

SOUTH AFRICA / JUDGMENT

University of Cape Town v Cape Bar Council (100/86) [1986] ZASCA 86; [1986] 2 ALL SA 619 (A) (4 September 1986)

[1986] ZASCA 86

COURT

Supreme Court of Appeal

BEFORE

Rabie, Jansen, Joubert, Hoexter, Botha

CASE / FILE NUMBER

100/86

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Case No. 100/86 E du P

IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)

In the matter

between:

THE UNIVERSITY OF CAPE TOWN Appellant
and
THE CAPE BAR COUNCIL 1st Respondent
THE LAW SOCIETY OF THE CAPE OF GOOD
HOPE 2nd Respondent
Coram: RABIE CJ, JANSEN, JOUBERT, HOEXTER et
BOTHAS, JJA.
Heard: Delivered
22 May 1986. 4 September 1986

JUDGMENT

RABIE, CJ:/

2 RABIE, CJ:

In an application brought in the Cape of Good Hope Provincial Division in terms of the provisions of sec. 19(1)(a)(iii) of the Supreme Court Act No. 59 of 1959, the appellant applied for an order declaring -

"1.....that by passing the course offered by

the Applicant and known as Latin Intensive, a person will have complied with the requirements of Section 3(2)(a) of the Admission of Advocates Act No. 74 of 1964 insofar as the necessity to pass a course in the Latin language prescribed or recognised by Applicant for a Baccalaureus Degree is concerned", and

"2 that by passing the course offered by

the Applicant and known as Afrikaans Intensive, a person will have complied with the requirements of Section 3(2)(a) of the Admission of Advocates Act No. 74 of 1964 insofar as the necessity to pass a course in the Afrikaans language prescribed or recognised by

Applicant /

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Applicant for a Baccalaureus Degree is concerned."

The application, which was opposed by the Cape Bar Council and The Law Society of the Cape of Good Hope, was dismissed (per Vivier J, in whose judgment Howie J and Lategan J concurred). The appeal is against the judgment and order of the Court a quo. (By agreement between the parties no order was made as to costs.) The respondents in the application are also the respondents in the appeal -

Sec. 3 of the Admission of Advocates Act No. 74 of 1964 (hereinafter referred to as "the Act"), in so far as relevant to the appeal, provides as follows:

"3(1) Subject to the provisions of any

other law, any division shall admit to practise and authorize to be enrolled as an advocate any person who

upon/

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upon application made by him satisfies the Court -

(a)

(b) that he is duly qualified;

(c) (d)

(2) The following persons shall for the purposes of paragraph (b) of subsection (1) be deemed to be duly qualified, namely: (a) Any person who -

- (i) has satisfied all the requirements for the degree of *baccalaureus legum* of any university in the Republic after pursuing a course of study for that degree of not less than five years and who has passed not less than one course in the Afrikaans language, not less than one course in the English language and not less than one course in the Latin language prescribed or recognized by such university for a *baccalaureus* degree;

or

(ii)/

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(ii) after he has satisfied all the requirements for the degree of bachelor other than the degree of *baccalaureus legum*, of any university in the Republic or after he has been admitted to the status of any such degree by any such university, has satisfied all the requirements for the degree of *baccalaureus legum* of any such university after pursuing courses of study for such degrees of not less than five years in the aggregate and who has passed not less than one course in the Afrikaans language, not less than one course in the English language and not less than one course in the Latin language prescribed or recognized by such university for a *baccalaureus* degree; or

(iii) ".

Laws which governed the admission of persons

to practise as advocates in the Supreme Court prior to

the coming into force of the Act with which we are here

concerned/...6concerned, contained no provisions of the kind mentioned

in sec. 3(2) of the Act. Universities were free to

prescribe their own requirements and curricula for a

baccalaureus legum degree awarded by them. It is said in

this connection in the appellant's founding affidavit

(deposed to by its registrar, Mr H van Huyssteen) that

at the time of the enactment of the Act "all or most

Universities in South Africa required a candidate for the

degree of *baccalaureus legum* to pass Latin I, Afrikaans I

and English I.

It is stated in the appellant's founding

affidavit that the appellant at present offers "first

courses" in Afrikaans, English and Latin, and that it also offers three other language courses, namely Afrikaans Intensive/.....7Intensive, Foundation English and Latin Intensive.

