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INSURANCE SECTOR EDUCATION  
AND TRAINING AUTHORITY

## LEARNER GUIDE

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# Demonstrate knowledge and application of ethical conduct in a business environment

## Introduction

Welcome to this module. The typical scope of this module is

- Explain the concept of ethics in relation to property and personal rights.
- Describe the role of a code of conduct in a business environment.
- Apply different ethical principles in a specific context.
- Make decisions based on a corporate code of ethics

Business ethics and corporate social responsibility have been the focus of a great deal of attention in recent years. Business organisations are increasingly being held accountable for the contributions they make to society, as well as for the degree to which their individual members adhere to an appropriate code of ethical conduct. Furthermore, managers of the future will be expected to address important social issues proactively and to maintain a high standard of ethical behaviour if they are to succeed within the corporate environment.

The Corporate Research Foundation (CRF) recently selected South Africa's Leading Managers for 2004. It is almost two years since the CRF selected South Africa's Leading Managers for the first time. Since then, the country's business leaders face as many challenges as they did then, but the challenges have either evolved to become different hurdles or completely new ones have arisen.

Two years back the international environment dominated the thinking of local business. The Enron and WorldCom corporate governance scams had just been revealed and the US economy was battling to emerge from its post-bubble recession. Two years on, and the US has introduced such strict corporate governance requirements that there are fears that this may stamp out any entrepreneurship or innovative decision-making. Some of the local challenges are the consistent strengthening of the rand during the past couple of years (especially for export-oriented industries) and black economic empowerment. South African business leaders have certainly had their work cut out for them during the past few years and, given growing global political turmoil and doubt about the US recovery, it's not likely to get any easier for them. The good news is that the SA economy showed early signs of shrugging off recession. The structure of



the SA economy is changing and leaders have had to adapt to much more regulatory demands and a different operating environment where competition and non-financial aspects, like empowerment and social and environmental imperatives are equally important as the bottom-line performance of the corporate.

A panel of the country's top analysts, including institutional research teams, stock-broking research teams and private equity houses, selected the top ten. But what is it that makes a person a leading manager? The following selection criteria were used:

- Financial
  - Status, good reputation, successful and financially stable
  - Financial structure: company performance as per investment performance ratio's over time
  - Shareholder value
  - Share price performance
  - Balance sheet management, debt management, growth performance and potential
- Human resources
  - Ability to attract and retain high quality people
  - Motivation, trading and insensitive strategies
  - Establishing and maintaining corporate culture
  - Knowledge management
- Management
  - Mentoring, role modelling and coaching
  - Affirmative action encouragement and results: previously disadvantaged and gender empowerment initiatives evident
  - Leadership and management style
  - Vision and drive
  - Leadership characteristics or traits that have had a positive impact on the business: decision-making and problem solving, communication and people skills, honesty and integrity, customer relations

- Flexibility
  - Organisational transformation: structures and strategies change to reflect new environmental realities
  - Ability to deal with tough times or overcome obstacles specific to a sector or geographic area
- Governance
  - Encourages contribution from all board members
  - Encourages shareholder activism
  - At least two non-executive board members of sufficient calibre that their views carry weight in decisions
  - Full and effective control, monitoring systems, definitions of materiality established for all important matters
  - Reports and communications made in context of societal demands for greater transparency and accountability in non-financial affairs
  - Has established and supports effective internal audit function
  - Has established systems that lead to effective sharing of information, consultation and speedy identification of conflict at all levels of the organisation
- International orientation
  - Business conducted overseas
  - Plans for international expansion
  - Social issues
  - Black Economic Empowerment initiatives
  - Initiatives to encourage small and medium size suppliers from previously disadvantaged communities
  - Social contribution

The following leaders were selected as South Africa's top ten: Graham Mackay of SABMiller plc, Tony Trahar of Anglo American plc, Nallie Bosman of Absa Group Limited, Pieter Cox of Sasol, Taddy Blecher and Lisa Kropman of CIDA City Campus, Bobby Godsell of AngloGold Ashanti, Adrian Gore of Discovery Holdings Limited, Michael Campbell of BHP Billiton, Pravin Gordham of South African Revenue Services and Johan van Zyl of Sanlam.

South African leading managers have proven their ability to make a business resilient during the tough times so that it can flourish during the good times. South African leading managers are principled, firm, honest, and committed to strong ethical values. They enhance governance standards and apply the highest standards in financial and operational reporting. They encourage the inclusion and advancement of previously disadvantaged people. They explore new global markets and many of these managers' strongest point are to grow successfully by means of acquisitions. Furthermore, they believe in team leadership and incentivising their people. Lastly, they are experts in transformational leadership. The accomplishments of these winning managers and their teams suggest that South Africans can take the best locally and compete successfully in international markets.



## Module 1

### The concept of ethics in relation to property and personal rights

This Module deals with:

- The source of ethics in relation to property and personality rights
- The role of the South African Constitution in defining the source of ethics for South African society in the context of the business environment
- The relationship between ethics and the law for a specific business sector
- The relationship between ethics and generally accepted codes of conduct for a specific business sector

Ethics and social responsibility are vital issues in contemporary management debate because of the scale and influence of modern organisations. Organisations and their managers have potential impact on issues that extend far beyond the conventional realm of their normal business. The actions of organisations can determine the prosperity of entire communities and the health of the environments in which they operate. Organisations have power and authority and demand the right to pursue their interests. However, with great power comes great responsibility and that is what ethics and corporate responsibility are about.

Although ethics is not synonymous with social responsibility, the two concepts are related. Are ethics relevant in South Africa? The South African Institute of Marketing Management in conjunction with Wits University conducted a survey on the ethical debate in South Africa. One of the most important questions posed to



respondents of the study was the following: “The most important concern for a firm is making profit, even if it means breaking the rules.” Most respondents disagreed with this statement. However, responses varied across industries. Wholesalers and retailers of consumer products were most vehement in their disagreement, while members of the communications, advertising, and public relations industries tended to be the most neutral. Responses to the statement “Good ethics is often good business” showed that South African marketers believe that adherence to ethical standards is not only important for businesses, but may be a source of competitive advantage. With the exception of advertising and public relations

companies, respondents agreed that, even when the chips are down, consideration of ethics and social responsibility cannot be forgotten. Business consultants, marketing researchers and marketing educators were vehement in their support of ethics when survival is at stake.

In the most elementary sense, ethics is a set of values and rules that define right from wrong behaviour. These values and rules indicate when behaviour is acceptable and when it is unacceptable. Ethics can also be described as a set of moral principles that govern the action of an individual or group.

The values of individuals are expressed in attitudes, beliefs and judgements about right and wrong. People learn their values from their parents and family, teachers and the communities into which they are born.

Ethics can be better understood when compared with the behaviour of an individual or group that is governed by laws, on the one hand, and free choice on the other.

Figure 1 illustrates that human behaviour falls into three categories.

