

2. HISTORICAL DEVELOPMENT OF TERMS AND RECESSES:

The most noteworthy aspects of the terms and recesses over the years, have been:

- (1) there have always been **set terms** for **civil** business, with **defined** starting and **ending** dates;
- (2) until relatively recently, there were no terms but only **open-ended 'sessions'** for **criminal** business¹ (with isolated exceptions) with commencement dates and the further provision that the session would **continue** by adjournment, **as the case may require**;
- (3) there would always be at least one judge **on duty** during **vacation** for the despatch of some specified limited business;
- (4) the **relative civil** term, **criminal** session and **vacation** dates mean that, at least to some extent, there must have been some system whereby not all the judges took leave/vacation at the same time, that is, a **staggered** system of duty had to be in place.

Originally, in the Cape Supreme Court, **civil terms** were to be held in March, June, September and December and there were to be **eight criminal sessions** every year. The court would also **sit during vacation** and provision was made for one of the judges to attend at chambers.

In terms of Rules 1 and 2, promulgated on 10 August, 1843, the court calendar looked as follows:

TERM/ SESSION	CIVIL TERM (4)	VACATION	CRIMINAL SESSION (4)
1 st	February		15/01 →

¹ There were certain isolated *ad hoc* exceptions to this rule: see, for instance, the Witwatersrand Local Division, on page 36 *supra*.

2 nd	15/05 - 14/06		10/05 →
3 rd	August		15/07→
4 th	15/11 - 14/12		10/11→

While the civil terms had set starting and closing times, the criminal sessions were stipulated *"to be continued by adjournment, **as the case may require, until the whole of the criminal business is disposed of...**"*

The Court would also sit in **vacation**, for so many days as was necessary, for the despatch of any business which the Court saw cause to appoint to be heard and determined out of term.

Rules 1 and 2, as referred to above, were repealed and replaced by the following, promulgated on 26 December 1872:

TERM/ SESSION	CIVIL TERM (4)	VACATION	CRIMINAL SESSION (4)
1 st	February	10/03 -	15/01→
2 nd	15/05 - 14/06	15/04	01/05→
3 rd	August	10/09 -	15/07→
4 th	20/11 - 19/12	15/10	07/11→

The criminal business, having commenced on the days indicated, would **"be continued by adjournment, as the case may require..."**

The **dates** of the terms and sessions were **changed frequently**, thus in 1893, the position looked slightly altered, as follows:

TERM/ SESSION	CIVIL TERM (4)	VACATION	CRIMINAL SESSION (4)
1 st	February	10/03 - 30/04	15/01→
2 nd	01/05 - 31/05	10/06 - 31/07	15/04→
3 rd	August	10/09 - 31/10	15/07→
4 th	01/11 - 30/11	10/12 - 31/01	15/10→

There were **different dates** prescribed for the Supreme Court and its two offshoots, respectively, although the **same basic** noteworthy features, as stated above, remained common to all.

A study of the terms, sessions and vacations of all the various divisions over the years, shows that they were in a **constant state of flux**.

By way of example, in the **High Court of Griqualand** there were **five civil** terms and **six criminal** sessions until **1881**, when there were **five** terms/sessions **each**. By **1905**, however, there were again only **four** civil terms and criminal sessions each, as follows:

TERMS/ SESSIONS	CIVIL TERMS (4)	VACATIONS	CRIMINAL SESSIONS (4)
1 st	20/02 – 19/03	All the days not included in the term	10/02→
2 nd	15/05 – 14/06		05/05→
3 rd	August		20/07→
4 th	November		20/10→

Further by way of example, in **1938**, while there were still **four** terms/sessions, the **dates** had been altered thus:

TERM/ SESSION	CIVIL TERMS (4)	VACATION	CRIMINAL SESSION (4)
1 st	01/03 – 31/03	All the days outside the civil terms	15/02→
2 nd	15/05 – 14/06		25/04→
3 rd	15/08 – 14/09		01/08→
4 th	01/11 – 30/11		15/10→

By **1956**, however, the High Court of Griqualand had increased their **criminal sessions** to **six**, while retaining only **four civil terms**.