With regard to Foundation English the appellant states that it is not a qualifying course which is recognised as a credit towards a bachelor's degree, but that successful completion of the course qualifies a candidate for entrance to the English I course.

As far as Afrikaans is concerned, the present position at the appellant University is said to be that a student will qualify for the bachelor of laws degree if he passes the Afrikaans I course, or, if he has not passed Matriculation Afrikaans, if he passes the Afrikaans Intensive course. As to the Afrikaans Intensive course, it is stated inter alia in the appellant's "Rules for the/.....8the Degrees of Bachelor of Arts and Bachelor of Laws (BA LLB)" (hereinafter referred to as "the rules") that the "main objective of Afrikaans Intensive will be to teach students to speak, read and write Afrikaans as it is in use at present and to prepare underprepared students for the Afrikaans I course." (My underlining.)

With regard to Latin, the appellant at present still requires a student to pass Latin I before he can obtain a bachelor of laws degree, but apparently it contemplates recognising its Latin Intensive course as a qualification for the bachelor of laws degree, in the same way as it already does in the case of its Afrikaans Intensive course.. It is stated in the rules that Latin

Intensive/.....⁹Intensive is "designed as a preliminary course to Latin I for non-matriculants" (my underlining) ; that students who obtained a matriculation pass or its equivalent in Latin will not be able to register for Latin Intensive for degree purposes, and that a pass in Latin Intensive will permit a student to be admitted to the Latin I course. It is said in the appellant's founding affidavit that Latin Intensive and Afrikaans Intensive have the "same status and purpose".

The appellant says that it is uncertain whether Latin I and Afrikaans I are required for a bachelor of laws degree which would entitle the holder thereof to practise as an advocate, or whether the Latin/.....

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Latin Intensive and Afrikaans Intensive courses would suffice for this purpose. The appellant suggests in its founding affidavit that, because at the time of the passing of the Act, "all or most Universities in South Africa required a candidate for the degree of baccalaureus legum to pass Latin I, Afrikaans I and English I", it is "improbable that the legislature contemplated the possible future substitution of a course such as this University's 'Latin Intensive' for Latin I", and that it therefore "seems likely that the legislature believed that the words 'a course in Latin' necessarily denoted a course at post-matriculation level". It submits, however, that its Latin Intensive and Afrikaans

Intensive/.....

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Intensive courses are of a "sufficiently high standard" to be recognised, as qualifying courses for the bachelor of laws degree, and that the decisions in the cases of *Ex parte Barnard* 1982(2) SA 70 (N) and *Ex parte Friedgut* 1983(2) SA 336 (T) should be followed.

In *Ex parte Barnard* the question was whether the "Latin Special" course offered by the University of South Africa was a course in the Latin language within the meaning of sec. 3(2) of the Act. Van Heerden J (with whom Leon J agreed) held that on the wording of sec. 3(2)(a)(ii) the said course was a course in the Latin language as referred to in the section. The learned Judge said *inter alia* (at 72 H-73 B):

"Die/.....

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"Die Latyn-vereiste vir die graad Baccalaureus Legum word in hierdie artikel verwys na en gekoppel aan 'n kursus in die Latynse taal wat deur 'n universiteit vir 'n ander baccalaureus graad voorgeskryf of erken is. Daar word in die artikel nie verwys na matrikulasie Latyn of na 'n Latyn I-kursus nie maar eenvoudig gepraat van 'een kursus in die Latynse taal'. Die applikant het in so 'n kursus in Latyn (Latyn Spesiaal) ter behaling van die graad Baccalaureus Procurationis geslaag. Daar is getuienis in die vorm van 'n sertifikaat van die Registrateur van die Universiteit dat Latyn Spesiaal 'n kursus in die Latynse taal is wat aan die Universiteit voorgeskryf en erken word en as 'n volwaardige kursus be-skou word vir onder ander die grade Baccalaureus Iuris en Baccalaureus Procurationis. Die applikant het dus, bloot op 'n vertolking van art. 3(2)(a)(ii), voldoen aan die vereistes daarin neergelê om, wat Latyn betref, behoorlik gekwalifiseerd geag te word om toegelaat te kan word om as advokaat te praktiseer."

In/.....