Figure 1 THE THREE DOMAINS OF HUMAN ACTION

<p>Behaviour directed by prescribed law Example: People owing a television must buy a television license. Companies need to pay corporate taxes.</p>	<p>Behaviour directed by ethics Example: Individuals will submit income tax return forms that give a true reflection of their personal income and expenditure. A purchasing manager will not accept bribes from suppliers.</p>	<p>Behaviour directed by free choice Example: An individual decides to enrol for further education. An organisation decides to expand their market internationally.</p>
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The first domain of human action is that of prescribed enforceable law where values and standards are written into a legal system. The laws of a country determine that people and corporations behave in a certain way. For example, people need to buy television licences and pay personal taxes. Corporations need to pay corporate taxes and compile financial statements. At the other end of the continuum is the area of free choice where no laws direct the behaviour of individuals or organisations and where there is complete freedom of behaviour. For example, an individual's choice to enrol for further tuition or an organisation's decision to expand their markets globally is examples of free choice.

Between these domains lies the area of ethics. Although this domain has no specific laws, it does have standards of conduct based on shared principles and values about moral conduct that guide the individual or the organisation. In the domain of free choice, obedience is strictly to oneself. In the domain of prescribed law, obedience is to enforceable laws. In the domain of ethical behaviour, obedience is to unenforceable norms and standards which the individual or organisation is aware.



Because ethical standards are not codified, disagreements and dilemmas about proper behaviour often occur. An ethical dilemma arises in a situation when each alternative, choice or behaviour is undesirable because of potentially negative ethical consequences, making it difficult to distinguish between right and wrong.

## **1.1 The source of ethics in relation to property and personality rights**

The South African Constitution signed into law on 10 December 1996 lays the foundations for a democratic and open society in which government is based on the will of the people and all people in the country are equally protected by law. The Constitution is the overriding dominant legislation in South Africa which the state and all people must respect, protect, promote and fulfill.

Chapter 2 of the Constitution enshrines the rights of all people in the country and affirms the democratic values of human dignity, equality and freedom in the form of a Bill of Rights. These rights can be classified into:

- Property rights – rights as a juristic person (able to contract)
- Personality rights - rights as an individual

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

This important legislation lays the foundation for ethics (i.e. moral principles, treatment of moral questions) in South Africa.

### **1.1.1 Property and Personality rights**

To gain a better understanding of the rights afforded to all the people of South Africa and the obligation this places on society, we must consider the content of the Bill of Rights.

A copy of the Bill of Rights can be accessed on the website [www.polity.org.za](http://www.polity.org.za) (under the section Historical Documents select Legislation and then the SA Constitution).



### **1.1.2 Responsibility of the individual**

It is important to remember that whereas all people in South Africa have rights under the new constitution IT IS ALSO THE INDIVIDUAL'S RESPONSIBILITY TO ENSURE THAT HE/SHE DOES NOT EXERCISE THESE RIGHTS SO AS TO NEGATIVELY IMPACT ON THE RIGHTS OF OTHER PEOPLE.

The Bill of Rights in the South African Constitution promotes the values that underlie an open and democratic society based on human dignity, equality and freedom.

## **1.2 The role of the South African Constitution in defining the source of ethics for South African society in the context of the business environment**

South Africa has begun the difficult task of improving ethical standards in our corporate and political arena. This requires directors to broaden their traditional focus on profits and to include an accounting of their company's involvement in social and environmental issues"

Reasons for the interest in ethics include the following:

- The strong emphasis on corporate governance-particularly following the Cadbury report in Britain and the King report in South Africa. The responsibilities of the board, its chairperson and chief executive-together with management as such-have received unusual attention during the past five years. Ethical codes began making their appearance in several companies.
- The strong focus on leadership rather than mere management. And, with that, the focus on issues such as motivational vision, core values and virtues like integrity and trustworthiness.



It is today generally accepted that management skills are not enough.

Especially needed is visionary, management of values. No company of note will today fail to give attention to the values it would like to see institutionalized within itself.

## **1.3 The relationship between ethics and the law for a specific business sector**

The South African Constitution sets out the fundamental principles to be applied throughout South Africa. All legislation subordinate to the constitution must ensure that these principles are followed through in practice in the specialized area to which the legislation applies.

During the last few years there have been significant amendments to legislation to introduce the principles described in the Bill of Rights.

For example; The Employment Equity Act (55/1998) incorporates a Code of Good Practice on the Employment of People with Disabilities. This could be regarded as a direct result of Section 9 of the Bill of Rights.i.e 'no unfair discrimination directly or indirectly against race.....disability etc.

#### **1.4 The relationship between ethics and generally accepted codes of conduct for a specific business sector**

The Bill of Rights in the South African Constitution clearly states the fundamental rights of each individual person in the country and these rights form the basis for ethical behaviour in South Africa.

Business organisations are advised to implement these rights by adopting a code their sector's codes (e.g.SAFSIA) and/or developing their own code of conduct, which acknowledges the rights of individuals and is relevant to their organisation.

This code of conduct:

- defines morally accepted behaviour
- provides guidance for moral decision making and
- sends a clear message to external stakeholders that will bolster their trust in or their expectations of the company.

Business ethics is the study of values and conduct in the business environment. Business ethics are concerned with truth and justice and include aspects which society expects, for example safe products and non-polluted environment. Ethical questions arise where there is a conflict of interest in the business environment. Managers especially, cannot avoid ethical issues in business any more than they can avoid them in other areas of their lives.

A code is a statement of policies and principles that guides behaviour. A code of conduct should guide the behaviour of all persons. Only formulating a code of ethics is not enough. By appointing an ethics committee, holding regular meetings, checking and enforcing violations to the ethics code and reviewing and updating the code, it can be seen that an enterprise is committed to the principle.

Ethical standards differ, particularly among nations and societies. This can cause great concern when managers are working in a foreign country. For example, in some

countries it is normal to make payments to expedite business transactions, which may be considered a bribe in other countries

In South Africa the current generally accepted code of conduct is the recommendations of the **King Report on Corporate Governance**.

## **King II**

This report recommends the fundamental international guidelines off:

- fairness,
- accountability,
- responsibility and
- transparency



As pillars in corporate governance and that a company adopts a Code of Conduct (sometimes referred to as a Code of Ethics) which determines the company's standards of ethical behaviour.

Discipline - a commitment to behaviour that is universally recognised and accepted as correct and proper.

Transparency - the ease with which an outsider is able to analyse a company's actions.

Independence - the mechanisms to avoid or manage conflict.

Accountability - the existence of mechanisms to ensure accountability.

Responsibility - processes that allow for corrective action and acting responsibly towards all stakeholders.

Fairness - balancing competing interests.

Social Responsibility - being aware of and responding to social issues

## **King III**

In the King III report, governance, strategy and sustainability were integrated released in 2009. It is recommended that organizations produce an integrated report in place of an annual financial report and a separate sustainability report and that companies create sustainability reports according to the Global Reporting Initiative's Sustainability Reporting Guidelines.

In contrast to the earlier versions, King III is applicable to all entities, public, private and non-profit. King encourages all entities to adopt the King III principles and explain how

these have been applied or are not applicable. The code of governance was applicable from March 2010.

The report incorporated a number of global emerging governance trends:

- Alternative dispute resolution
- Risk-based internal audit
- Shareholder approval of non-executive directors' remuneration
- Evaluation of board and directors' performance

It also incorporated a number of new principles to address elements not previously included in the King reports:

- The governance of information technology (IT)
- Business Rescue
- Fundamental and affected transactions in terms of director's responsibilities during mergers, acquisitions and amalgamations.

