

**USE OF CANNABIS: HISTORICAL DEVELOPMENT PRE AND POST 2017 IN
SOUTH AFRICA**

By

TRA DJE BI KALOU LOUIS
(42167329)

Submitted in partial fulfilment of the requirements for the degree

LLB

In the

SCHOOL OF LAW

UNIVERSITY OF SOUTH AFRICA

SUPERVISOR: PROFESSOR L PIENAAR

(ASSIGNMENT 02)

UNIQUE NUMBER 637538

2020

Table of Contents

1. Introduction	3
2. Problem statement	3
3. Hypothesis	4
4. Points of departure and assumptions	4
5. Conceptualization of central research themes	5
6. Proposed chapter outlay	6
7. Projected time scale	7
8. Description of proposed research method	8
9. Preparatory study and research	8-9
10. Conclusion	10
11. Bibliography	11
12. Academic honesty declaration	12

1. INTRODUCTION

Before 2017 it was illegal to use cannabis in South Africa in all its form whether private or public in terms of sections 4(b) and 5(b) of Drug and Drugs Trafficking Act 140 of 1992 ¹, part III of Schedule 2 of that Act ² and section 22A(9)(a)(1) of the Medicines and Related Substances Control Act 101 of 1965 ³ we will be discussing these sections in the actual work. I will discuss the general law requirement in particular the constitution of the Republic of South Africa and its Bill of Rights.

This research examines the current position of the private use of cannabis which is a radical change from pre- 2017 to post-2017 where the private use of Cannabis has now been authorized as set out in the long due constitutional court Judgment on which we will be discussing different point in this research

The research will include cases such as Prince V President of the Law Society, a case which paved way to the constitutional Court judgment decriminalizing cannabis. Reference will also be made to arguments for and against the decriminalization of Cannabis.

In this research we will consider every constitutional debate among academics and other role players in the cannabis industry such as writers opinions through books.

As I will complete the South African current position on the private use of cannabis, a Historical study will be undertaken concerning the legal position of the private use of cannabis and I will mostly base it on the legal aspect of the current cannabis usage. I will also refer to journal articles for the total number of youth and adults currently using cannabis in South Africa.

2. PROBLEM STATEMENT

The purpose of this research deals with the historical development of Cannabis usage in South Africa before and after 2017.the constitutional judgment which led to the abolition of different sections such as sections 4(b) and 5(b) of Drugs and Drug Trafficking Act 140 of 1992 ⁴, part III of Schedule 2 of that Act ⁵ and section 22A(9)(a)(1) of the Medicines and Related Substances Control Act 101 of 1965 can also be a point of criticism by academics and various religious groups.

Due to the use of all drug illegally and the increase of drug usage and trafficking thereof,

Government has come with Drugs and Drug Trafficking Act 140 of 1992 in order to curb the influx.

¹ sections 4(b) and 5(b) of Drugs and Drug Trafficking Act 140 of 1992

² part III of Schedule 2 of that Act.

³ section 22A(9)(a)(1) of the Medicines and Related Substances Control Act 101 of 1965.

⁴ sections 4(b) and 5(b) of Drugs and Drug Trafficking Act 140 of 1992 .

⁵ part III of Sched.

Section (b) and 5(b) stipulates that: No person shall use or have in his possession any dependence-producing substance; or any dangerous dependence-producing substance or any undesirable dependence-producing substance, unless he is a patient who has acquired or bought any such substance from a medical practitioner, dentist or practitioner acting in his professional capacity and in accordance with the requirements of the Medicines Act or any regulation made there under; or from a pharmacist in terms of an oral instruction or a prescription in writing of such medical practitioner, dentist or practitioner, and uses that substance for medicinal purposes under the care or treatment of the said medical practitioner, dentist or practitioner;

Section 5(b) stipulates that No person shall deal in any dependence-producing substance; or any dangerous dependence-producing substance or any undesirable dependence-producing substance,

Inter alia these sections fall short to provide proper remedy that covers all citizens as illegal use of private drugs continued to rage in the South African society.

Illicit drug use is a growing public health problem. The aim of the study was to assess the prevalence of drug use and the socio-demographic and health characteristics that influence it among young and adult South Africans.

Can a solution be provided to reduce the use of drug in South Africa ?

Is there any way to regulate even the private use of Cannabis as well as its cultivation?

As I answer the above questions, I will recommend the solution to the questions,

3. HYPOTHESIS.

Because of the stringent nature of laws related to the illegality of drugs and drug trafficking and possession of drugs, the drug consuming community in South Africa ventured in illegal consumption and trafficking of drugs nationally.

