1959), an authorized
officer may at any time remove any person from any public premises or public vehicle if-

(i) that person enters or enters upon the premises or vehicle concerned without the permission
contemplated in subsection (2);

(ii) that person refuses or fails to observe a condition contemplated in paragraph (a); (iii) the
authorized officer considers it necessary for the safeguarding of the premises or
vehicle concerned or the contents thereof or for the protection of the people therein or thereon.

(4) If it is not practicable to examine or keep in custody on or in the premises or vehicle
concerned anything which may be examined or kept in custody under subsection (2), it may
be removed to a suitable place for that purpose.

(5) The search of a woman under subsection (2) (g) may be carried out only by a woman.

4. Exemption of certain persons

SECTION 3 OF THE ACT STATES

The provisions of section 2 (2) do not apply in respect of any member of a police force established by
or under any law or a member of the South African Defense Force who is required in the performance
of his functions to enter or enter upon any public premises or public vehicle and who produces proof
of his identity to the satisfaction of the authorized officer concerned.

5. Offences

SECTION 4 OF THE ACT STATES

Any person who-

(a) contravenes the provisions of section 2 (2);

(b) for the purposes of this Act makes a statement or furnishes information which is false in a
material particular, knowing it to be false;

(c) refuses or fails to observe any condition contemplated in section 2 (3) (a); (d) holds
himself out to be an authorized officer;

(e) obstructs, hinders, resists or interferes with an authorized officer in the performance of his
functions, is guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to
imprisonment for a period not exceeding two years or both that fine and that imprisonment.
LEARNING OUTCOMES

On completion of this study unit you will be able to....

- Explain how to apply the correct procedures according to the Criminal Procedures Act 51 of 1977 with regard to the searching of persons and premises and the seizure of articles.
1. **Introduction**

Arresting a perpetrator, the searching of a person and premises, and the seizure of articles in terms of the Criminal Procedure Act 51 of 1977 (hereafter referred to as the Criminal Procedure Act) are important methods security and police officials can use during the investigation of crime to secure the attendance of the accused at court and to obtain evidence.

Take note that security and police officials should be sufficiently authorized to carry out the above-mentioned activities.

Remember that arrest is only one of the methods of securing the attendance of an accused in court.

2. **State may seize certain articles**

Section 20 of the Criminal Procedure Act regulates which articles the state may seize. Although this section refers to articles that may be seized by the state, it is also of importance to the security official since section 23(2) empowers a security official as a private person to seize articles mentioned in section 20 under certain prescribed circumstances (section 23 is discussed later in this learning unit).

The State may, in accordance with the provisions of this Chapter, seize anything (in this Chapter referred to as an article)-

(a) which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within the Republic or elsewhere;

(b) which may afford evidence of the commission or suspected commission of an offence, whether within the Republic or elsewhere; or

(c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence.

3. **Search and seizure without a warrant**

Section 23 of the Criminal Procedure Act empowers both police officials and security officials, as private persons, to search arrested persons and/or seize certain articles. This section stipulates the following:

On the arrest of any person, the person making the arrest may-

a. if he is a peace officer, search the person arrested and seize any article referred to in section 20 which is found in possession of or in custody or under the control of the person arrested, and where such a peace officer is not a police official, he shall forthwith deliver any such article to a police official or;

b. if he is not a peace officer (such as a security officer), seize any article referred to in section 20 which is in possession of or in the custody or under the control of the person arrested and shall forthwith deliver any such article to a police official.

On the arrest of any person, the person making the arrest may place in safe custody any object found on the person arrested and which may be used to cause bodily harm to himself or others.

Section 23(1)(b) permits any person, which includes the security official, to seize any article referred to in section 20 (see discussion above), provided that it is in the possession or control of the arrested person.
The requirement relating to the possession is not particularly problematical, but care must be exercised with regard to control. Geldenhuys (1991:236) suggests that there should be a direct link between the arrest and the search and seizure and that therefore the above phrase should rather be interpreted as referring to the arrested person and his or her immediate vicinity, for instance the vehicle he or she is driving, his or her suitcase, clothes, or the room in which he or she is found.

A person will also be in control of articles if he or she has physical authority or command over an article and this authority or command must be present prior to any seizure being affected. There must therefore be some outward indication of control, physical authority or command.