Again, the code of corporate governance is not enforced through legislation. However, due to evolutions in South African law many of the principles put forward in King Report are now embodied as law in the Companies Act of South Africa of 2008. In addition to the Companies Act, there are additional applicable statutes that encapsulate some of the principles of King III such as the Public Finance Management Act and the Promotion of Access to Information Act.



## Module 2

### The role of a code of conduct in a business environment

This Module deals with:

- The concept of a code of conduct with reference to the role of a code in a business environment
- The current generally accepted code of business ethics analysed and an indication of how it should be applied in a business environment
- A code of conduct of a business evaluated against the generally accepted code and checked for alignment
- The codes of conduct of two different business sectors compared and an explanation for apparent differences
- The code of conduct of a professional organisation in a sector compared to that of the code of conduct of a business in the sector and an indication of any apparent differences

#### **2.1 The role of a code of conduct in a business environment**

“A Code of Conduct (or a Code of Ethics, Credo, Value Statement etc) is a document or agreement that stipulates morally acceptable behaviour within an organisation. It defines the moral standards or guidelines that need to be respected by all members of an organisation in their dealings with internal and external stakeholders.”

(Business Ethics in Africa – Deon Rossouw)

Or

‘A code of ethics serves as a central guide to support day-to-day decision making at work. It clarifies the cornerstones of an organisation-its mission, values and principles-helping managers, employees and stakeholders understand how these cornerstones translate into everyday decisions, behaviours and actions.’ (Creating a Workable Company Code of Ethics-ERC books)



## **2.2 Analysis of recommendations of King Report on Corporate Governance and how this should be applied in a business environment**

Boards of directors are confronted with many difficult decisions on a regular basis. The right choice is not always obvious. The King Report on Governance for South Africa 2009 (King II/ III) provides a list of best practice principles to assist and guide directors to make the right choice for their company.

These principles have become an indispensable guide on Corporate Governance to directors, executives and regulators alike. King Report provides guidance to all corporate entities on various governance related aspects, including:

- Ethical leadership and corporate citizenship
- Boards and directors
- The governance of risk
- The governance of information technology (IT)
- Internal audit
- Governing stakeholder relationships
- Integrated reporting and disclosure

The following is an extract from King 11 (with acknowledgement: Institute of Directors - September 2003) which is currently regarded as the generally accepted code of conduct in South Africa, although it has not yet been written into legislation

### **2.2.1 Extract of King 11 Report**

#### Organisational integrity / Code of ethics.

- Every company should engage its stakeholders in determining the company's standards of ethical behaviour. It should demonstrate its commitment to organisational integrity by codifying its standards in a code of ethics.
- Each company should demonstrate its commitment to its code of ethics by:
  - creating systems and procedures to introduce, monitor and enforce its ethical code;
  - assigning high-level individuals to oversee compliance with the ethical code;

- assessing the integrity of new appointees in the selection and promotion procedures;
  - exercising due care in delegating discretionary authority;
  - communicating with, and training, all employees regarding enterprise values, standards and compliance procedures;
  - providing, monitoring and auditing safe systems for reporting of unethical or risky behaviour;
  - enforcing appropriate discipline with consistency; and
  - Responding to offences and preventing re-occurrence.
- Disclosure should be made of adherence to the company's code of ethics against the above criteria. The disclosure should include a statement as to the extent the directors believe the ethical standards and the above criteria are being met. If this is considered inadequate there should be further disclosure of how the desired end result will be achieved.
  - Companies should strongly consider their dealings with individuals or entities not demonstrating the same level of commitment to organisational integrity

In addition an appendix to King 11 (acknowledgement Deon Rossouw; Business Ethics in Africa) suggests that the content of a code of ethics may include all or some of the following categories of content:

- The rationale for the code -it explains why the code has been developed and what purpose it is meant to serve for the organisation
- Ethical values or standards- these provide the norms that will guide organisational behaviour.
- Prescriptions or prohibitions –they prescribe or prohibit specific actions
- Sanctions-these stipulate the consequences of disregard for the code

## Module 3

### Different ethical principles in a specific context

This Module deals with:

- The ethical principles in the generally accepted code applied to five case studies that illustrate different principles
- The process to be followed when the code of ethics is breached for five examples

There are three questions that you should ask when you are faced with an ethical dilemma:

- Is it legal? In other words, have any criminal laws, civil laws or company policies been violated?
- Is it balanced? Is it fair to all parties concerned both in the short term, as well as the long term? Is this a win-win situation for those directly as well as indirectly involved?
- Is it right? Most of us know the difference between right and wrong, but when push comes to shove, how does this decision make you feel about yourself? Are you proud of yourself for making this decision?

Most of the time, when dealing with “grey decisions”, just one of these questions is not enough. But by taking the time to reflect on all three, you will find the answer becomes clearer.

### **3.1 Perspectives of Ethical Decision making**

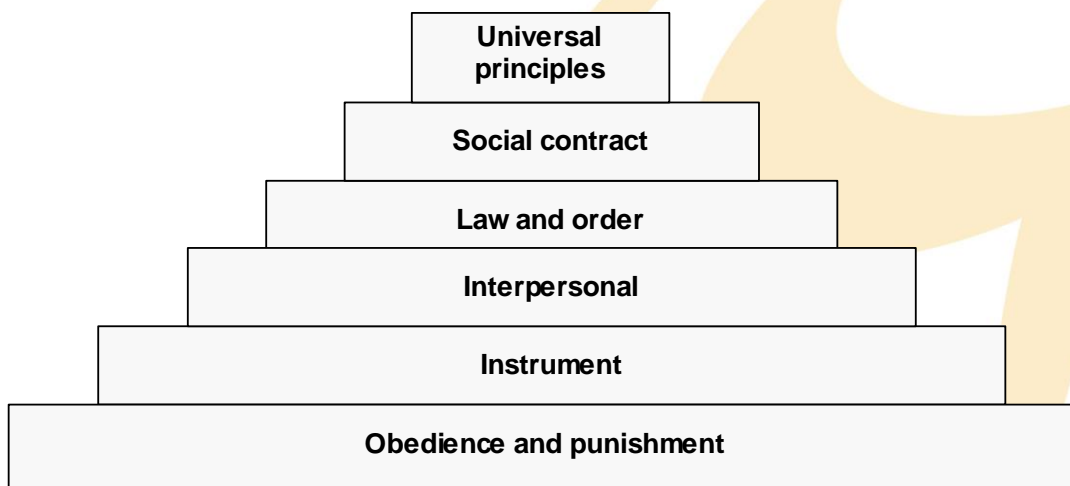
Understanding ethical dilemmas by identifying the perspective (or level) at which the issues originate, can add clarity for those who must decide what course of action to take. In business, most issues with which managers are confronted fall into one of five levels, namely the individual, organisational, association, social and international perspectives. These perspectives are not mutually exclusive.

- Individual perspective

Individuals have their own values of what is ethical, despite prevalent societal, legal and organisational interpretations. Ethical questions from the individual perspective address issues such as whether to cheat on an expense account, to call in sick when one is not, to accept a bribe or to report a sexual harassment incident.