This has not helped the South African society in a way that, what is always protected attract people. Hence people have been attracted to test the drug that was so protected before 2017.

We have had many cases of drug consumption mainly referred to as Gandja. Community like Rastapharians, school children , and the adult community were all engaged in such venture.

Surely with the constitutional judgment which now give access to cannabis or marijuana, the number of drug consumers will decrease as it is now demystified since the constitutional Court Judgment of 2018.

4. POINTS OF DEPARTURE AND ASSUMPTIONS

A Historical point of departure will be used in this research. The legal position pre- 2017 and post 2018 will be discussed in this research making reference to Drugs and Drug Trafficking Act 140 of 1992 and other laws previously prohibiting the private us of cannabis and from the constitutional perspective after 2017 with reference to the

constitutional case of Minister of Justice and Constitutional Development and Others v Prince and others in a class action. In this case, although the order of the High Court declared constitutionally invalid not only the provisions of the sections referred to therein that prohibit the use or possession of cannabis in a private dwelling but also the purchase and cultivation of cannabis in a private dwelling or home. The High Court's basis for declaring the provisions constitutionally invalid to the extent that it did was that they were inconsistent with the right to privacy when an adult uses or is in possession of, or, cultivates, cannabis in a private dwelling or at home for his or her consumption in private, the Constitutional Court on confirmation of the order overturned the Judgment to the contrary, that means that cannabis can now be cultivated and use for private use. The Ratio decidendi will be further discussed in the research.

Section 14 of the Bill of Right ⁶will also be discuss in the research in particular the right to privacy. As we are dealing with the Bill of Right which is the Chapter of the Constitution and contains a number of right, the right to Human dignity will also be discussed.

The method of research used is a Historical method. I will address the illegality of Drugs laws pre-2017 and the legality post 2017 with regards to the private use of cannabis. the comparative development of the South African legal position regarding cannabis in Contrast with the legal position of the use of Cannabis in Holland will not be looked at.

How can one farm, cannabis in his backyard for private use without being tempted to sell it to others?

The legalization of the cannabis raises difficult questions of moral philosophy which fall beyond the scope of this work and therefore the religious and moral arguments will not be looked at.

This research will be limited to the illegality of cannabis pre- 2017 and the legality of the private use thereof post 2017 as contemplated by the constitutional's Court judgment as mentioned above. Public commercial use of cannabis is contra bonos mores and therefore raises too many legal arguments and for that purposes will not be dealt with in this research too.

5.CONCEPTUALISATION OF CENTRAL RESEARCH THEMES

Prohibition of Cannabis before 2017 and legalization for private use and cultivation after 2017

5.1 Illegality Of Cannabis

In terms of Drug and Drug Trafficking Act 140 and 1992 it was illegal to use cannabis either privately or publicly unless it was prescribed by a medical practitioner. Section 4b and 5b of the Act stipulated so and any action opposite to the act was punishable by law.

5.2 Legality Of The Use Of Cannabis

After 2017 there was a constitutional judgment which include a number of cases of similarities namely:

Minister of Justice and Constitutional Development and Others v Prince;
National Director of Public Prosecutions and Others v Rubin; ⁷
National Director of Public Prosecutions and Others v Acton and Others

⁶ Section 14 of the Bill of Right.

⁷ Minister of Justice and Constitutional Development and Others v Prince;
National Director of Public Prosecutions and Others v Rubin;
National Director of Public Prosecutions and Others v Acton and Others [2018] ZACC 30.

In this case the above sections were invalidated and gave place to the legality of the private use or plantation of cannabis in one's backyard.

5.3 Bill Of Right

The 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 value of human dignity, equality and freedom. Also described as a human rights charter that protect the right of all who live in South Africa.

5.4 Constitution:

The Constitution of South Africa is the supreme law of the Republic of South Africa. It provides the legal foundation for the existence of the republic, sets out the rights and duties of its citizens, and defines the structure of the government

The researcher intends to highlight the importance of the historical development, the findings of the Constitutional Court, allowing the legalization of cannabis in South Africa and own opinion such as despite the fact that any person can now use cannabis, sufficient safeguards can be established if not yet done to minimize the risk of abuse.

Such safeguard is the obtaining of a license before using cannabis for whatever reason.