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In *Ex parte Friedgut* the issue was whether the "Latin Preliminary" course offered by the University of the Witwatersrand and recognised by it as a full credit course for a Bachelor of Arts degree was a course in the Latin language within the meaning of sec. 3(2)(a)(i) of the Act. Boshoff JP (with whom Nicholas J and Van Dyk J agreed) held that, on the plain meaning of the words used by the Legislature, the said course was a course in Latin as required by the section. The learned Judge-President said (at 341B-C):

"Mr Van der Vyver is correct when he argues that on the language used in subparas (i) and (ii) the applicant is required to have passed a course in the Latin Language prescribed or recognized by the University of the Witwatersrand for a Baccalaureus degree and that on the evidence which is not disputed he has in fact passed a course in the Latin

language/

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language prescribed or recognized by the University for a Baccalaureus degree..

I have carefully perused the

provisions of the Act and there is nothing whatsoever in the Act that will entitle a Court to hold that the Latin preliminary course in question is not the kind of course in the Latin language contemplated in the two sub-paragraphs."

Sec. 3(2) of the Act does not, as was pointed out by Van Heerden J in *Ex parte Barnard*, refer to Matriculation Latin or to Latin I, but simply to "one course in the Latin language" without any reference to the academic standard of such course, and it can hardly be disputed that, if regard were had only to what would seem to be the ordinary meaning of the words used in the section, one would be obliged to hold - as was held in both *Ex parte Barnard* and *Ex parte Friedgut* - that if a University

prescribes/

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prescribes or recognises any particular course in Latin

or Afrikaans, as the case may be, as a course which

qualifies for the bachelor of laws degree, that course

would be a course within the meaning of the section.

Counsel for the appellant, arguing in favour of the

strictly literal construction of the words of sec.

3(2) that was adopted in *Ex parte Barnard* and *Ex parte*

Friedgut, contended that the standard of a language

course prescribed or recognised by a University for the purposes of sec. 3(2) is irrelevant. His submission is that if a University "labels" any particular course as being one which qualifies for a bachelor of laws degree, the Court cannot "evaluate" that course, but is/.....

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is obliged to accept the "label" attached to it by the University.

It is no doubt true, as was argued on behalf of the appellant, that it is a primary rule of interpretation that one must, in construing an Act of Parliament, adopt the ordinary, grammatical meaning of the words used by the Legislature, unless such an approach would, as it was put in *Bhyat v. Commissioner for Immigration* 193 2 AD 125 at 129, lead to "some absurdity, inconsistency, hardship or anomaly which from a consideration of the enactment as a whole a court of law is satisfied the Legislature could not have intended." See also *Du Plessis v. Joubert* 1968 (1) SA 585 (A) at 594 i.f. - 595 B and *Ebrahim v. Minister of the Interior* 1977(1) SA 665 (A) at/.....

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at 677 D - 678 G. I would stress at the same time, however, because of the view that I take of this appeal, that it is also a well-known rule of construction that words used in a statute should be read in the light of their context . See e.g. *Jaga v. Donges N O and Another*; *Bhana v. Dönges N O and Another* 1950(4) SA 653 (A) at 662 G - 663 A, where Schreiner JA said:

"Certainly no less important than the oft repeated statement that the words and expressions used in a statute must be interpreted according to their ordinary meaning is the statement that they must be interpreted in the light of their context. But it may be useful to stress two points in relation to the application of this principle. The first is that 'the context', as here used, is not limited to the language of the rest of the statute regarded as throwing light of a dictionary kind on the part to be interpreted.

Often/

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Often of more importance is the matter of the statute, its apparent scope and purpose, and, within limits, its background. The second point is that the approach to the work of interpreting may be along either of two lines. Either one may split the inquiry into two parts and concentrate, in the first instance, on finding out whether the language to be interpreted has or appears to have one clear ordinary meaning, confining a consideration of the context only to cases where the language appears to admit of more than one meaning; or one may from the beginning consider the context and the language to be interpreted together."