Lawrence Kohlberg is probably the best-known scholar in the field of the psychology of ethical decision-making and behaviour. His model of moral development is useful in exploring questions about how members of an organisation regard ethical dilemmas, including how they determine what is right and what is wrong in a particular situation (Kohlberg 1969:347-380). Kohlberg held that people develop morally, much as they do physically, from early childhood to adulthood. As they develop, their ethical criteria and patterns of moral reasoning go through stages of moral development, which ranges from the lowest (obedience and punishment) to the highest (universal principles). The stages are illustrated in figure 2.

Figure 2: KOHLBERG'S STAGES OF MORAL DEVELOPMENT



**Obedience and Punishment Stage:** A person at this stage does the right thing mainly to avoid punishment or to obtain approval. An employee stuck at this stage might think that the only reason not to steal money from an employer is the certainty of getting caught and then fired and arrested.

**Instrumental Stage.** A person at the instrumental stage becomes aware that others also have needs and begins to defer to them to get what he or she wants. Proper behaviour is what satisfies the person's self-interest. An employee at this stage might be willing to defer to the needs of the employer to reduce absenteeism, but only if the employer gives something in return.

**Interpersonal Stage:** A person at the interpersonal stage considers appropriate behaviour as what pleases, helps, or is approved by friends or family. Proper behaviour exhibits conformity to conventional expectations, often of the majority. At this stage, being seen as a 'good person' with basically good motives is important. An employee at this stage might focus on the importance of being a loyal employee and colleague who is always friendly and who avoids conflict.

**Law and Order Stage:** A person at this stage recognises that ethical behaviour is not determined only by reference to friends, family and co-workers. Proper behaviour consists of doing a person's duty, showing respect for authority and maintaining the social order for its own sake. Loyalty to the nation and its laws are paramount. For example, in some organisations employees commonly take paid sick days even when they aren't sick. Employees may even encourage each other to take all their sick days. They view these leave days as something the company owes them. However, the company policy may state that sick days are allowed only for legitimate illnesses. In this situation, employees at the law and order stage might resist peer pressure to take a day off if they aren't ill. They would view company rules as overriding the somewhat selfish interests of their peers. At this stage of moral reasoning, rules are considered to be necessary for the effective functioning of the entire organisation, and they should be followed even when this requires some self-sacrifices or resistance to pressure from peers.

**Social Contract Stage:** A person at this stage is aware that people hold a variety of conflicting personal views that go beyond the letter of the law. A person at this stage understands that although rules and laws may be agreed upon and for the most part must be impersonally followed, they can be changed if necessary. Some absolute values, such as the right to life and liberty, are held regardless of different individuals' values or even majority





opinion. People at this stage would recognise that employees of organisations are expected to follow the rules but would also accept the notion of breaking the rules when those rules conflict with accepted social values.

**Universal Principle Stage:** Someone at this stage views appropriate conduct as determined by a person's conscience, based on universal ethical principles. Universal principles are founded in justice, the public welfare, the equality of human rights, and respect for the dignity of individual human beings. People at the most advanced stage of ethical reasoning recognise these universal principles and act in accordance with them rather than rules or laws.

### ***3.1.1 Organisational perspective***

To provide guidance for employees, an organisation can define ethical and unethical behaviours. Organisations can also guide employees' actions both formally and informally. The most fundamental informal source of guidance is top management's behaviour, which demonstrates the ethical principles that are important to the organisation. Even within the same company, different departments may have different ethical substructures. In other words, the behaviour of middle- and lower-level managers can also send signals about what is considered ethical conduct. More formal sources of guidance include policy statements, codes of ethics, speeches, publications, the content of training programmes, and disciplinary actions taken against employees who act unethically. The nature of an organisation's culture, leadership, reward systems and practices can work for or against ethical conduct. An organisation isn't likely to design intentionally rewards systems that will encourage unethical behaviour, but often just that happens. Consider what would happen at a soft drink manufacturing plant if managers at headquarters set sales targets for sales people. The quotas are reasonable and most sales people achieve their goals. Management then set more difficult goals to achieve. The goals are now more challenging and most sales people work hard to achieve them. During the next round of planning, managers even set the goals higher than before. Some sales people now fall short on achieving them and begin to fear the consequences. Out of fear, they figure out ways to cheat the system and appear to be meeting the goals.



### **3.1.2 Association perspective**

At the association level an accountant, lawyer, medical doctor, or management consultant may refer to his or her professional association's charter or code of ethics for guidelines on conducting business. In South Africa both the private sector and the public sector make extensive use of the services of consultants. These consultants were often the victims of downsizing, re-engineering and affirmative action policies of their previous employers. No enforceable code of conduct exists to regulate the ethical conduct of these consultants to ensure that their clients receive fair treatment and protection of their rights.

### **3.1.3 Social perspective**

A large part of any view of what is ethical comes from the society in which the behaviours occur. At the social level, norms, customs and traditions govern the moral acceptability of behaviour. The following questions were posed to respondents in several surveys (for example Harris, 1987: 71 and Gudridge & Byrne, 1990: 86-87):

Question 1: The ethical standard of business managers and executives is only fair or poor.

Question 2: White-collar crime is common or somewhat common.

Question 3: The lack of ethics in businesspeople is contributing to crumbling moral standards.

Question 4: People are less honest today than they were ten years ago.

Question 5: Businesspeople harm the environment to maintain profits.

Question 6: Executives and managers put workers' health and safety at risk to maintain profits.

The following table presents the percentages of the respondents that agreed with these statements.

**Table 1 STATEMENT ON ETHICAL BEHAVIOUR**

Question	Percentage of respondents agreed to the question
1	58
2	90
3	76
4	54
5	47
6	42

In contrast to this relatively negative results, the results of a comprehensive survey of managers revealed that 80 percent thought their organisations were guided by high ethical values. However, lower-level managers responding to the survey were more likely than top managers to say that their organisations were not guided by high ethical standards.

These survey results indicate that the general public perceives serious ethical problems in the way that business is conducted generally, whereas managers tend to see serious ethical problems in business as exceptions that grab headlines in the media.

Managers and employees work in more of a fishbowl than ever before. The media expose and report on their decisions and behaviour, which are often judged publicly by many different pundits and interest groups. In recent years the tobacco industry in South Africa has come under pressure as more and more evidence has been provided which links smoking to various diseases. In response to these facts, the South African government passed the Tobacco Products Control Amendment Act of 1999. The main theme of this Act is an eventual blanket ban on all tobacco advertising, vigorous health warnings, and a crackdown aimed against encouraging new smokers, especially the youth. Hundreds of studies have shown that smoking tobacco has negative health consequences. Tobacco related health problems also have huge medical costs, which are ultimately paid by taxpayers and anyone who pays for private health insurance.

In a single society, the view of what is ethical and legal changes over time. Changing societal views of ethical behaviour eventually result in new legal requirements. However, before laws and government regulations are changed, managers and their organisations may take voluntary actions that reflect their personal and corporate values and beliefs and their assessments of the public's changing ethical stance. An example of this can be found in the alcoholic beverages industry. As with tobacco, there are laws in South Africa that regulate corporate advertising of alcoholic beverages. SABMiller was selected as the best company to work for in South Africa in 2005 by the Corporate Research Foundation. Every SAB site has its own pub. The company is committed to encouraging the responsible use of alcohol and was a founder member of the Industry Association for Responsible Alcohol Use. In 1998, they conducted an extensive drink/drive campaign, representing an investment of R4, 2 million which included repeated use of the logo of the government's Arrive Alive campaign. The division also donated over R1 million to the campaign to fund the cost of communicating the issue to all nine provinces in South Africa.