Take note that while the police official may both search a person and seize an article referred to in section 20 which is found in possession of or in the custody or under the control of the arrested person, the security official, as a private person, in terms of section 23(1)(b) may not physically search an individual under arrest in order to establish whether articles referred to in section 20 are present. The security official may arrest the person, but then have to call the police to search such a person.

Geldenhuys (1992:238) suggests that if the security official suspects that a person is in possession of stolen goods, and he or she is not allowed to search the suspect in terms of section 24 of the Criminal Procedure Act, the security official should inform the suspect that unless he consents to the security official searching him or her, he or she will have to arrest the suspect, and call the police to search him or her.

Take into consideration that a security official may search any person who consents to being searched, whether the person was arrested or not.

Note that section 23(2) permits both the police official and a private individual to place in safe custody any object found on the person of the arrested person which is capable of being used to cause bodily harm to the arrested person or other persons.

This class of objects would not only include offensive weapons (e.g. edged weapons, firearms, clubs and the like) but also more mundane objects such as belts, shoelaces and cigarette lighters.

4. Searching premises

In terms of section 24 of the Criminal Procedure Act, private individuals are entitled to search premises. This section stipulates the following:

Any person who is lawfully in charge or in occupation of any premises and who reasonably suspects stolen stock or produce, as defined in any law relating to theft of stock or produce, is on or in the premises concerned, or that any article has been placed thereon or therein or is in the custody or possession of any person upon or such premises in contravention of any law relating to intoxicating liquor, dependence-producing drugs, arms and ammunition or explosives, may at any time, if a police official is not readily available, enter such premises for the purpose of searching such premises and any person thereon or therein, and if such stock, produce or article found, he shall take possession thereof and forthwith deliver it to a police official.

Note that the term premises is defined in section 1 of the Criminal Procedure Act as including land, any building or structure, any vehicle, conveyance, ship, boat or aircraft. This explanation makes it a widely couched section with a vast area of operation.

However, the section does limit the area of operation to certain specified categories of offences, as discussed below. The section is more readily understood when reduced into its different components:

- Any person who is lawfully in charge or in occupation of any premises and
The persons who are allowed to enter such premises, include the owner, a lessee or a employee who has been placed in control of the premises by either the owner or the lessee (Kriegler 2002:43).
From this, it is clear that this section will also include security officials who are left lawfully in charge of premises by the owner or lessee of the premises.

- who reasonably suspects that

Note that here again we have the test of reasonableness that applies.

- stolen stock or produce, as defined in any law relating to the theft of stock or produce .is on or in the premises concerned or
- that any article has been placed thereon or therein or is in the custody or possession of any person upon or in such premises in contravention of any law relating to:
  - intoxicating liquor
  - dependence-producing drugs
  - arms and ammunition
  - or explosives may

If we look at the above, it is clear that the security official who is in charge of a premises may only search premises or a person in relation to the above-mentioned offences.

Whether a police official is readily available it must be determined by means of an objective test.

- enter such premises for the purposes of searching such premises and any person thereon or therein

Interestingly enough, whereas the private person who makes an arrest may not search a person in terms of section 23(1)(b) of the Criminal Procedure Act, he or she may both search a person and seize certain specified articles in terms of section 24. Keep in mind that this section is limited to certain specified categories of offences.

- and if any stock, produce or article is found, he shall take possession thereof and forthwith deliver it to a police official.

The entry and search must be for the purpose of taking possession of the article (stock, produce etc.) and delivering these to a police official as soon as possible.

As already mentioned above this section does not only authorizes the search of persons, but also vehicles etc. In this regard, we suggest that it is in the best interests of security officials to obtain clear instructions from their employers and the owners/occupiers of land on which they are employed regarding the search of especially vehicles that leaves or enters the specific premises. It is also wise to obtain permission from the driver of any vehicle searched as well as the authority from the owner of the premises prior to initiating a search of a vehicle. The prescriptions regarding the search of women in section 29 of the Criminal Procedure Act will also have to be considered.

5. The manner in which the search must be conducted

In terms of section 29 of the Criminal Procedure Act a search of a person and premises must be conducted in decent and orderly manner. This section stipulates the following:

A search of any person or premises shall be conducted with strict regard to decency and order, and a woman shall be searched by a woman only, and if no female police official is available, the search shall be made by any woman designated for the purpose by a police official.

This section requires that the normal standards of decency be complied with and that the persons searched be subject to the least disrespect to their dignity possible under the circumstances.
Remember that strip searches and probe searches should not be undertaken by security personnel.

