

Kinds of Issues which arise:

1. Schedule 4: Conflict between national and provincial legislation

- Provincial legislation will prevail unless it meets one or more of the requirements of s146

2. Schedule 5: Conflict between National Legislation and Provincial Legislation

- Exclusive jurisdiction of provincial government. Prov legislation will prevail unless one of the requirements in s44 is met

Validity of national/provincial legislation

- Enquiry into validity of the law before identifying conflict.

Invalid if:

1) sphere of government legislates in an area where they have no legislative competence. E.g. provinces can only legislate on matters in schedule 4 or 5.

2) Wrong process 'manner and form' where there are certain requirements for how a law must be passed. E.g. public participation, tagging (only at national level)

Tagging: If bill tagged incorrectly it is invalid. Either tagged s75 (ordinary which do not effect prov) or s76 (Ord which affect provinces)

1. Division of Power Between Spheres of Gov

Introduction

Division of powers in federal or quasi federal system (SA) of gov is based on either

1. A divided model of federalism: Subject matters in which law must be made is clearly divides between levels of gov. Powers between are generally exclusive.

2. Integrated Model of Federalism: Most subject matters are shared between different spheres of government. National leg can be complemented by prov/local gov who must implement and administer law.

1. Division of Power Between Spheres of Gov (cont)

Background: Con Avoids defining SA as a quasi federal system as ANC concerned fed system would hinder goal to improve collective SoL by instilling a rigid division of powers.

The 34 Constitutional Principles: 7 pertaining to structure of Gov -

1) Structured at nat, prov & loc levels; 2) powers of sphere's had to be defined; 3) Functions of nat and prov levels had to incl exclusive & concurrent powers 4) nat cannot encroach on integrity of provs; 5) court resolved disputes between nat and prov 6) Framework dealing w powers/functions/structures of local gov outlined in Con 7) all sphere's to be given equitable share of nat revenue

Ch3: Principles of co-operative Government

- Look at chat about conflict in terms of schedule 4 & 5. Note part Bs set out matters which local gov can make by-laws on (cannot conflict w other leg).

- National gov can make and administer laws outside of these sections

- Organs of state involved in intergovernmental dispute must make every reasonable effort to settle dispute by mechanism and procedures provided, & exhaust all remedies before approaching a court of law.

- ***Uthukela:** The court will decline to hear matter if they fail to comply w above obligation.

Intergovernmental Co - Ordination

- Constitution established co - ordinating bodies to avoid conflict between different spheres of gov. These are responsible for coordinating:

1) Legislative activities of the 3 sphere's. Ie NCOP

2)The executive activities of gov. coordinated by bodies established by InterGov Relations Framework Act

1. Division of Power Between Spheres of Gov (cont)

IGRFA provisions do not apply to conflicts as s146 deals w this

The Division of Leg&Exec Powers Btwn Nat&Prov

- (**s104**): Legislative authority vested in provincial legislature which can create prov constitution and laws with regards to matters in schedules 4 & 5; expressly assigned to them by national legislation

- The executive authority of a province is vested in premier

*Premier Limpopo Prov v Speaker of Limpopo Leg

Legal question: Did the Limpopo Provincial Legislature have the legislative competence (authority) to pass the Financial Management of the Limpopo Provincial Legislature Bill i.e. to enact legislation dealing with its own financial affairs?

Reasoning:

1. Prov Leg argued that even through this isn't in Sch4/5, the bill fell into its leg competence bc the power to pass financial management leg was expressly given to them in Financial Man of Par Act.

- 1. Does the Financial Management of Parliament Act 'expressly assign' the financial management of a provincial legislature to the provinces? CC: no

- 2. Was the power to pass legislation regulating the financial management of a provincial legislature 'envisaged' by sections 195, 215 and 216 of the Constitution? CC: no

Minority: Expressly assigned and envisaged should mean diff things. Thus, Yes to second Q