TERM	CIVIL TERMS (4)	VACATION	CRIMINAL SESSIONS (6)
1 st crim		All the days outside the civil terms.	01/02→
1 st civil	01/03 – 31/03		
2 nd crim			01/04→
2 nd civil	01/05 – 31/05		
3 rd crim			01/06→

TERM	CIVIL TERMS (4)	VACATION	CRIMINAL SESSIONS (6)
4 th crim			01/08→
3 rd civil	01/09 - 30/09		
5 th crim			01/10→
4 th civil	01/11 - 30/11		
6 th crim			01/12→

From the above table, it can be seen that the court sat during **every month** of the year, for either civil or criminal business, save for January and July.

In 1961, there were **two civil** terms of approximately four months each, and **nine criminal** sessions, commencing on the first business day of each calendar month, except January, July and December. In 1969, the **civil terms** had increased to **four**, while the **criminal** sessions remained **nine** in number.

By the 1980's, the open-ended criminal sessions had disappeared, with the introduction of one calendar for the despatch of both civil and criminal business. The rest of the year was to be regarded as **vacation**, and there was a **closed period** from approximately 24 December to 2 January. With minor date changes, this has remained the position to this day.

Likewise, the court calendar of the **Cape Supreme Court** underwent regular changes. Thus, in **1903**², the following calendar was introduced, providing for **five civil** terms and **six criminal** sessions³:

TERMS/ SESSIONS	CIVIL TERMS (5)	VACATIONS	CRIMINAL SESSIONS (6)
1 st	February	01/03 - 14/04	15/01→
2 nd	15/04 - 14/05	15/05 - 31/05	15/03→
3 rd	01/06 - 14/07	15/07 - 31/07	15/05→
4 th	August	01/9 - 14/10	15/07→
5 th	15/10 - 14/11	15/11 - 31/01	15/09→
6 th			15/11→

² Rule 399, Government Notice No. 792, 1903 dated 29 August 1903.

³ As always, to be continued by adjournment, as the case may require.

It was further stipulated⁴ that *'no [civil] case shall without special leave of the Supreme Court be set down for trial or for argument in the said Court for any day later than seven days before the last day of term.'*

In 1938, a new set of Rules was brought out, in terms of which, in the Cape of Good Hope, there were **four civil** terms and **ten criminal** sessions during the year. **Vacations** would be all the days falling **outside the civil terms**, and **circuit courts** would be held twice a year, from the 1st March and 1st September, respectively.

TERM/ SESSION	CIVIL TERMS (4)	VACATION	CRIMINAL SESSION (10)
		All the days falling outside the civil terms	February
1 st	15/02 - 30/04		March
			April
2 nd	15/05 - 23/06		May
			June
3 rd	01/08 - 15/10		August
			September
4 th	01/11 - 15/12		October
			November
			December

There were **no criminal** sessions during **January** and **July**. While the sessions remained open-ended, the provision that the sessions would *'continue by adjournment as the case may require'*, was not included that year.

In **1944**, the **Cape Provincial Division** had **four civil** terms and **six criminal** sessions, subsequently increased to **ten criminal** sessions. This remained the position for some 15 years until, in **1970**, the criminal and civil terms were made to **coincide**. Up **until then**, the criminal sessions were *'to continue by adjournment, as the case may require'*:

⁴ Rule 400, Government Notice No. 792, 1903, dated 29 August 1903.

YEAR	TERM	CIVIL	CRIMINAL	VACATION	CLOSE PERIOD
1944	1 st civil/crim	15/02 - 30/04	01/02→	The rest of the year, falling outside the civil terms, i.e.: 01/05 - 14/05	16/12 - 15/01
	2 nd crim		01/04→		
	2 nd civil/3 rd crim	15/05 - 23/06	01/06→	24/06 - 31/07	
	3 rd civil/4 th crim	01/08 - 15/10	01/08→		
	5 th crim		01/10→	16/10 - 31/10	
	4 th civil/6 th crim	01/11 - 15/12	01/12→	16/12 - 14/02	
1970	1	08/02 - 31/03		The rest of the year.	
	2	15/04 - 15/06			ditto
	3	01/08 - 30/09			
	4	15/10 - 15/12			
2003	1	27/01 - 28/03		ditto	
	2	07/04 - 20/06			
	3	28/07 - 26/09			15/12 - 16/01
	4	13/10 - 12/12			