Also remember that a female may only be searched by a female and under no circumstances may be deviated from this requirement. Therefore it will be in order to keep a women in custody for a reasonable period of time until another women is available to search her (Kriegler 2002:52).
LEARNING OUTCOMES

On completion of this study unit you will be able to:

♦ Know the role of the security officer during public gatherings as contemplated in the Public Gatherings Act of 1993.

♦ Explain the importance of the Public gatherings Act during the execution of the security officers duty.

♦ Explain what is meant by the term vicarious liability by using examples of practical acts and deeds, which involve, for instance, the use of a firearm by a security officer.

♦ Explain what is meant by the term civil liability by using examples of practical acts and deeds, which involve, for instance, the use of a firearm by a security officer.
1. **Purpose of the Act**

To regulate the holding of public gatherings and demonstrations at certain places; and to provide for matters connected therewith.

2. **Importance of the Gatherings Act**

According to Memeza (2006:11) in the main- the RGA sets out to regulate the holding of public gatherings and demonstrations and to provide for matters connected with such activities. It attempts to create space for consensus and co-operation between those who intend to hold a gathering on the one hand and the local authorities and South African Police Services (SAPS) on the other. The triumvirate provided by the RGA consists of the convener, the responsible officer and an authorized member. Where an organization seeks to hold a protest ‘march’ or gathering- a notification form must be filled in terms of section 321 providing for the following:

1. the name and address of the convenor(s), telephone numbers and address;
2. the name of the organization requesting the gathering- if the gathering is not called by an organization- the convener must make a statement that it is called by himself;
3. the purpose of the gathering;
4. the date, time and duration of the gathering;
5. the place where the gathering will commence;
6. the number of participants expected to attend the gathering;
7. the proposed number of the marshals;
8. if the gathering is going to take the form of a procession- where it will commence- and the routes to be taken;
9. where a memorandum is going to be handed over- the organization or individual accepting the memorandum and the place where such a memorandum or petition will be accepted;
10. a letter confirming that the organization or individual will accept a memorandum and the mode of transport to be used to deliver the participants in the gathering.
11. After the submission of a notice- and after consultation with a member of SAPS the responsible officer may decide to call or not to call a consultation or meeting in terms of section 4 of the RGA.24 Section 4 of the RGA provides for the holding of a meeting after the submission of section 3 notice to discuss the contents of the notice and whether amendments should be effected to the proposed facts so as to meet the objectives of the RGA. In this meeting- parties must agree on
12. whether the gathering should proceed or not taking into account all the factors that the SAPS member and responsible officer may pertaining to the impact that the gathering will have on the flow of traffic, the preferred routes and the safety and danger of the public and private property. Ultimately the responsible officer makes a ruling. If the responsible officer decided that the gathering may proceed- he/she may do so and lay down the conditions with regard to the holding of the gathering to ensure:

- that vehicular traffic or pedestrian traffic especially during rush hour is less impeded; or
- an appropriate distance between participants in the gathering and rival gatherings; or
- access to property and workplace; or
- the prevention of injury to persons or damage to property.
3. Vicarious liability

The judgment in the recent matter of The Commissioner for the South African Revenue Service & Another v TFN Diamond Cutting Works (Pty) Limited which was handed down on 31 March 2005 represents the most recent pronouncement of the Supreme Court of Appeal on the issue of vicarious liability and, more particularly, the vexed question of whether an employer is to be held liable for an act of theft by an employee.

The leading case on the test to be applied in determining vicarious liability is the matter of Mkize v Martens 1914 AD 382 in which it was held that:

"A master is answerable for the torts of its servant committed in the course of his employment, bearing in mind that an act done by a servant solely for his own interests and purposes, and outside his authority, is not done in the course of his employment, even though it may have been done during his employment. (Denyes Reitz Attorneys. 2007).

Security companies can thus be held responsible for criminal and negligent deeds committed by their security officers.

Vicarious liability is a creation of statute, because in common law a person will only be held liable for his or her own conduct. The general rule is that a person is not liable for the crime of another unless he/she authorizes or procured its commission or took part in it.

Vicarious liability is used to hold employers liable for the conduct of their employees, where they would under normal circumstances plead lack of responsibility. It must be provided for in specific legislation and it may be imposed expressly or by implication.