I am of the opinion that the words of sec, 3(2) of the Act, clear and unambiguous as they may appear to be on the face thereof, should be read in the light of the subject-matter with which they are concerned, and that it is only when that is done, that one can arrive at the true intention of the Legislature. The section deals with requirements for the baccalaureus legum degree which has to be obtained by anyone who wishes to be admitted to practise as an advocate.

it/

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It is a degree that is awarded by Universities, and,
this being so, it seems to me to be logical and
reasonable to hold that when the Legislature prescribed
that the curriculum for that degree should contain the
language courses mentioned in sec. 3(2) of the Act, it
intended that those courses should be what one may term
true University courses, i.e. post-Matriculation courses.
(The same view, it may be noted, is expressed by Professor
Coenraad Visser in a note on the decision in Ex parte
Friedgut in 1983 SALJ at 385.) I cannot accept that
the Legislature, when dealing with the requirements of

a University degree, intended that a University should be entitled to prescribe a pass in , say, Standard 8

Afrikaans or English as a qualification for a degree awarded/

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awarded by it. Parliament must be taken to have known that students who proceed to Universities after leaving school would in the vast majority of cases, if not all, have passed courses in Afrikaans and English at Matriculation level, and it is most unlikely that it would have intended that such students could subsequently obtain a University degree after completing courses in those languages at a level no higher than that required for a Matriculation course. (Similar views, it may be pointed out, have been expressed by Professor M T W Arnhem in a note on the decision in *Ex parte Friedgut* in 1983 SALJ at 377, and by F J van Zyl and J T Delport in a note on the same case in 1983 THRHR at 471-473.) I realise that, otherwise than in the case of Afrikaans and English, Parliament/.....

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Parliament would in all probability not have thought that the majority of students who proceed to University with a view to obtaining a bachelor of laws degree would be students who took Latin at school, but it is to be noted that sec. 3(2) of the Act refers to the three language courses mentioned therein in precisely the same terms. It may be noted, too, as is stated in the

appellant's founding affidavit, that at the time of the passing of the Act "all or most Universities in South Africa required a candidate for the degree of baccalaureus legum to pass Latin I, Afrikaans I and English I."

It is said in an obiter statement in Ex parte Barnard (at 73 G - 74 E) that there has over the years been a gradual moving away ("n geleidelike beweging/.....

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beweging") from the high standards formerly demanded in Latin for a bachelor of laws degree, and it seems to be suggested that this tendency may serve to explain why the Legislature, in enacting sec. 3(2) of the Act, did not refer to any particular course in Latin as being a requirement for the said degree, but simply to "one course in the Latin language". It is true that there has in recent years been a lowering of the standard of Latin courses required by Universities for a bachelor of laws degree, but this fact cannot justify the view that the "one course in the Latin language" mentioned in sec. 3(2) may be any course which a University chooses to prescribe, no matter what its standard may be. The section refers to a course in Latin in precisely the/.....

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the same terms as it does to a course in Afrikaans and a course in English, and it must be held, in my opinion, as I have said above, that the Legislature intended

that the courses in Afrikaans and English should be University courses proper, i.e. post-Matriculation courses. I would add that, even if the gradual debasing of standards in Latin to which Van Heerden J referred could possibly be thought to be a reason why the Legislature intended that a University should be entitled to prescribe a course in Latin of which the standard is no higher than Matriculation Latin, there is no apparent reason why it should have intended that a University should be able to prescribe a course in Afrikaans or English of a standard no higher than that attained by a student while he/.....

24 he was still at school. I now turn to consider whether the appellant's Afrikaans Intensive and Latin Intensive courses can be regarded as post-Matriculation courses. As to the Afrikaans Intensive course, it is clear that it is no more than a preliminary course which, if successfully completed, gives access to Afrikaans I. (I have already pointed out that it is said in the rules that a main objective of the course is "to prepare underprepared students for the Afrikaans I course.") Matriculation Afrikaans gives direct access to Afrikaans I, and in the circumstances there would seem to be no ground for regarding Afrikaans Intensive as a course which is of a higher standard than Matriculation Afrikaans. Latin

Intensive is likewise a preliminary course, designed,

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it is said, in the rules, "as a preliminary course to Latin I for non-matriculants ...". The successful completion of this course enables a student to be admitted to Latin I. A pass in Matriculation Latin gives a student direct access to the Latin I course. A student with Matriculation Latin may not enrol for the Latin Intensive course, but is obliged to take Latin I in order to qualify for the bachelor of laws degree.

In the light of these facts the Latin Intensive course cannot be held to be a course of above Matriculation level. I should point out that the appellant states in its founding affidavit that in its view Latin Intensive is "not . . . equivalent to a Matriculation Latin course because/.....

