History of african law

It would be impossible to provide a history of African law without exploring the major influences of the European countries that colonised most of the African continent in the Eighteenth and Nineteenth centuries. The major legal influences in the African continent come mostly from English, French and Dutch law, as those were the main colonisers in this area. The different countries that brought their laws with them when they took over control of the particular countries have moulded the law in Africa in their own image. Some of the oldest legal systems in the world began first in Africa many thousands of years ago. For example the laws of Ancient Egypt utilised a particular type of civil code, which was based on the concept of Ma’at. The Ma’at was an informal system involving such principles of social equality and impartiality. The Ma’at was portrayed as being responsible for the regulation of the seasons, stars and the actions of both mortals and the deities. Some of the laws of the countries in Northern Africa are still primarily based upon on French and Islamic law. One example of this is Algeria, which remained under direct French rule for over one hundred years and it is plain to see the French legal influences in many different areas of their legal system. Algeria became a sovereign state in 1962 but still retains many facets of Roman law that it has inherited from the French colonialists.

A brief summary of the legal history of the entire African continent is impractical and so the focus of this piece will be mainly on the history of South African law as it is demonstrative of the continent as a whole, as it contains all the same themes that are present in the majority of African countries. South Africa has a mixed legal system, comprised of the combining of several distinct legal traditions. The original Dutch colonisers in

the Seventeenth century brought with them a civil law system; a common law system was inherited from the later English colonisers in the Eighteenth and Nineteenth centuries, and indigenous law, often referred to as African ‘ customary law’. The interrelationship between these individual traditions is very complex, with the influence of English law being the most noticeable in procedural characteristics of their legal system and set up and methods of judiciary. There is a major Roman law influence in the legal system in addition, which is most visible in its substantive private law. More recently in the late Twentieth century another component has been added to this mix and that is the constitution. This interrelation of vastly different legal systems and methods is visible throughout the continent and no exploration of the history of African law would be complete without an analysis of the individual sources of this law itself.

Throughout the majority of the African continent it is most difficult to discover the history of the legal systems that were in existence prior to the Europeans arriving. The reason for this is because with the exception of a few countries such as Egypt, there was no formal written history of laws in most African countries. Seemingly to amplify this problem was the failure of the Dutch, British and other European regimes to record the laws of pre-colonial Africa. From the middle of the Seventeenth century, with the arrival of Dutch explorers in the Cape of Good Hope, the spread of the Roman-Dutch based legal system gathered momentum and quickly became the recognised legal system of not only South Africa but the majority of African countries The situation for many years in South Africa was wherever British law does not stand, Roman-Dutch law forms the fall back to which the country looks

towards to ensure clarity in its law. In the case of South Africa, which is highlighted in many other countries including Zimbabwe, after the Second World War, Britain and the other European colonists of Africa gradually lost influence and this led to the creation of numerous Republican regimes. The Republic of South Africa was formed in 1961, but many of English laws and facets of the English legal system were incorporated into and now form the bedrock of South African law. The current situation in South Africa is that the fundamental source of laws in the country is the 1996 Constitution, which was formed by virtue of the Constitution of South Africa Act 1996. Any law or action that breaches the provisions of this Constitution is illegal.

The sources of South Africa's law have been briefly explored above and will now be further elaborated upon. The current position in South Africa reflects the situation in many post-colonial African nations in terms of the sources of its legal system. It is made up of the following components:

1. Statutory law which is formed by the legislative institution It is the codified part of the South African Law. These laws are contained in Acts and various subordinate legislation, which is passed by the Parliament of South Africa
2. Common law, which comprises of judicial precedent taken from case law, which is based on the same tradition of precedent as that which applies in England and Wales and from case law and the Roman Dutch ' old authorities'. Roman Dutch Law, which is prevalent throughout large parts of Southern Africa, is a legal system that is fundamentally based on Roman law. This was the legal system that was operative in the Netherlands throughout the Eighteenth and Nineteenth centuries.

There are many African countries whose legal systems are still based upon Roman Dutch law and Lesotho, Swaziland and Namibia are the most prominent examples.

3. African customary law
4. Foreign and international law.

The laws of South Africa that are not contained in Acts passed by Parliament are those based on common law. The development of the Common Law system of South Africa is made possible by the fact that the South African courts follow the UK system of legal precedent or ‘ *stare decisis’* .