For purposes of liability it must be clear that an employee or agent of the employer or principal committed the unlawful conduct. The nature of the relationship between the two parties is very important. Where the person who committed the act does not have a relationship of employee or agent to the principal, his/her conduct would not be attributed to that of the employer or principal.

In addition to the relationship between the parties it must be clear that the person was acting within the scope of their employment or mandate. It must be shown that the person was acting in the course of his/her employment or within the scope of the authority conferred on him/her. The unlawful conduct must have been committed in circumstances that make it legitimate to attribute the act of the employee to the employer. The fact that the employer or principal may have instructed the employee not to engage in such activities that resulted in the unlawful conduct is not relevant.

Another approach is to ask the question whether the employer or principal derived any benefit from the activities of the employee or the agent.

For example, where a security officer steals merchandise from a warehouse that he/she was guarding. The question that would be asked is whether the unlawful conduct was performed in the course of his/her duties. If the answer to this question is yes, then the employer (Security Company) will be held vicariously liable.

This would be different if the theft was committed while the employee was off duty.
The general rule in terms of liability is that a person is not liable for the crime by another unless he/she authorized or procured its commission or took part in its commission. The legislature may, in some instances, create a special form of liability called **vicarious liability**, which is an exception to the general rule. This form of liability occurs where a person other than the one who is held responsible performed the conduct resulting in a civil liability. For purposes of liability, the person on whose behalf the perpetrator was acting is held responsible as if he/she were responsible for the conduct.

It must be clear from the relevant statute creating this form of liability that the legislature intended to hold others vicariously liable for a particular offence. The legislature may declare, expressly or by implication, that certain other people who stand in a certain relationship to the perpetrator are guilty of the perpetrator's conduct. Vicarious liability is used to hold employers liable for the conduct of their employees where the employers would plead lack of responsibility under normal circumstances, because they were not directly involved in the commission of the prohibited conduct.

- The nature of the relationship between the two parties is very important. Where the person who committed the act does not have a relationship as specified in the legislation (e.g. that of an employee or agent to the client), his/her conduct will not be attributed to that of the employer/client.

- In addition to the relationship between the parties it must be clear that the perpetrator was **acting within the scope of his/her employment or mandate**. It must be shown that the person was acting in the course of his/her employment or within the scope of the authority conferred on him/her.

- The unlawful conduct must have been committed in **circumstances that make it legitimate to attribute the act of the employee to the employer**. The fact that the employer or client may have instructed the employee not to engage in such activities that resulted in the unlawful conduct is not relevant.

- Another approach is to ask **whether the employer/client derived any benefit** from the activities of the employee or the agent. If the answer to this question is YES, then the employer/client would be held liable for the conduct of his/her/its employee.

There are requirements that must be met before a person can be held liable for the conduct of another.

- The employee/agent of the employer/client must have committed an **unlawful act**.

- The nature of the relationship between the two parties is very important. Where the person who committed the act does not have a relationship as specified in the legislation (e.g. that of an employee or agent to the client), his/her conduct will not be attributed to that of the employer/client.

- In addition to the relationship between the parties it must be clear that the perpetrator was **acting within the scope of his/her employment or mandate**. It must be shown that the person was acting in the course of his/her employment or within the scope of the authority conferred on him/her.

- The unlawful conduct must have been committed in **circumstances that make it legitimate to attribute the act of the employee to the employer**. The fact that the employer or client may have instructed the employee not to engage in such activities that resulted in the unlawful conduct is not relevant.

- Another approach is to ask **whether the employer/client derived any benefit** from the activities of the employee or the agent. If the answer to this question is YES, then the employer/client would be held liable for the conduct of his/her/its employee.
4. **Civil liability**

Civil liability gives a person rights to obtain redress from another person e.g. the ability to sue for damages for personal injury. The burden of proof is "the balance of probability" which is much lower than for criminal matters. If there has been a relevant criminal conviction in a particular matter, then the burden of proof in any related civil action is reversed, so that the defendant has to prove he is not liable.

Security officers can be held liable in their personal capacities for acts that cause damages and injuries to other.
UNIT STANDARD

Apply legal aspects in a security environment

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<th>SAQA US ID</th>
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QUALITY ASSURING BODY

- 

FIELD | SUBFIELD
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Field 08 - Law, Military Science and Security | Safety in Society

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<th>ABET BAND</th>
<th>UNIT STANDARD TYPE</th>
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<td>2010-11-28</td>
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LAST DATE FOR ENROLMENT | LAST DATE FOR ACHIEVEMENT
--- | ---
2011-11-28 | 2014-11-28

PURPOSE OF THE UNIT STANDARD

Learners credited with this unit standard will be able to explain which legislation impacts on the operations and functions of the security sector. They will be able to understand how and when proportionality of force can and may be used. They will also be able to explain situations and indicate how they should be dealt with in line with legal prescripts.