The **Eastern Districts Local Division**⁵ had the following calendar in 1938:

TERM/SESSION	CIVIL TERMS (4)	VACATION	CRIMINAL SESSION (4)
1 st	01/02 - 09/03	All the days outside the civil terms	4 th Tues in Jan→
2 nd	10/05 - 15/06		4 th Tues in April→
3 rd	01/07 - 15/08		1 st Tues in July→
4 th	21/10 - 30/11		3 rd Tues in Oct→

In the **Transvaal Supreme Court**⁶, in **1930**, there were **four criminal** sessions and only **three civil** terms:

⁵ In contrast to the provincial and local divisions, the Appellate Division had **four** set terms for the despatch of **both civil and criminal business** alike, with the rest of the year being vacation:

TERM	DATES	VACATION
1 st	01/03 - 31/03	The rest of the year.
2 nd	01/05 - 14/06	
3 rd	15/09 - 14/10	
4 th	01/11 - 30/11	

TERMS/ SESSIONS	CIVIL TERMS (3)	VACATION	CRIMINAL SESSIONS (4)
1 st civil/1 st criminal	15/02 - 15/06	16/06 - 31/07	01/02→
2 nd criminal			01/05→
2 nd civil/3 rd criminal	01/08 - 30/09	01/10 - 15/10	01/08→
3 rd civil/4 th criminal	16/10 - 15/12	16/12 - 14/02	01/11→

As was the practice in all the divisions, the criminal cases were to continue by adjournment as the case may require, and there was accordingly no cut-off date marking the close of criminal business.

In 1972, the **criminal** sessions were increased to **six**, while retaining the **three civil** terms:

TERMS/ SESSIONS	CIVIL TERMS (3)	VACATION	CRIMINAL SESSIONS (6)
1 st civil/1 st criminal	15/02 - 15/06	(No mention)	01/02→
2 nd crim			01/04→
3 rd crim			01/06→
2 nd civil/4 th criminal	01/08 - 30/09		01/08→
5 th crim			01/10→
3 rd civil/6 th criminal	16/10 - 15/12		01/12→

This calendar remained unchanged until **1991** when, for the **first time** in that province, the civil and criminal terms were made to **coincide**. As a result, the **criminal business** could no longer 'continue by adjournment, as the case required', but **ended** on the same date as the civil business.

Since that date, the following calendar has been in force in **Pretoria**:

YEAR	TERMS	CIVIL and CRIMINAL	VACATION (or 'administrative recess')	CLOSE PERIOD
1991	1	01/02 - 31/03	(no mention)	
	2	09/04 - 15/06		
	3	01/08 - 30/09		
	4	09/10 - 15/12		
1992		Ditto	(no mention)	

⁶ The Witwatersrand Local Division had **six criminal sessions**, commencing 1st February, 1st April, 1st June, 1st August, 1st October and 1st December.

YEAR	TERMS	CIVIL and CRIMINAL	VACATION (or 'administrative recess')	CLOSE PERIOD
1993	1	27/01 - 27/03	(no mention)	
	2	07/04 - 19/06		
	3	27/07 - 25/09		
	4	05/10 - 04/12		
2003	1	27/01 - 11/04	12/04-28/04	
	2	29/04 - 27/06	28/06-03/08	
	3	04/08 - 26/09	27/09-05/10	20/12/3 -
	4	06/10 - 05/12	06/12-24/01	04/01/04

The calendar of the **Witwatersrand Local Division** underwent similar changes.

Thus, whereas in **1930** there had been **six criminal sessions**, by **1944**, these had been reduced to only **two (long) criminal sessions** and **three civil terms**. The vacations were referred to as 'civil vacations'. Unusually, these criminal sessions were **closed** sessions, that is, they had an **end date**.

In **1957**, the WLD again reverted to **six open-ended criminal sessions**, while retaining only three civil terms.

As was the case with its sister court in Pretoria, this differentiation in civil and criminal terms (both in number and in nature) remained until **1991**, when the two were made to **coincide**.

