

The facts:

Let's imagine that Johannesburg's water supply - due to 'a combination of infrastructure neglect, sustained power failures and unsustainable water consumption practices' - is soon to dry up.

Day Zero looms near!

How might this involve the law?

What is the highest law in South Africa?

How might this law be relevant to the situation at hand?

The Constitution

OF THE REPUBLIC OF SOUTH AFRICA, 1996

As adopted on 8 May 1996 and amended
on 11 October 1996 by the Constitutional Assembly

Supremacy of Constitution

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

Is government “bigger” than this
law?

What constitutional rights are implicated in the case at hand?

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.

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.

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.

Free water?

Access to water?

“Water”?

“Reasonable legislative and other measures”?

“Within its available resources”?

“Progressive realisation”?

Health care, food, water and social security

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

Link into criminal law:

Imagine that human rights advocacy group, Section27, take the matter at hand to court. Imagine that Section27 wins the case and Johannesburg Water is ordered to put a reasonable plan into action in order to prevent 'day zero' (which is what you have been asked to do).

City of Johannesburg Water head officials tell **X** (an employee of Johannesburg Water in charge of water supply to Diepsloot) to ensure that adequate water is supplied to households that are currently experiencing shortages in Diepsloot. **X** is given a deadline of 2-days. **X** knows about a particular reservoir where water can be supplied from, but due infrastructure collapse, the water cannot be cleaned properly. Objectively, the water is heavily contaminated with bacteria that can kill if consumed.

X, while knowing that the water is contaminated, does not think that it will kill anyone. Moreover, per the judgment made against Johannesburg Water, **X** thinks that the constitutional obligation to supply access to water will be fulfilled even if he supplies *any* water - contaminated or not. **(1)** Is X correct?

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3 days after supplying water to affected households in Diepsloot, many residents get ill and 2 residents die as a result of the contaminated water.

Investigations lead back to **X**.

Can X be convicted of any crime?

Requirements for criminal liability:

“Murder is the unlawful and intentional causing of the death of another human being.”

“Culpable homicide is the unlawful and negligent causing of the death of another human being”

1. Unlawful Conduct
2. Compliance with definitional elements of crime (includes causation)
3. Capacity
4. **Fault - focus**

Fault:

“Blameworthy state of mind”

-exists in the form of either intention or negligence

-intention can be defined as the will to commit the act or cause the result set out in the definitional elements of the crime, in the knowledge of the circumstances rendering such act or result unlawful. **Dolus eventualis** =

-negligence is the failure to adhere to a prescribed standard required by law, that is, the accused fails to act as a reasonable person would have acted in the circumstances.

X is late for work. As he opens the door to leave his house his dog is in his way. X kicks the dog to make it hurry out of his way.

X is late for work. While rushing to the door he doesn't see his dog lying on the floor. As he exits his house he stumbles over the dog hurting it as he does so.

Intention?

Negligence?

Sally steals your lunch at school - a delicious sandwich and a peach. This upsets you deeply.

Sally then approaches your boyfriend (Sven) and offers him your lunch in exchange for Sven dumping you and dating her (Sally). Sven agrees.

What do you want to do to Sally?

Let's assume that this did not happen to you. Rather, this happened to a girl named Tipo.

Tipo is livid and wants to kill Sally. She decides that she is going to kill Sally.

After two hours, however, she calms down, decides that Sven was no good anyway, and abandons her intention to kill Sally.

While driving home that night, Tipo is fiddling with her music app, loses concentration for a second, veers off the road and hits a pedestrian with her car. The pedestrian is killed.

Tipo gets out of her car to see if she can help. She feels terrible.

Tipo then notices that the pedestrian that she has hit was Sally.

Hitting and killing Sally/pedestrian? Murder? Culpable homicide?

Let's have a look at a real case:

The accused is a herbal doctor who stood trial in court on a charge of murdering a seven-year-old girl. The girl was his wife's niece and he considered the child to be his own. He was convicted of murder. He then appeals.

It was found that he made the child drink a poisonous brew of herbs mixed with beer from a glass against her will. According to the post-mortem examination that took place a few days later, the medical opinion was that the death was caused by plant poisoning.

Witnesses David and William both say that they saw him throwing medicine, which he had with him, in a glass containing beer. He washed his hands and gave the mixture to the child to drink, saying:

"Take this... You are my wife. I will pay lobolo for you with my cattle."

She drank and then said it was sour or bitter and did not want to drink any further. The appellant urged her to drink more and she complained that it "bites" her in the stomach. The girl's grandmother was also in the room who also witnessed the events.

The appellant stated that the medicine he uses is harmless. He says that he did not know that they contain toxins.

Which form of fault exists? Rely on the facts/evidence of the case to determine this.

Dolus eventualis (Snyman):

The definition of *dolus eventualis* is as follows: A person acts with intention in the form of *dolus eventualis* if the commission of the unlawful act or the causing of the unlawful result is **not his main aim**, but:

- (a) **he subjectively foresees the possibility that, in striving towards his main aim, the unlawful act may be committed or the unlawful result may be caused, and**
- (b) **he reconciles himself to this possibility.**

Decision:

However, I have reservations about the finding that intent to kill was proven beyond a reasonable doubt.

- 1) It is not at all clear that the appellant knew that the herbs or medicines mixed with the beer contained toxins.
- 2) He does not do it secretly, but openly in the presence of others.
- 3) He considered the child his own.
- 4) *"Take this girl here. You are my wife. I will pay lobolo for you with my cattle."* - Words that rather indicate a desire for the little girl to be spared for him.

Decision: I would hesitate to find on the evidence that intent was proven.

Is this the end of the matter? Can we prove culpable homicide - negligent causing of death?

Negligence is the failure to adhere to a prescribed standard required by law, that is, the accused fails to act as a reasonable person would have acted in the circumstances.

The question still remains as to whether the death was not caused by appellant's negligence even though he did not know that the medicine contained toxins.

He, **as a reasonable person (herbalist in this case)** should have known this, and he is liable for culpable homicide and a sentence of eighteen months imprisonment is imposed.

Back to X:

(2) What crime, if any, can X be found guilty of? Can you establish **fault** for this crime?