

# CLA1501

## 1. The South African Legal System

Law is a social science.

South African Law is not codified; recorded in one comprehensive piece of legislation.

**Origin:**

- Indigenous legal systems applied at the southernmost tip of Africa before 1652.
- Jan van Riebeeck arrives in Cape Town in 1652 and the adoption of Roman-Dutch law as a legal system to the Cape.

### 1.1 A SHORT HISTORY OF THE LAW

- Unlike most European continental legal systems, SA law is not codified:
  - It is drawn from various authoritative sources
  - Such as statutes (legislation) and decided cases
  - Occasionally also Roman and Roman-Dutch law.

**Roman Law**

- 735BC to AD658
- The *Law of the Twelve Tables of 449BC* were the cornerstone of the future development of Roman Law
- Attempts to codify the law led to the *Corpus Iuris Civilis (body or civil law)* which is still the primary authoritative source of Roman Law.

**Roman-Dutch Law**

- Roman Law was revised in the Netherlands during the 15<sup>th</sup> and 16<sup>th</sup> centuries and became mixed with the existing Dutch customary law.
- Some great Roman-Dutch Jurists:
  - Hugo de Groot "Father of Roman-Dutch Law"
  - Johannes Voet
  - Dionysius Godefridus van der Keessel
  - Johannes van der Linden

**English Law**

- After 1814, English Law began to seep into the existing Roman-Dutch system:
  - A jury was introduced
  - New legislation e.g. criminal often drew on English law
  - A number of statutes in existence today are squarely based on English legislation e.g. Bills of Exchange Act.

### 1.2 SOURCES OF LAW IN SOUTH AFRICA

- Some are authoritative: courts are bound by authoritative sources
- Others have merely persuasive authority: serves to convince a court to apply or interpret a rule in a particular way.

*Corpus Iuris Civilis*: codification of Roman law that is a primary authoritative source on which South African courts draw when reverting to Roman Law to solve a legal problem.

# Cla1501 Commercial Law Ia Study Notes For Unisa

**Scott C. Dulebohn**



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## **Table of Contents Cla1501 Commercial Law Ia Study Notes For Unisa**

1. Understanding the eBook Cla1501 Commercial Law Ia Study Notes For Unisa
  - The Rise of Digital Reading Cla1501 Commercial Law Ia Study Notes For Unisa
  - Advantages of eBooks Over Traditional Books
2. Identifying Cla1501 Commercial Law Ia Study Notes For Unisa
  - Exploring Different Genres
  - Considering Fiction vs. Non-Fiction
  - Determining Your Reading Goals
3. Choosing the Right eBook Platform
  - Popular eBook Platforms
  - Features to Look for in an Cla1501 Commercial Law Ia Study Notes For Unisa
  - User-Friendly Interface
4. Exploring eBook Recommendations from Cla1501 Commercial Law Ia Study Notes For Unisa
  - Personalized Recommendations
  - Cla1501 Commercial Law Ia Study Notes For Unisa User Reviews and Ratings
  - Cla1501 Commercial Law Ia Study Notes For Unisa and Bestseller Lists
5. Accessing Cla1501 Commercial Law Ia Study Notes For Unisa Free and Paid eBooks
  - Cla1501 Commercial Law Ia Study Notes For Unisa Public Domain eBooks
  - Cla1501 Commercial Law Ia Study Notes For Unisa eBook Subscription Services
  - Cla1501 Commercial Law Ia Study Notes For Unisa Budget-Friendly Options
6. Navigating Cla1501 Commercial Law Ia Study Notes For Unisa eBook Formats
  - ePub, PDF, MOBI, and More
  - Cla1501 Commercial Law Ia Study Notes For Unisa Compatibility with Devices
  - Cla1501 Commercial Law Ia Study Notes For Unisa Enhanced eBook Features
7. Enhancing Your Reading Experience
  - Adjustable Fonts and Text Sizes of Cla1501 Commercial Law Ia Study Notes For Unisa
  - Highlighting and Note-Taking Cla1501 Commercial Law Ia Study Notes For Unisa
  - Interactive Elements Cla1501 Commercial Law Ia Study Notes For Unisa

8. Staying Engaged with Cla1501 Commercial Law Ia Study Notes For Unisa
  - Joining Online Reading Communities
  - Participating in Virtual Book Clubs
  - Following Authors and Publishers Cla1501 Commercial Law Ia Study Notes For Unisa
9. Balancing eBooks and Physical Books Cla1501 Commercial Law Ia Study Notes For Unisa
  - Benefits of a Digital Library
  - Creating a Diverse Reading Collection Cla1501 Commercial Law Ia Study Notes For Unisa
10. Overcoming Reading Challenges
  - Dealing with Digital Eye Strain
  - Minimizing Distractions
  - Managing Screen Time
11. Cultivating a Reading Routine Cla1501 Commercial Law Ia Study Notes For Unisa
  - Setting Reading Goals Cla1501 Commercial Law Ia Study Notes For Unisa
  - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Cla1501 Commercial Law Ia Study Notes For Unisa
  - Fact-Checking eBook Content of Cla1501 Commercial Law Ia Study Notes For Unisa
  - Distinguishing Credible Sources
13. Promoting Lifelong Learning
  - Utilizing eBooks for Skill Development
  - Exploring Educational eBooks
14. Embracing eBook Trends
  - Integration of Multimedia Elements
  - Interactive and Gamified eBooks

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