6 PROPOSED CHAPTER OUTLAY

<p>Chapter 1 Introduction</p>	<p>This chapter introduces cannabis as an illegal substance before 2017 and how it is now legal in the light of the constitutional Court Judgment.</p>
<p>Chapter 2 Historical Development analyses of Cannabis in South Africa</p>	<p>This chapter Discuss the illegality of Cannabis as well as its legality in the light of the constitutional Judgment in the South African</p> <p>the past and present legal position regarding the use of Cannabis. This chapter also looks at the South African Journal of Psychiatry.</p> <p>where a study of the number of youth and adult taking drugs was elucidated. legal position in South. The South African Medical Journal also will be looked at as they address the issue of the medical use of Cannabis to doctors.</p> <p>The constitutional court Judgment will be looked at as well as section 14 of the Bill of Right, namely those rights that are central to the</p>

	discussion on the implementation of The right of privacy, will be discussed. , Corroborated by all sources including books Journal articles, legislation and case laws
Chapter 3 Legalization of Cannabis in South Africa	Constitutional case discussion to reach to legalization as well as what is included in the legalization and what is not.
Chapter 4 Arguments for and against the private use of Cannabis	This chapter summarizes the arguments for and the arguments against the private use of Cannabis. Corroborated by all sources including books Journal articles, legislation and case laws
Chapter 5 Conclusion and recommendations	This chapter focuses on the conclusion of this research paper with recommendations on whether the private use of Cannabis should be regulated or not.
Bibliography	

7. PROJECTED TIME SCALE

Chapter	Expected date of submission
Preparatory Study and Research	08 September
Completion of Chapter 1	20 September
Completion of Chapter 2	1 October
Completion of Chapter 3	7 October
Completion of Chapter 4	13 October
Completion of Bibliography	18 October

8. DESCRIPTION OF PROPOSED RESEARCH METHOD

This research is a Historical approach of the legal position in South Africa of the private use of cannabis before and after 2017. This research is qualitative research as I have gathered written information from various academic sources. In order to research this matter extensively, I will be making use of books, legislation, case law, journal articles and electronic sources, I will be obtaining these sources by accessing electronic databases. Qualitative data collection will enable me to get to the depths of the information gathered on the historical sources concerning cannabis in South Africa.

The research method is desktop. As mentioned above I will use written sources to construct my argument on the prohibition of cannabis in South Africa before 2017 and on the private use of the said substance as now legalized. I use a qualitative approach to research. My sub-method is historical, showing how cannabis went from being illegal to being legal pre and post 2017.

9. PREPARATORY STUDY AND RESEARCH

9.1 Books

Friedman MD Legalization of Drugs(Capstone Global Library 2012) 2

In its case study this book speaks about how cannaboid was invented by a student in the United states of America. The student was a chemistry student who created to be more precise K2 . K2 contained cannaboid which was use by a professor in his research on Marijuana or cannaboid. The book develops the origin of k2 which contained cannaboid making its users to hallucinate.

A student killed himself after using the drug by means of a gun when he got home. and after this tragedy the drug was banned In 8 US states. The book talks about drug treat to economy, health and people.

There is also a debate about banning drugs because of the harm it creates to society by individuals who uses it.

Beazley J and Field S Cannabis on Campus(Routlege imprint of Taylor and Francis group 2018) 4-170

The history of Cannabis is spoken about . it talks about the use of drug on campuses and how it destroy students. In addition the book talks about counseling students with proper words and not steaky counsel. The book elaborates more on these counseling activities of students in order to assist them in decreasing cannabis in their lives on campus.

9.2 Case law

Smit v Minister of Justice and Correctional Services and Others 2019 4 SA 542 (WCC)

In this case the United Kingdom requested South Africa to extradite the suspect to the UK because he has committed the following offences in relation of cannabis: possessing a huge quantity, cultivation of cannabis, possession of Cannabis in order to supply another person. The suspect was arrested in cape town and the matter will unfold before different laws as we develop in the actual work.

***Minister of Justice and Constitutional Development and Others v Prince;
National Director of Public Prosecutions and Others v Rubin;
National Director of Public Prosecutions and Others v Acton and Others [2018] ZACC 30***

In this case, the private use and cultivation of cannabis was allowed in South Africa. Section 4 of Drug and drugs Act was found inconsistent with Section 14 of the Constitution to the extent that they criminalize the use or possession of cannabis at a private place or the private cultivation thereof.

9.3 Legislation (South Africa)

Constitution of the Republic of South Africa, 1996.

The Constitution is the supreme law of South Africa. It provides the legal foundation for the existence of the republic, sets out the rights and duties of its citizens.

