

WHAT IS THE DEFINITION OF 'A CALENDAR YEAR'?

There are certain words and phrases that we all know, subconsciously, what their meanings are, but if we were asked to define such words or explain such phrases to a five-year-old child, we would stumble on our words.

One such phrase that I recently came across is 'a calendar year'.

I have always defined a calendar year as the period starting on the 1st of January to the 31st of December, which is in line with the Cambridge Dictionary's definition of a 'calendar year' i.e. the period of 365 or 366 days, starting from the 1st of January and ending on the 31st of December.

Another person could say a calendar year is a period of 365 or 366 days, regardless of when it starts. For example, in the financial sector, a financial year is defined as the period which runs from the 1st of March to the end of February. In the field of astronomy, a calendar year is defined as the time it takes the earth to complete 1 orbit around the sun.

And in terms of the law? Anyone who is versed with the law will tell you it is never a simple thing where the law is involved. The law is open to interpretation. The definition of 'calendar year' has been a contentious issue brought before the Courts over the years recently and the Courts were tasked with interpreting this phrase under differing circumstances.

In a matter I dealt with for example, a regulation of the South African Nursing Council ("SANC") which provides that a course should be completed in an academic year, was put on the spotlight. The regulation further defines an academic year as a period of at least 44 weeks of learning in any calendar year. In ***South African Nursing Council v Khanyisa Nursing School (Pty) Ltd and Another ("the SANC case")***, the Supreme Court of Appeal was tasked with the interpretation of this phrase.

SANC's interpretation, like mine, was that a calendar year is from the 1st of January to the 31st of December and as such the 44 weeks should fall within this period. It goes without saying that the nursing school had a different view. The nursing school was of the view that an academic year, in this instance, can start at any time, as long as the 44 weeks are complied with, and therefore any calendar year means a period of 365 or 366 days not confined to a single year.

In the end, it all boils down to interpretation and the relevant circumstances. I must say, in hindsight, I am more inclined to agree with the Court that the definition of a Calendar Year in this instance must be interpreted in context of the regulation in question as opposed to the simplistic approach of reading the words in isolation.

Prior to the SANC case the courts have long been deciphering the interpretation of statutes in general and various approaches have been adopted over the years on this issue. It goes to show the veracity of the law.

The following cases are noteworthy:

In the then Appellate Division in ***R v Close Settlement Corporation Ltd***, the Court's interpretation of a calendar year was aligned with that of SANC's. The Court defined a calendar year as the period from 1 January to 31 December.

In the ***University of Cape Town v Cape Bar Council***, the Court favoured the approach of considering the intention of the Legislature. The Court provided that words that are clear and unambiguous as they may appear, should be read in light of the subject matter which they are derived from and in line with their ordinary meaning. This way, one will arrive at the true intention of the Legislature. If we were to adopt this notion, then I believe SANC's interpretation will succeed.

In ***Minister of Land Affairs v Slamdien***, the Court adopted the purposive approach. It was stated that in interpreting legislation, its purpose must be analysed, having regard to the historical origin of the statute, furthermore, regard must also be had to its context in the sense of the statute as a whole, the subject matter and the statute's

broad objects and values which underline it. Immediate context in the sense of the particular part of the statute in which the provision appears or those provisions with which it is interrelated must be considered. With this approach, I opine that SANC's interpretation will succeed.

I pause here to give reasons why SANC would succeed on the above-mentioned approaches. SANC conducts its exams in or around November of each year, with a second opportunity scheduled for May in the next year. The intention and purpose for this is that a learner would start training in January, complete the 44 weeks in time for the November exams. The May exams are a second opportunity for those that came short in November. This supports that the purpose and intention of the legislature prefers calendar year to mean a period from 1 January to 31 December to enable students to complete their learning within the prescribed 44 weeks and write the exams within the same period. Historically, the approach has always aligned with this meaning. Take for example how the school terms are structured, learners start their education in January and the academic year ends in December.