### **3.1.4 Legal perspective**

What a society interprets as ethical or unethical frequently ends up being expressed in laws, government regulations and court decisions. Laws are simply society's value and standards that are enforceable in the courts. However, the legality of actions and decisions doesn't necessarily make them ethical. At one time South African organisations could legally discriminate against woman and black people in hiring and promotions. After the democratic elections held in April 1994 and the drafting of a new constitution, these practices were outlawed. The much-needed economic transformation after 1994 has proven to be very elusive. Since 1994, the government has passed a number of policies, laws and regulations aimed at achieving black economic empowerment (BEE). The economy, however, continued to remain in the hands of a relatively small minority consisting largely of white people. As a result, the government ignited a second wave of BEE by introducing a system of charters setting out precise targets that companies in each sector must achieve within a specified time. Charters essentially bind corporates to transform themselves in such a way that their make-up more accurately reflects the



composition of the country's population. To monitor transformation, corporates must publicly disclose progress in meeting targets through the use of a "Balanced scorecard". Government will measure all charters against a balanced BEE scorecard.

The indicators in the scorecard and their weightings are given in table 2:

Indicator	Weighting
Ownership	20
Management	10
Employment equity	10
Skills development	20
Preferential procurement	20
Enterprise development	10
A residual that is sector specific	10

Table 2 BLACK ECONOMIC EMPOWERMENT ACT: SCORECARD AND WEIGHTINGS

South African companies have tended to respond very favourably to the Charter initiative. Sasol, for example, is a signatory to the Liquid Fuel Charter, which obliged it to introduce 25% BEE ownership into its Liquid Fuels Business by 2010. The merger of Exel Petroleum into Sasol was a first step towards the creation of a new business entity. Sasol initiated Exel and contributed to its developing into the most profitable and successful BEE enterprise in fuel retailing in South Africa.

### 3.1.5 International perspective



If a company operates in many different countries, the international perspective on ethical behaviour becomes important. Local standards for ethical behaviour may differ greatly from one location to the next. Developing ethical guidelines that make sense in various countries may become a complex and difficult task. Some companies apply their domestic country's standards for ethical behaviour wherever they operate in the world, in the belief that this approach will not violate ethical principles elsewhere.

Other companies adapt to local practices, arguing that ethical standards make only sense when considered within a particular societal context. An example of an ethical issue from the international perspective would be to accept the organisation's policy of doing business with a government that abuses human rights such as child labour. Conditions in a shoe manufacturing plant in China, illustrate this problem. Some 50 000 employees, many of them younger than 16, work in factories that make products for Nike, Adidas, Reebok, LA Gear, Puma and New Balance. Many workers are not even paid the Chinese minimum wage without any benefits. They work under conditions that are typical in the region, but that are harsh by global standards. Ethical issues at this level can be difficult to resolve since a mix of cultural, political and religious values is often involved in a decision.

### **3.2 Different approaches to Ethical Decision-making**

The ethics of managerial decision-making is often complex and managers often disagree on what comprises an ethical decision. There are four fundamental ethical approaches that business managers can use in their ethical decision making when selecting particular alternatives and justifying difficult actions. In the following paragraphs the utilitarian approach, the moral rights approach, the individualism approach and the justice approach are discussed.

#### **3.2.1 The Utilitarian Approach**

When the utilitarian approach is adopted, the effects of a particular action on those directly involved is judged in terms of what provides the greatest good for the greatest number of people. This approach focuses on actions rather than on the motives behind the actions. Potentially positive results of an action are weighed against potentially negative results. If the positive results outweigh the negative results, the manager taking the utilitarian approach is likely to proceed with the action in question. That some people might be adversely affected by the action is accepted as inevitable. Managers faced with making decisions about pension plans and company sponsored medical aid schemes are often required to make utilitarian judgements. Here they use their conceptual skills to estimate the general benefits to be derived from a decision.

The utilitarian approach prescribes ethical standards for managers and employees in the areas of organisational goals, efficiency and conflict of interest.



Organisational goals: Providing the greatest good for the greatest number in a competitive market system means focusing on maximising profits. Achieving high profits is thought to result in the highest-quality products and the lowest prices for consumers. Profits are seen as the reward for satisfying customers. If profits get too high, new competitors will enter the market, thereby increasing the supply of high-quality goods and pushing prices down. No organisation should unilaterally go beyond what the law requires – for the sake of helping preserve the environment, for example. Doing so would only reduce their profits and would do nothing to eliminate the pollution caused by competitors.

Efficiency: Managers and employees should try to attain organisational goals as efficiently as possible. Efficiency is achieved by minimising inputs (such as labour, land and raw materials) and maximising productive outputs (for example products and services).

Conflict of interest: Managers and employees should not have personal interests that conflict with the organisation's achievement of its goals. A purchasing manager having a significant interest in one of the firm's major suppliers faces a potential conflict of interest. The purchasing manager may be motivated to purchase from that supplier, even when the price or quality is not the best available.



### **3.2.2 The moral rights approach**

The moral rights approach asserts that decisions should be consistent with fundamental rights and privileges (for example life, freedom, health, privacy and property) as set forth in documents such as the South African Constitution. Respect for certain moral rights is equivalent to defining these moral rights as universal principles that should guide ethical decisions and behaviour.

Life and safety: Employees, customers and the general public have the right not to have their lives and safety unknowingly and unnecessarily endangered. In South Africa, this moral right in large part justifies the Occupational Health and Safety Act, which contain many requirements designed to increase the safety of work environments.

Truthfulness: Employees, customers and the general public have the right not to be intentionally deceived on matters about which they should be informed.



Privacy: Citizens have the right to control access to personal information about themselves and its use by government agencies, employers, and others.

Freedom of conscience: Individuals have the right to refrain from carrying out orders that violate their moral or religious beliefs.

Free speech: Employees have the right to criticize the ethics or legality of their employers' actions. This right holds only if the criticisms are conscientious and truthful and do not violate the rights of others within or outside the organisation.

Private property: The legal and value systems of the United States, Canada, United Kingdom, Germany, Japan, South Africa and many other societies recognise the individual's right to private property. This right allows people to acquire, use, and dispose of shelter and to have life's basic necessities.

### **3.2.3 The Justice Approach**

The justice approach holds that moral decisions must be based on standards of equity, fairness and impartiality. When managers must decide how the costs and rewards of employment in the organisation should be shared, the basis for ethical judgment is social judgment where rules are fairly and impartially imposed and enforced.

To ensure just decisions and behaviour, the proponents of this approach argue that three principles should be followed when designing management systems and making organisational decisions: the distributive justice principle, the fairness principle and the natural duty principle.

Distributive Justice Approach: The distributive justice approach morally requires that individuals not be treated differently on the basis of arbitrarily defined characteristics. This principle holds that (1) individuals who are similar in relevant respects should be treated similarly; and (2) individuals who differ in relevant respects should be treated differently in proportion to the differences between them. The South African Employment Equity Act of 1998 forbids employers from discriminating between employees on the basis of race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, sexual orientation, age, disability, HIV status, religion, conscious belief, political opinion, culture, language or birth.