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because Latin Intensive is a University course, taught by duly qualified academic staff, and in which University text books and methods of teaching are used", and that "The student is for example required to do far more independent research and studying than for the Matriculation Latin examination." This expression of opinion regarding the standard of Latin Intensive cannot prevail in the light of the facts concerning the course as they appear from the appellant's founding affidavit and the rules.

I would point out finally that the view for which the appellant contends, viz. that its Afrikaans Intensive and Latin Intensive courses are courses in Afrikaans and Latin as contemplated in sec. 3(2) of the Act, would - as/.....

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as is shown in some detail in the judgment of the Court a quo - lead to results which the Legislature could not reasonably have intended. The section provides that a student has to pass a course in Afrikaans, English and Latin before he can obtain a bachelor of laws degree which would entitle him to be admitted to practise as an

advocate. It follows that a University must, in order to enable its students to qualify for such a degree, prescribe a course in each of the three languages mentioned in the section. If the appellant were to prescribe Latin Intensive as a course for its bachelor of laws degree, it would have, not one course in Latin which, if successfully completed, would enable a student to obtain that/.....

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that degree, but two such courses, one of which (Latin Intensive) has to be taken by students who do not have Matriculation Latin, and the other (Latin I) by students who have Matriculation Latin. These two courses, as has been said above, are not of the same standard. Latin Intensive is merely a preliminary course which, if passed, gives access to Latin I, whereas Latin I is a post-Matriculation course. To prescribe Latin Intensive as a qualifying course for students who do not have Matriculation Latin, and Latin I as a requirement for students who have Matriculation Latin, has the effect that students who wish to obtain a bachelor of laws degree are not all treated equally, but that those students who have Matriculation Latin are/.....

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are discriminated against in that they are required to take a more advanced course than those who do not have Matriculation Latin. A statute should, as far as

possible, be construed in a manner which avoids any unequal or discriminatory treatment of the persons affected by it. (See Steyn, *Uitleg van Wette*, 5th ed., at pp. 116-117; *Sekretaris van Binnelandse Inkomste v. Lourens Erasmus (Edms) Bpk* 1966(4) SA 434 (A) at 443 C-D.) There is nothing in sec. 3(2) which could justify the view that the Legislature intended that the language requirements mentioned therein do not apply to all students who wish to obtain a bachelor of laws degree, but that some may be required to take courses/.....

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courses of a higher standard than others. Counsel for the appellant conceded that the introduction of Latin Intensive as a qualifying course for the bachelor of laws degree would mean that there would not be one uniform standard required of all students who wish to obtain the degree, but two different standards, and that this would result in the unequal treatment of students. His submission is, however, (a) that it is open to a University to prescribe any course it chooses as a qualifying course if it considers it to be of a sufficiently high standard for degree purposes, and (b) that there is, in any event, nothing unfair, or unjust, in requiring a student who has passed Matriculation Latin to do a more advanced course than a student who has/.....

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has not passed Matriculation Latin. As to (a), there is a two-fold answer. First, the Act requires, in my opinion, as I have said above, that the qualifying courses should be post-Matriculation courses, and the appellant's Latin Intensive course cannot be regarded as being such a course. Second, if the appellant in fact considers its Latin Intensive course to be of a sufficiently high standard for the bachelor of laws degree, it is illogical and unreasonable not to recognise it as such in the case of all students, but to require some of them to do a course (Latin I) which is of a higher standard than Latin Intensive. As to (b), I do not agree with counsel's submission. In my opinion it is manifestly unfair and unjust to require students who have Matriculation/.....

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Matriculation Latin to do Latin I before they can be awarded the bachelor of laws degree, but to permit those who did not do Matriculation Latin to qualify for the same degree after completing a course which is of a lower standard than Latin I. What I have said above regarding Latin Intensive and Latin I applies mutatis mutandis to Afrikaans Intensive and Afrikaans I.

It follows from what I have said above that in my view the decisions in *Ex parte Barnard* 1982 (2) SA 70 (N) and *Ex parte Friedgut* 1983 (3) SA 336 (T), which we were urged to follow, were wrong, and that the judgment of the Court a quo in the present case was correct.

The/.....

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The appeal is dismissed. By agreement between the parties no order is made as to costs -

P J RABIE CHIEF JUSTICE,

JANSEN, JA

JOUBERT, JA

Concur. HOEXTER, JA

BOTHA, JA.

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