YEAR	TERM	CIVIL	CRIMINAL	VACATION	CLOSE PERIOD
1944	1	15/02 - 15/06	01/02 - 15/06	16/12 - 14/02	
	2	01/08 - 30/09	01/08 -	16/06 - 31/07	
	3	16/10 - 15/12	15/12	01/10 - 15/10	
1957	1 crim/civil	15/02 -	01/02→		
	2 crim		01/04→		
	3 crim	15/06	01/06→		
	2civil/4crim	01/08 - 30/09	01/08→		

YEAR	TERM	CIVIL	CRIMINAL	VACATION	CLOSE PERIOD
	3civil/5crim	16/10 -	01/10→		
	6crim	15/12	01/12→		
1991	1	01/02 - 31/03		01/04 - 08/04	
	2	09/04 - 15/06		16/06 - 31/07	
	3	01/08 - 30/09		01/10 - 08/10	
	4	09/10 - 15/12		16/12 - 31/01	
2003	1	27/01 - 11/04		12/04 - 28/04	
	2	29/04 - 27/06		28/06 - 03/08	
	3	04/08 - 26/09		27/09 - 05/10	20/12/03-
	4	06/10 - 05/12		06/12 - 24/01	02/01/04

In the **Natal Provincial Division**, there was much fluctuation.

For instance, in **1944**, there were **six civil** terms (for the months of February, April, June, August, October and half of December) and **four criminal** sessions, commencing on the first Tuesday of March, June, September and December, respectively. The month of July, and the second half of December were **vacation** periods, and the period 21 December to 3 January was regarded as a **closed period**.

The criminal sessions would "***continue until the completion of every trial for which proper notice of trial at those Sessions has been given***", subject to any order of adjournment, postponement or change of venue made by the presiding Judge.

In **1957**, there were only **two, closed** criminal sessions, that is, roughly for the months of February and March, and again from 1 May until 15 December. (The civil terms still numbered six.)

In **1959**, there were **two terms** for **civil** and **criminal** business, alike, which ran approximately from February to June, and again from August

to December. Each month within the four month criminal 'session' was regarded as a separate session.

In **1961**, civil and criminal divisions shared a four term calendar; for the purposes of criminal work, however, each **calendar month** was to be regarded as a **separate session**.

At the **Durban and Coast Local Division**, in **1944**, there were **five** civil terms and **four, open-ended criminal** sessions, the latter commencing on the first Tuesday of February, May, August and November, respectively.

The **civil terms** started on the third day of March, May, July, September and November, respectively and were to continue *'until the last day of the month or until such earlier day as the business set down for such sittings shall had been completed'*.

In **1956**, there was only **one criminal session**, running from the second business day of **February until 15 December**. The session would *'continue until the completion of every trial for which the proper notice of trial had been given'*.

In contrast, there were **nine civil** sessions, which ran during each month of the year with the exception of January, February and August. The sessions would start on the third day of the month and continue until the last day of the month or earlier, as indicated above. In **1957**, there were **ten** such **civil sessions**, with only **one criminal** session.

In **1959**, the D.&C.L.D. calendar was altered radically, to **two terms**, for **civil** and **criminal** business alike, the first of which ran approximately from February to June, and the second from August to December. For the

purposes of criminal work, each month within the four month 'session' was regarded as a separate session.

From here onwards, this division shared a calendar with its sister Court, the NPD.

In the **Orange Free State**, there were **separate** civil and criminal terms. Typically, there were **four criminal** sessions, although the number of **civil** terms fluctuated, from four (of about one month each) in 1944, to two (for three months each) in 1964, and back to four in 1969.

In **1969**, the civil terms and criminal sessions were **combined**, and referred to as '**civil terms, for the despatch of both civil and criminal business**'. From that date, therefore, criminal cases no longer 'continued by adjournment.'

The position, therefore, is that, between the mid-1950's and the early 1990's, our various Supreme Courts **abandoned** the system of open-ended criminal 'sessions'; it was decided, instead, to make the civil terms and fixed recesses applicable to criminal trials.

Whereas, probably, the incidence of crime and the absence of court roll backlogs at the relevant time could **accommodate** this revised criminal trial calendar, it has become abundantly clear that the present context can do so no longer.