Fairness Principle: This principle morally requires employees to support the rules of the organisation when two conditions are met: (1) the organisation is just (or fair);

and (2) employees have voluntarily accepted benefits provided by the organisation or have taken advantage of opportunities offered in order to further their own interests. Employees are then expected to follow the organisation's rules, even though those rules might restrict their individual choices. If a job applicant was informed that accepting a job offer would later involve being subjected to random drug testing and continuous video monitoring, the organisation could expect the employee to accept these conditions of employment. Under the fairness principle, both the organisation and its employees have obligations and both should accept their responsibilities. Their mutual obligations can be considered fair if they satisfy the following criteria: (1) they result from voluntary acts; (2) they are spelled out in clearly stated rules; and (3) they are owed between individuals who are cooperating for mutual benefit.

Natural Duty Principle: This principle requires that decisions and behaviour be based on universal principles associated with being a responsible member of society: (1) to help others who are in need or in jeopardy, provided that the help can be given without excessive personal risk or loss; (2) not to harm or injure another; (3) not to cause unnecessary suffering; and (4) to support and comply with just institutions.

### **3.2.4 The individualism approach**

According to the individualism approach, acts are moral when they promote the individual's best long-term interests, which eventually lead to the greater good of all concerned.



With all individuals pursuing self-interest, the greater good is ultimately served when people learn to accommodate each other in their own long-term interest, hence leading to honesty and integrity as opposed to lying and cheating.

Each of the three ethical approaches has strengths and weaknesses. Utilitarian views are most compatible with the goals of efficiency, productivity, and profit maximisation – all strong managerial values in South Africa. Managers in many South African organisations value this approach. In contrast, the moral rights and justice approaches emphasise individual rights and obligations and the need to distribute benefits and burdens fairly among individuals. These models give greater weight to the long-term welfare of employees than the short-term organisational

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efficiency. Using these three approaches in combination increases the probability that others will judge decisions and behaviour as ethical.



## Module 4

### Make a decision based on a corporate code of ethics

This Module deals with:

- An ethical business decision made and supported for three different scenarios
- Potential conflict between a personal value system and a specific corporate code of ethics identified and suggestions for potential resolution
- The consequences of non-compliance with a code debated with reference to current ethical incidents
- Conflicts of interest that arise out of different interpretations or applications of a code of ethics identified and suggestions on how the situations could be resolved in the best interests of all stakeholders

#### 4.1 Steps in the Ethical Decision-making Process

The steps outlined below can help a decision maker an ethical decision. The decision ultimately taken may, of course, still be the wrong one, but at the very least, a rational process was followed and the decision taken represents the best judgment of the decision-maker.

- Identify the problem

The ethical problem should be specifically defined. Here it is important not to confuse the ethical problem with the associated symptoms or problems. For example, suppose your organisation is compromising on the quality controls of a drug sold to pregnant women to meet an urgent and large order. Your ethical problem here is whether you have the right to endanger the life of fetuses and pregnant women. The quality control of the drug is not the real ethical problem.

- Determine whose interests are involved

A decision with ethical consequence can affect many stakeholders such as customers, suppliers, employees, shareholders, the government, environmental lobby groups and many others. Before any ethical choice can be made, it is essential to determine whose interest is involved and how the various stakeholders would react and be influenced by the various scenarios created by different choices. Say, for instance, in the example

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cited above that many deformed children are born as a result of the poor quality of the drug taken by their mothers while they were pregnant. Stakeholders here would be customers (mothers and babies), the organisation, employees and shareholders who will be affected by costly court cases and also the government, which will react against a drug company that compromises on the quality of drugs taken by pregnant women.

- Determine the relevant facts

No ethical choice can be made without investigation and considering all the relevant facts. In the example cited above, the decision maker will avail himself or herself of all the relevant facts relating to the compromised quality control of the drug. He or she will, for instance, find out what the possible consequences might be of a batch of defect drugs to the health of pregnant women and their babies.

- Determine the expectations of those involved

In complicated ethical decisions, many stakeholders have expectations that are based on actual and tacit agreements. The end user has a legitimate expectation to receive a safe drug whilst the client has a legitimate expectation to have his or her order delivered on time. The expectations of all the stakeholders should be taken into consideration when a decision is reached.

- Weigh the various interests

Having determined all the relevant facts about the decision to be taken, the decision maker must now judge whose interests are the most important. In our example, the decision maker will weigh the possible benefits to the organisation of a large order against the possible negative consequences of defect products and will take all factors into consideration when making the final ethical decision. An ethical way to weigh the various interests is to reverse roles with the other parties to the conflict. Put yourself in the position of the other party. How would you feel if your baby's, your own, or your wife's health was harmed by a defect product? Once this process has been completed, the decision maker should be in a position to make a judgment about whose interest is the most important



- Determine the range of choices

A range of choices is available in any given decision-making situation. The decision maker must first determine what she can do, before deciding on what to do. In the case of our example, she could decide to cancel the order, or she could remain silent and go ahead with the processing of the order, or she could discuss her problem with her superiors. Another alternative is to speak to the press if forced into a decision with which she is not comfortable.

- Determine consequences

Determine consequences of these choices for all those involved. This is not an easy exercise, because it is difficult to predict the consequences of the various alternatives with any certainty. However, this is an important step in the ethical decision-making process. In our example, the decision maker may judge that by keeping silent, a number of defective babies will be born. On the other hand, she might lose her job if she cancels the order.

- Make your choice

The decision maker should now be in a position to make a reasoned judgment, taking into account the facts, the stakeholders, and the consequences of each possible alternative and the weighed reasonable expectations of all involved.



A manager's ethical standards and the organisation's social responsibility are closely related. Ethics is the individual manager's guide for assessing the rightness of potential actions by the organisation. In a sense, ethical standards are filters that screen the organisation's actions according to what is right and what is wrong. Ultimately, managers must weigh each demand made on the organisation according to their own ethical standards and the organisation's code of ethics and that forms the basis for their decision-making on the complex issues of social responsibility

#### **4.2. Levels of Corporate Social Responsibility**

Because the organisation is an open system, managers cannot make decisions that are based solely on economic considerations. The organisation is interrelated with the whole system in which it functions and to make socially responsible decisions, INSETA copyright 2014



managers must consider all possible stakeholders. Corporate social responsibility implies that a manager, in the process of serving his or her own business interests is obliged to take actions that also protect and enhance society's interests. The overall effect is to improve the quality of life in the broadest possible way, regardless of how quality of life is defined by society. The manager becomes concerned with the social and economic outputs and with the total effect of the organisation's actions on society.

The following levels of social responsibility can be identified:

Social Obligation: According to this view, an organisation engages in socially responsible behaviour when it pursues profit within the constraints of the law imposed by society. Because society supports organisations by allowing them to exist, organisations are obliged to repay society by making profits.



Social Reaction: This view emphasises that society is entitled to more than the mere provision of goods and services from business. A minimum requirement is that organisations must be accountable for the ecological, environmental and social costs incurred by its actions. At the most, organisations should react and contribute to solving society's problems (even those that cannot be directly attribute to business).