A person credited with this unit standard will be able to:

- Describe legislation pertaining to the security industry.
- Describe common law principles that relate to the security industry.
- Apply legal prescripts to the private security industry.

LEARNING ASSUMED TO BE IN PLACE AND RECOGNITION OF PRIOR LEARNING

- Communication at NQF Level 2 or equivalent.
- Mathematical Literacy at NQF Level 2 or equivalent.

UNIT STANDARD RANGE

N/A

Specific Outcomes and Assessment Criteria:

SPECIFIC OUTCOME 1
Describe legislation pertaining to the security industry.

ASSESSMENT CRITERIA

ASSESSMENT CRITERION 1
The role of human rights within the security industry is described in terms of its potential influence on day-to-day security operations.

ASSESSMENT CRITERION RANGE
Human rights may include but is not limited to the Constitution Chapter 2 Bill of Rights.
ASSESSMENT CRITERION 2
The PSIRA statutory code of conduct is described as it pertains to private security.

ASSESSMENT CRITERION RANGE
Private security may include but is not limited to the service provider’s statutory duties as well as the security officer’s statutory duties.

ASSESSMENT CRITERION 3
The Liquor Act is described in terms of its relevance to the private security industry.

ASSESSMENT CRITERION 4
The Explosives Act is described in terms of its relevance to the private security industry.

ASSESSMENT CRITERION 5
The Dangerous Weapons Act is described in terms of its relevance to the private security industry.

ASSESSMENT CRITERION 6
The storage of firearms is described in relation to the Firearms Control Act.

ASSESSMENT CRITERION 7
The Trespasses Act is described in terms of its effect on access control principles.

ASSESSMENT CRITERION 8
The Public Gatherings Act is described in terms of its relevance to the private security industry.

ASSESSMENT CRITERION 9
A lawful citizen’s arrest is described according to the parameters set out in the Criminal Procedure Act.

SPECIFIC OUTCOME 2
Describe common law principles that relate to the security industry.

ASSESSMENT CRITERIA

ASSESSMENT CRITERION 1
The concept of lethal force is described in line with common law principles.

ASSESSMENT CRITERION 2
The concept of continuum and proportionality of force is described in line with common law principles.

ASSESSMENT CRITERION 3
The concept of private defence is described in line with common law principles.

ASSESSMENT CRITERION 4
The circumstances in which a security officer may use lethal force are described within the parameters of the reasonable man test.

ASSESSMENT CRITERION RANGE
Circumstances may include but are not limited to protection of own life, protection of people, protection of property, instances where a firearm is pointed at a person.

ASSESSMENT CRITERION 5
The doctrine of vicarious liability is described in terms of when a service provider may be held accountable for employee’s actions.

ASSESSMENT CRITERION 6
The doctrine of civil liability is described in terms of when a person may be held personally accountable for actions while on duty.
SPECIFIC OUTCOME 3
Apply legal prescripts to the private security industry.

ASSESSMENT CRITERIA

ASSESSMENT CRITERION 1
Common law principles are applied in a given situation.

ASSESSMENT CRITERION 2
Human rights principles are applied in a given situation to determine whether the rights were violated.

ASSESSMENT CRITERION 3
A given situation is assessed to determine which legislation (Act) is applicable.

ASSESSMENT CRITERION 4
A given situation is assessed to determine whether appropriate proportionality of force was used.

UNIT STANDARD ACCREDITATION AND MODERATION OPTIONS
• An individual wishing to be assessed (including through RPL) against this unit standard may apply to an assessment agency, assessor or provider institution accredited by the relevant ETQA.
• Anyone assessing a learner against this unit standard must be registered as an assessor with the relevant ETQA.
• Any institution offering learning that will enable achievement of this unit standard or assessing this unit standard must be accredited as a provider with the relevant ETQA.
• Moderation of assessment will be conducted by the relevant ETQA at its discretion.