In ***Thoroughbred Breeders' Association v Price Waterhouse***, the Court refused to interpret provisions of statute in isolation, it stated thus:

"The days are long past when blinkered peering at an isolated provision in a statute was thought to be the only legitimate technique in interpreting it if it seemed on the face of it to have a readily discernible meaning."

The Court's approach herein does not favour SANC's interpretation. The simplistic interpretation adopted by SANC does not hold water. The meaning of a statute ought to be interpreted with other relating factors such as context and the reading of the statute as a whole.

More and more so the Court started to adopt the contextual approach to interpretation. The same views were made in ***Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism***. The Court opined that a trend emerging in interpretation is having regard to the context in which the words occur, even where the

words seem to be clear and unambiguous. Having regard herein SANC's interpretation will not succeed.

In ***Natal Joint Municipal Pension Fund v Endumeni Municipality***, the Court provided thus:

“Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective.”

The Court here adopted the contextual approach and therefore SANC's interpretation would similarly not succeed.

The Court in ***Capitec Bank Limited v Coral Lagoon Investments 194 (Pty) Ltd***, also adopted the contextual approach. It opined that the language used, understood in the context in which it is used, and having regard to the purpose of the provision that constitutes the unitary exercise of interpretation. The Court further added that the triad of text, context and purpose should not be used in a mechanical fashion. It is the relationship between the words used, the concepts expressed by those words and the place of the contested provision within the scheme of the agreement (or instrument) as a whole that constitutes the enterprise by recourse to which a coherent and salient interpretation is determined.

Once more SANC's interpretation would not succeed.

Early this year, the Supreme Court of Appeal made a final determination with the interpretation of the phrase 'any calendar year'. In ***the SANC case*** mentioned herein above, the Supreme Court of Appeal was tasked to put the interpretation of this phrase to bed. In paragraph 16, the Court cautioned against the use of dictionaries to make

simplistic attributions of meaning. The Court admitted that such approach would make sense in many settings, however, not in other settings. For example, in the field of astronomy. The Court herein also adopted the contextual approach. In paragraph 24, the Court found that the meaning of an academic year is informed by the timing of the examinations. At paragraph 25, the Court concluded that the meaning of 'any calendar year' in the regulations means a period that runs from a date of commencement in any given year and extends for 12 months from that date.

Very importantly and in line with the contextual approach, the Court at paragraph 26 cautioned that its definition herein is only confined to the regulatory setting in which this term is used. The result was that SANC's interpretation did not succeed.

In conclusion, what seems so simple, clear and unambiguous to some, might not be so in terms of the law. What is clear from case law is that the Courts favour the contextual approach to interpretation of statutes. It goes to show that law is a living thing, it changes and adapts to times. The reason why we have Courts is for situations like these. People have different understandings of things and therefore, the Courts help settle those differences. So, what is the definition of 'a calendar year'? The answer: It depends on who is asking, and in which the context.

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LIST OF AUTHORITIES

1. *R v Close Settlement Corporation Ltd* 1922 AD 294 at para 301
2. *University of Cape Town v Cape Bar Council* 1986 (4) SA 903 (A) at para 914D-E
3. *Minister of Land Affairs of the Republic of South Africa and Another v Slamdien and Others* 1999 4 BCLR 413 LCC 422, at para 14
4. *Thoroughbred Breeders' Association v Price Waterhouse* 2001 (4) SA 551 (SCA), at para 12
5. *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* (CCT27/03) [2004] ZACC 15 at para 90
6. *Natal Joint Municipal Pension Fund v Endumeni Municipality* (920/2010) [2012] ZASCA 13, para 18
7. *Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* (470/2020) [2021] ZASCA 99, at para 25
8. *South African Nursing Council v Khanyisa Nursing School (Pty) Ltd and Another* (835/2022) [2023] ZASCA 86 (2 June 2023) paras 16,24,25 & 26
9. Cambridge Dictionary