Social Responsiveness: The term social responsiveness has become widely used in recent years to refer to actions that exceed social obligation and social reaction. The characteristics of socially responsive behaviour include citizenship responsibilities such as taking stands on public issues, accounting willingly for actions to any group, anticipated future needs of society and moving toward satisfying them and communicating with the government about existing and anticipated socially desirable legislation. A socially responsive corporation actively seeks to prevent and find solutions to social problems according to this view.

You'll find lots of examples of business ethical decisions and dilemmas in areas such



as:

Let's take one of the above – suppliers.

A business cannot claim to be ethical firm if it ignores unethical practices by its suppliers – e.g.

- Use of child labour and forced labour
- Production in sweatshops
- Violation of the basic rights of workers
- Ignoring health, safety and environmental standards

An ethical business has to be concerned with the behaviour of all businesses that operate in the supply chain – i.e.

- Suppliers
- Contractors
- Distributors
- Sales agents

#### 4.3 To whom is business responsible?

Thus far the discussion on social responsibility has centred on the abstract meanings of social responsibility. However, we now turn our attention to the actions of the organisation. Socially responsible activities by organisations can be classified in terms of the stakeholders affected by the actions of the organisation.

A stakeholder is any individual or group who can affect or is affected by the actions, decisions, policies, practices or goals of the organisation. The stakeholders in organisations can be classified in terms of primary and secondary stakeholders.

Primary stakeholders are those identified in the micro-environment and market environment, and include owners, stockholders and the board of directors, employees, suppliers and customers.

Secondary stakeholders are those found in the macro-environment of the organisation and include local communities and the country as a whole.

A social audit is a measure of an organisation's social behaviour in the form of an inventory that identifies and describes specific information on the current and anticipated socially responsible plans and results of an organisation. A social audit is thus a measure of an organisation's overall contribution to its social goal by comparing the social costs and benefits of its programmes

#### **4.4 Managing Ethics in the organisation**

Management can manage ethics in the organisation by being a leading example; through a code of ethics, ethical structures and whistle blowing.

##### **4.4.1 Leading by example**

The chief executive officer and senior managers need to be openly and strongly committed to ethical conduct and must provide constant leadership in reinforcing ethical values in the organisation. That commitment must be communicated as often as possible in speeches, directives and organisational publications.



Most importantly, their actions should set the example for ethical standards in their organisations.

##### **4.4.2 Code of ethics**

At the core of many efforts of organisations to set an internal standard of behaviour in ethical matters, is the development of a corporate code of ethics. Also called code of conduct, it states the importance of conducting business in an ethical manner and provides guidelines for ethical behaviour within the organisation.

##### **4.4.3 Ethical structures**

An organisation can create various ethical structures to implement ethical behaviour. An ethics committee can be established to oversee the organisation's ethics by ruling on questionable issues and discipline violators. Such a committee typically consists of a group of executives of the organisation. Another option is to appoint an ethical

ombudsman who is, an official given the responsibility of corporate conscience that hears and investigates ethical complaints and points out potential failures to top management. Ethic training programmes can also help to entrench ethical behaviour in organisations.

#### **4.4.4 Whistle blowing**

The disclosure by an employee of illegal, immoral or illegitimate practices by individuals in the organisation or the organisation itself is called whistle blowing. Whistle blowers often report wrongdoing to outsiders such as government officials, newspaper reporters or an ethics committee. Whistle blowers must be protected if this is to be an effective ethical safeguard, otherwise they will suffer and the individual or organisation may continue with unethical or illegal activities.



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# **Annexure 1: Bill of Rights**

## **Bill of Rights**

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### **Rights**



7. (1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

(2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.

(3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

### **Application**

8. (1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.

(2) A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.

(3) When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court

1. in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and
2. may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).

(4) A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.

### **Equality**

9. (1) everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) 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.

(3) 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.

(4) 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.

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

## **Human dignity**

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

## **Life**

11. Everyone has the right to life.

## **Freedom and security of the person**

12. (1) everyone has the right to freedom and security of the person, which includes the right

1. not to be deprived of freedom arbitrarily or without just cause;
2. not to be detained without trial;
3. to be free from all forms of violence from either public or private sources;
4. not to be tortured in any way; and
5. 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

1. to make decisions concerning reproduction;
2. to security in and control over their body; and
3. not to be subjected to medical or scientific experiments without their informed consent.

## **Slavery, servitude and forced labour**

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

## **Privacy**

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

1. their person or home searched;
2. their property searched;
3. their possessions seized; or
4. the privacy of their communications infringed.

## **Freedom of religion, belief and opinion**

15. (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

1. those observances follow rules made by the appropriate public authorities;
2. they are conducted on an equitable basis; and
3. attendance at them is free and voluntary.

(3) This section does not prevent legislation recognizing

1. marriages concluded under any tradition, or a system of religious, personal or family law; or
  2. systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
2. Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

### **Freedom of expression**

16. (1) everyone has the right to freedom of expression, which includes

1. freedom of the press and other media;
2. freedom to receive or impart information or ideas;
3. freedom of artistic creativity; and
4. academic freedom and freedom of scientific research.

(2) The right in subsection (1) does not extend to

1. propaganda for war;
2. incitement of imminent violence; or
3. advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

### **Assembly, demonstration, picket and petition**

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

### **Freedom of association**

18. Everyone has the right to freedom of association.

### **Political rights**

19. (1) every citizen is free to make political choices, which includes the right

1. to form a political party;
2. to participate in the activities of, or recruit members for, a political party; and
3. 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

1. to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
2. to stand for public office and, if elected, to hold office.

## **Citizenship**

20. No citizen may be deprived of citizenship.

## **Freedom of movement and residence**

21. (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.

## **Freedom of trade, occupation and profession**

22. 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**

23. (1) everyone has the right to fair labour practices.

(2) Every worker has the right

1. to form and join a trade union;
2. to participate in the activities and programmes of a trade union; and
3. to strike.

(3) Every employer has the right

1. to form and join an employers' organisation; and
2. to participate in the activities and programmes of an employers' organisation.

(4) Every trade union and every employers' organisation has the right

1. to determine its own administration, programmes and activities;
2. to organise; and
3. to form and join a federation.

(5) Every trade union, employers' organisation 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 recognise 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).

## **Environment**

## 24. Everyone has the right

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

## Property

25. (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

1. for a public purpose or in the public interest; and
2. 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

1. the current use of the property;
2. the history of the acquisition and use of the property;
3. the market value of the property;
4. the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
5. the purpose of the expropriation.

(4) For the purposes of this section

1. 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
2. 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**

26. (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 realisation 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.

## **Health care, food, water and social security**

27. (1) everyone has the right to have access to

1. health care services, including reproductive health care;
2. sufficient food and water; and
3. 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 realisation of each of these rights.

(3) No one may be refused emergency medical treatment.

## **Children**

28. (1) every child has the right

1. to a name and a nationality from birth;
2. to family care or parental care, or to appropriate alternative care when removed from the family environment;
3. to basic nutrition, shelter, basic health care services and social services;
4. to be protected from maltreatment, neglect, abuse or degradation;
5. to be protected from exploitative labour practices;
6. not to be required or permitted to perform work or provide services that
  1. are inappropriate for a person of that child's age; or
  2. place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
7. 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
  1. kept separately from detained persons over the age of 18 years; and
  2. treated in a manner, and kept in conditions, that take account of the child's

- age;
8. 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
  9. not to be used directly in armed conflict, and to be protected in times of armed conflict.