Section 14 of the Constitution of South Africa, 1996

Everyone has the right to privacy, which includes the right not to have their person or home searched; their property searched; their possessions seized; or the privacy of their communications infringed. Everyone has the right to freedom of conscience, religion, thought, belief and opinion.

Drugs and Drug Trafficking Act 140 of 1992

This act in its section 4 and 5 prohibited the private and public used of Drug and gave right to people for medicinal used of drugs under the supervision of medical practitioners who prescribed it.

section 22A (9)(a)(1) of the Medicines and Related Substances Control Act 101 of 1965.

No person shall sell, have his or her possession or manufacture any medicine or scheduled substance, except in accordance with the prescribed conditions. These sections have been repealed and Drug can now be utilized for private use.

Cannabis for Private Purpose Bill

This Bill regulates the quantity of the private use of cannabis and prescribes offences for those who surpass the prescribed quantity.

9.4 Journal articles

Peltzer K, Phaswana M “ Drug used among youth and adults in a population based survey in South Africa 2018” SAJP 47

Illicit drug use is a growing public health problem. The estimated global prevalence of illicit drug use (including amphetamines, cannabis, cocaine, opioids, etc.) is 5.3% in the past year in 2014.^{1,2} The most commonly used illicit drugs globally are cannabis, amphetamine-type stimulants, cocaine and opioids.² Illicit drug use contributes significantly to the global burden of disease, that is 0.8% in 2010.³

Decloedt EH “Medical Cannabis: What practitioners need to know 200” SAMJ 3

The South African Constitutional Court recently decriminalized the private cultivation, possession and use of cannabis by adults. Cannabis contains varying amount of cannabinoids from delta 9 to CBD depending on various cultivating factors. I will elaborate on more in the research paper.

9.5 Internet sources

<http://www.scielo.org.za/pdf/sajp/v24n1/08.pdf> (Date of use: 12 April 2019).

Atakan, Z "*Cannabis a complex plant: different compounds and different effects on individuals*" <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3736954/>. (Date of use: 30 May 2019).

10.CONCLUSION

The history of laws regulating cannabis have been from negative to positive as we have seen in our development and more we shall see in the main research. For now I have only mentioned the steps and gist of which is to come from introduction to conclusion including providing various sources in order to cover all that have been mentioned in this work as the pre-cursor of the coming work.

BIBLIOGRAPHY

Book

Friedman MD *Legalization of Drugs*(Capstone Global Library 2012)

Beazley J and Field S *Cannabis on Campus*(Routledge imprint of Taylor and Francis group 2018) 4-170

Case Law

Minister of Justice and Constitutional Development and Others v Prince;
National Director of Public Prosecutions and Others v Rubin;
National Director of Public Prosecutions and Others v Acton and Others [2018] ZACC 30

Legislation (South Africa)

Constitution of the Republic of South Africa, 1996.

Section 14 of the Constitution of South Africa, 1996

Drugs and Drug Trafficking Act 140 of 1992

section 22A (9)(a)(1) of the Medicines and Related Substances Control Act 101 of 1965.

Cannabis For Private Purposes Bill

Journal articles

Peltzer K, Phaswana M “ Drug used among youth and adults in a population based survey in South Africa 2018” *SAJP* 47

Decloedt EH “Medical Cannabis: What practitioners need to know 200” *SAMJ* 3

Internet sources

<http://www.scielo.org.za/pdf/sajp/v24n1/08.pdf> (Date of use: 12 April 2019).

ACADEMIC DECLARATION OF HONESTY

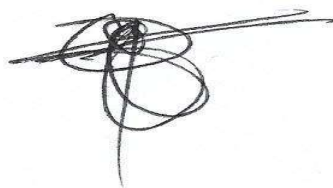
Declaration: ...I.....TRA DJE BI KALOU LOUIS.....

1. I understand what academic dishonesty entails and am aware of UNISA's policies in this regard.
2. I declare that this assignment is my own, original work. Where I have used someone else's work I have indicated this by using the prescribed style of referencing. Every contribution to, and quotation in this assignment from the work or works of other people has been referenced according to this style.
3. I have not allowed, and will not allow, anyone to copy my work with the intention of passing it off as his or her own work.
4. I did not make use of another student's work and submitted it as my own.

NAME: TRA DJE BI KALOU LOUIS

STUDENT NUMBER: 42167329

MODULE CODE: LME3701



SIGNATURE:

DATE: 28 SEPTEMBER 2020