UNIT STANDARD ESSENTIAL EMBEDDED KNOWLEDGE
• Status of Constitution in relation to other legislation.
• Limitations and constraints within Chapter 2 the Bill of Rights.
• Unlawful attack according to common law practices.
• Lawful defence.
• Relationship between unlawful attack and lawful defence.

UNIT STANDARD DEVELOPMENTAL OUTCOME
N/A

UNIT STANDARD LINKAGES
N/A
Critical Cross-field Outcomes (CCFO):

UNIT STANDARD CCFO IDENTIFYING
Identify and solve problems related to the implementation of legal requirements and how they affect the security industry.

UNIT STANDARD CCFO ORGANISING
Organise oneself and one's activities in such a way as to have all the required legal prescripts available as and when required.

UNIT STANDARD CCFO COLLECTING
Collect, analyse, organise and critically evaluate information pertaining to the security industry and its application for security personnel.

UNIT STANDARD CCFO DEMONSTRATING
Demonstrate an understanding of the world as a set of related systems where the incorrect application of legal issues in the security environment has a negative effect on it.
LEARNER WORKBOOK SECTION

FORMATIVE ASSESSMENT (OPEN BOOK EXAM)

APPLY LEGAL ASPECTS IN A SECURITY ENVIRONMENT
UNIT STANDARD 244184

Full Name and Surname: ___________________________________________

ID Number: _______________ Date of Assessment: _______________

Name of Assessor: _______________________________________________

Learner Signature: _______________ Assessor Signature: ______________

Pass mark is 70% (99 out of 142)

Competent: ☐ Not Yet Competent: ☐

SKILLS PROGRAM 1
BOOK  2
1. Fill in the missing words: (3 Marks)
Security Officers must understand the ______________ framework in which they operate, to ______________ themselves and the ______________ for which they are working and rendering a service to.

2. Fill in the missing words: (4 Marks)
The purpose of the Bill of Rights is to protect the individual against ______________ of the authority of the State (including the police) and, in some instances, imposes a _____ on the State to provide citizens with certain ______________ and economic ____________.

3. List 9 (nine) examples of rights contained in the Bill of Rights that are relevant to the security services. (9 Marks)

   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________

4. The rights and obligations of security/police officials in their official capacity are embodied in section 205(3) of the Constitution. List 4 (four) of these rights and obligations. (4 Marks)

   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________

5. Fill in the missing words: Limitation clause (3 Marks)
The Constitution places an ______________ on every security/police official to _________ and __________________ the fundamental human rights of every person in South Africa.
6. The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors. List 5 (five) of these factors. (5 Marks)

7. Section 12 of the Bill of Rights refers to the right of freedom and security of the person. List 4 (four) rights mentioned in this section. (4 Marks)

8. What is the purpose of the PSIRA Code of conduct? (5 Marks)

9. List 4 (four) relevant parties that the Code of conduct applies to. (4 Marks)
10. A security service provider has certain general obligations towards the public and the private security industry. A security service provider must at all times act in a manner which: (List 5 (five)). **(5 Marks)**

11. When a person acts in private defense when is his conduct lawful? **(Criminal Law) (5 Marks)**

12. Below is table with the requirements of private defense. Complete the table with the requirements of attack and defense. **(6 Marks)**

<table>
<thead>
<tr>
<th>Requirements of attack: The attack</th>
<th>Requirements of defense: The defensive action</th>
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13. Fill in the missing words: **(9 Marks)**

**Necessity**

A person acts out of necessity, and his conduct is therefore lawful:

- if he acts in the __________________ of his own or somebody else’s ______________, ______________ or
- other legally recognized interest which is ________________ by a threat of harm which has already began or is ________________, ________________ and which cannot be averted in any other way;
- provided that the person who relies on the necessity is not ________________ to endure the danger,
- and the interest protected by the act of __________________ is not out of proportion to the interest threatened by such an act.
14. There are certain requirements for plea of consents. List 4. (4 Marks)

The consent must be:
- ___________
- ___________
- ___________
- ___________

15. Fill in the missing words: (4 Marks)

**Perjury at common law**

Perjury at common law consists in the ________________, intentional making of a ________________ ________________ under oath (or in a form allowed by law to be substituted for an oath) in the course of a ________________ proceeding.