(2) A child's best interests are of paramount importance in every matter concerning the child.

(3) In this section "child" means a person under the age of 18 years.

## **Education**

29. (1) everyone has the right

1. to a basic education, including adult basic education; and
2. 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

1. equity;
2. practicability; and
3. 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

1. do not discriminate on the basis of race;
2. are registered with the state; and
3. 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**

30. 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

31. (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community

1. to enjoy their culture, practise their religion and use their language; and
2. 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**

32. (1) Everyone has the right of access to

1. any information held by the state; and
2. 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**

33. (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

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

### **Access to courts**

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.

### **Arrested, detained and accused persons**

35. (1) Everyone who is arrested for allegedly committing an offence has the right

1. to remain silent;
2. to be informed promptly
  1. of the right to remain silent; and
  2. of the consequences of not remaining silent;
3. not to be compelled to make any confession or admission that could be used in evidence against that person;
4. to be brought before a court as soon as reasonably possible, but not later than

1. 48 hours after the arrest; or
2. the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
5. at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
6. to be released from detention if the interests of justice permit, subject to reasonable conditions.

(2) Everyone who is detained, including every sentenced prisoner, has the right

1. to be informed promptly of the reason for being detained;
2. to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
3. 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;
4. to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
5. 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
6. to communicate with, and be visited by, that person's
  1. spouse or partner;
  2. next of kin;
  3. chosen religious counsellor; and
  4. chosen medical practitioner.

(3) Every accused person has a right to a fair trial, which includes the right

1. to be informed of the charge with sufficient detail to answer it;
2. to have adequate time and facilities to prepare a defence;
3. to a public trial before an ordinary court;
4. to have their trial begin and conclude without unreasonable delay;
5. to be present when being tried;
6. to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
7. 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;
8. to be presumed innocent, to remain silent, and not to testify during the proceedings;
9. to adduce and challenge evidence;
10. not to be compelled to give self-incriminating evidence;
11. 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;
12. 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;
13. 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;
14. 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  
15. 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.

### **Limitation of rights**

36. (1) 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

1. the nature of the right;
2. the importance of the purpose of the limitation;
3. the nature and extent of the limitation;
4. the relation between the limitation and its purpose; and
5. less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

### **States of emergency**

37. (1) A state of emergency may be declared only in terms of an Act of Parliament, and only when

1. the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and
2. the declaration is necessary to restore peace and order.

(2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only

1. prospectively; and
2. for no more than 21 days from the date of the declaration, unless the National Assembly resolves to extend the declaration. The Assembly may extend a declaration of a state of emergency for no more than three months at a time. The first extension of the state of emergency must be by a resolution adopted with a supporting vote of a majority of the members of the Assembly. Any subsequent extension must be by a resolution adopted with a supporting vote of at least 60 per cent of the members of the Assembly. A resolution in terms of this paragraph may be adopted only following a public debate in the Assembly.



(3) Any competent court may decide on the validity of

1. a declaration of a state of emergency;
2. any extension of a declaration of a state of emergency; or
3. any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.

(4) Any legislation enacted in consequence of a declaration of a state of emergency may derogate from the Bill of Rights only to the extent that

1. the derogation is strictly required by the emergency; and
2. the legislation
  1. is consistent with the Republic's obligations under international law applicable to states of emergency;
  2. conforms to subsection (5); and
  3. is published in the national Government Gazette as soon as reasonably possible after being enacted.

(5) No Act of Parliament that authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorise

1. indemnifying the state, or any person, in respect of any unlawful act;
2. any derogation from this section; or
3. any derogation from a section mentioned in column 1 of the Table of Non-Derogable Rights, to the extent indicated opposite that section in column 3 of the Table.

Table of Non-Derogable Rights

Section Number	Section Title	Extent to which the right is protected
9	Equality	With respect to <u>unfair discrimination solely on the grounds of race, colour, ethnic or social origin, sex religion or language</u>
10	Human Dignity	Entirely
11	Life	Entirely
12	Freedom and Security of the person	With respect to subsections (1) (d) and (e) and (2) (c).
13	Slavery, servitude and forced labour	With respect to slavery and servitude
28	Children	With respect to: <ol style="list-style-type: none"> <li>1. subsection (1)(d) and (e);</li> <li>2. the rights in subparagraphs (i) and (ii) of subsection (1)(g); and</li> <li>3. <u>subsection 1(i) in respect of children of</u></li> </ol>

		<u>15 years and younger</u>
35	Arrested, detained and accused persons	With respect to: <ol style="list-style-type: none"> <li>1. subsections (1)(a), (b) and (c) and (2)(d);</li> <li>2. <u>the rights in paragraphs (a) to (o) of subsection (3), excluding paragraph (d)</u></li> <li>3. <u>subsection (4); and</u></li> <li>4. <u>subsection (5) with respect to the exclusion of evidence if the admission of that evidence would render the trial unfair.</u></li> </ol>

(6) Whenever anyone is detained without trial in consequence of a derogation of rights resulting from a declaration of a state of emergency, the following conditions must be observed:

1. An adult family member or friend of the detainee must be contacted as soon as reasonably possible and informed that the person has been detained.
2. A notice must be published in the national Government Gazette within five days of the person being detained, stating the detainee's name and place of detention and referring to the emergency measure in terms of which that person has been detained.
3. The detainee must be allowed to choose, and be visited at any reasonable time by, a medical practitioner.
4. The detainee must be allowed to choose, and be visited at any reasonable time by, a legal representative.
5. A court must review the detention as soon as reasonably possible, but no later than 10 days after the date the person was detained, and the court must release the detainee unless it is necessary to continue the detention to restore peace and order.
6. A detainee who is not released in terms of a review under paragraph (e), or who is not released in terms of a review under this paragraph, may apply to a court for a further review of the detention at any time after 10 days have passed since the previous review, and the court must release the detainee unless it is still necessary to continue the detention to restore peace and order.
7. The detainee must be allowed to appear in person before any court considering the detention, to be represented by a legal practitioner at those hearings, and to make representations against continued detention.
8. The state must present written reasons to the court to justify the continued detention of the detainee, and must give a copy of those reasons to the detainee at least two days before the court reviews the detention.

(7) If a court releases a detainee, that person may not be detained again on the same grounds unless the state first shows a court good cause for re-detaining that person.

(8) Subsections (6) and (7) do not apply to persons who are not South African citizens and who are detained in consequence of an international armed conflict. Instead, the

state must comply with the standards binding on the Republic under international humanitarian law in respect of the detention of such persons.

### **Enforcement of rights**

38. 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 -

1. anyone acting in their own interest;
2. anyone acting on behalf of another person who cannot act in their own name;
3. anyone acting as a member of, or in the interest of, a group or class of persons;
4. anyone acting in the public interest; and
5. an association acting in the interest of its members.

### **Interpretation of Bill of Rights**

39. (1) When interpreting the Bill of Rights, a court, tribunal or forum

1. must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
2. must consider international law; and
3. 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.