16. Four basic requirements must be complied with before a person can be convicted of theft in any of its forms. List the 4 (four) requirements. (4 Marks)

- ___________
- ___________
- ___________
- ___________

17. Which Act gives private persons the right to arrest someone without a warrant in certain circumstances? (1 Mark)

18. Fill in the missing words: (1 Mark)

________________________ of the Criminal Procedure Act requires certain male persons to assist in the execution of an arrest when called upon to do so by a member of the SAPS.

19. Are the following statements true or false? (2 Marks)

a. “**Arrestor**” means any person in respect of whom an arrestor has or had a reasonable suspicion that such person is committing or has committed an offence.

b. “**Suspect**” means any person in respect of whom an arrestor has or had a reasonable suspicion that such person is committing or has committed an offence.
20. List 10 (ten) Schedule 1 offences as mentioned in Sections 40 & 42 of the Criminal Procedure Act. (10 Marks)

21. Are the following statements true or false? (4 Marks)

The concept of lethal force is described in line with common law principles

a. The Constitutional Court judgment has clarified that under South African law a person carrying out an arrest may use the force which is necessary to overcome resistance to the arrest or to prevent the person concerned from fleeing. _____________________

b. A person carrying out an arrest may use force and they may only shoot a firearm or similar weapon if they have reasonable grounds for believing either (1) that the suspect poses an immediate threat of serious bodily harm to them, or a threat of harm to members of the public; or (2) that the suspect has committed a crime involving the infliction or threatened infliction of serious bodily harm. ____________________________

c. The Walters’ judgment impacts only on the use of lethal force. _____________________

d. Where suspected criminals have not inflicted or threatened serious physical harm, it is justifiable to use lethal force. ____________________________

22. Explain the legal requirements when using lethal force for private or self defence. (3 Marks)
23. What is the purpose of the Liquor Act? (4 Marks)

24. Fill in the missing words: (3 Marks)
**Purpose of the Explosives Act**
To consolidate the laws relating to the ______________, __________, sale, ____________, importation, exportation and the use of explosives.

25. Fill in the missing words: (4 Marks)
**Dangerous Weapons Act**
Dangerous weapon' means any ______________, other than a firearm, which is likely to cause ______________ ______________ ______________ if it were used to commit an assault;

26. Is the following statement true or false? (1 Mark)
Any person who is in possession of any object, firearm or replica of a firearm in contravention of the provisions of any notice issued shall be guilty of an offence and liable on conviction to the penalties prescribed in subsection (1).

27. Explain the requirements for carrying a firearm in a public place. (3 Marks)
Section 84 of the Firearms Control Act 60/2000.

28. Fill in the missing words: (7 Marks)
**Trespassing**
Section 1(1) of the Trespass Act 6 of 1959 provides that any person who without the permission:

(b) of the ______________ ______________ of any land or building or part of a building; or

(b) of the owner or person in ______________ of any land or any building or part of a building that is not ______________ occupied by any person,

(c) enters or is upon such land or enters or is in such building or part of a building, shall be ______________ of an offence unless he has ______________ ______________ to enter or be upon such land or enter or be in such building or part of a building.
29. List 3 (three) people who have lawful reasons to enter land or buildings. (3 Marks)

______________________________________________________________

30. Fill in the missing words: (6 Marks)
The manner in which the search must be conducted

In terms of section 29 of the Criminal Procedure Act a search of a person and premises must be conducted in decent and orderly manner. This section stipulates the following:

A search of any person or premises shall be conducted with strict regard to ______________ and ______________, and a woman shall be searched by a _______________ only, and if no female police official is available, the search shall be made by any woman designated for the purpose by a police official.

This section requires that the normal standards of decency be complied with and that the persons searched be subject to the least _______________ to their dignity possible under the circumstances.

Remember that _______________ and probe searches should not be undertaken by security personnel.

31. Where an organisation seeks to hold a protest march or gathering, a notification form must be completed in terms of Section 321. List 5 (five) requirements that needs to be filled in on the notification form. (5 Marks)

Importance of the Gatherings Act

______________________________________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

32. Fill in the missing words: Vicarious liability (4 Marks)

Vicarious liability is a creation of statute, because in common law a person will only be held ______________ for his or her ______________ conduct.

Vicarious liability is used to hold ______________ liable for the conduct of their employees, where they would under normal circumstances plead lack of _______________.
33. Fill in the missing words: **Civil liability (3 Marks)**

Civil liability gives a person rights to obtain _____________ from another person e.g. the ability to sue for damages for ________________ ______________.

TOTAL MARKS: ____________

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