

Law of Persons and the Family

2nd Edition

Edited by A Barratt

**W Domingo, W Amien, R Denson, JD Mahler-Coetzee,
M Olivier, F Osman, H Schoeman, PP Singh**

Pearson South Africa (Pty) Ltd
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About the authors

Waheeda Amien is an Associate Professor in the Department of Public Law at the University of Cape Town. Her expertise is in the areas of Legal Pluralism, Religion, Culture, Women's Rights and Personal and Family Laws.

Amanda Barratt is an Associate Professor in the Department of Private Law at the University of Cape Town and teaches Family Law.

Razaana Denson is a lecturer in the Private Law Department in the Law Faculty at Nelson Mandela Metropolitan University. Her field of speciality is Family Law.

Wesahl Domingo is an Associate Professor at the University of the Witwatersrand, School of Law. She is also an accredited family law mediator.

Jacques Mahler-Coetzee is a Senior Lecturer at the Nelson Mandela School of Law, Attorney of the High Court of South Africa and Instructor at the Law Society's School for Legal Practice.

Morné Olivier is an Associate Professor in law at the University of the Witwatersrand, Johannesburg.

Fatima Osman is a lecturer in the Department of Private Law where she teaches African customary law and the law of succession. She is also an attorney of the High Court of South Africa.

Heidi Schoeman is Head of Programme: Law at the Independent Institute of Education (Pty) Ltd and an admitted advocate of the High Court of South Africa.

Priya P. Singh is an admitted attorney and notary and teaches law at the University of KwaZulu-Natal (Pietermaritzburg).

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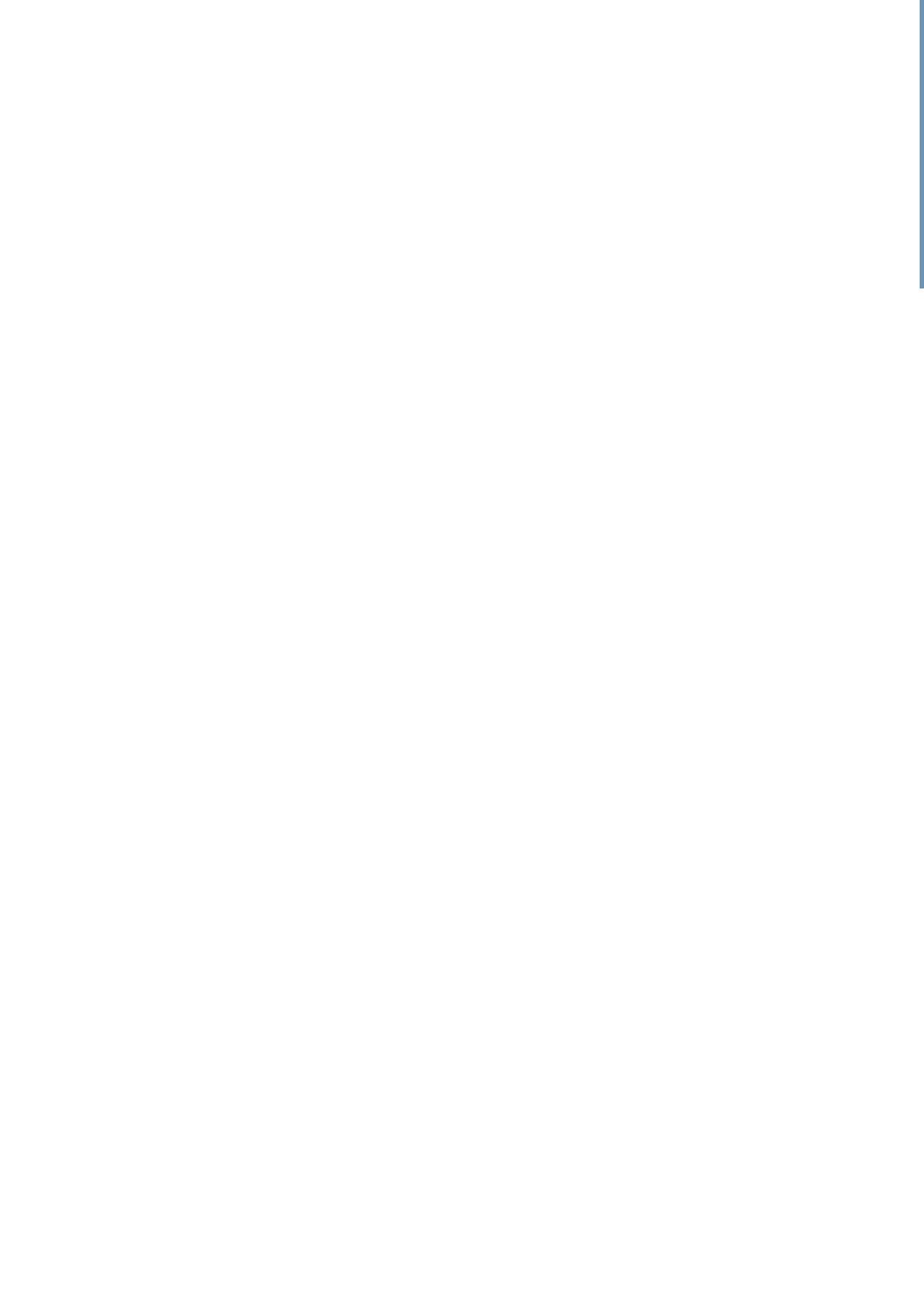
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Part 1

Law of persons

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1

Introduction

Most South African universities offer a course called ‘The law of persons’ in the first year of the LLB degree. Many new law students are somewhat perplexed by the course name – surely all law is ‘the law of persons’? After all, people make the law, and the law regulates human behaviour. Students soon discover that the law uses many puzzling or esoteric terms. In law, things are often not quite what they seemed at first glance.

For a start, the word ‘person’ when used as a legal term does not mean exactly the same thing as the word ‘person’ in everyday language. The first thing that law students learn in their law of persons’ course is a new definition of ‘person’ – a *legal* definition of person. Students are ‘persons’ in the eyes of the law – but so is their university. In law, a university is also a ‘person’.

Much of the law of persons’ course examines ‘status’ and ‘capacity’. A person’s ‘status’ (his or her standing in the eyes of the law) depends on the class or group to which the person belongs. The most important status is ‘minority’ (the status of people who are below the age of 18). Typically a law of persons’ course will look at minors in detail and will examine the various capacities that minors do or do not have in the eyes of the law. The law of persons is also concerned with the capacities of other groups of persons, for example, those who are mentally ill, or people who are intoxicated.

Many law schools use a course on the law of persons as a general ‘Introduction to Law’. Law of persons is often the first substantive law course that students do at law school, and this is where students first encounter the many legal principles and concepts that they will use throughout their LLB (and in legal practice if they choose to become lawyers). These principles and concepts are the ‘building blocks of law’ – they enable the law to work in the way that it does.

Fortunately for law teachers and students, the law of persons provides many opportunities for using the foundational building blocks of law: What is a ‘right’? What does it mean to have a right? How does the law protect your rights or enable you to assert them? What is a legal ‘remedy’? What can you do with a remedy, and when, and how?

This book is intended primarily for new law students. One of the book’s purposes is to explain how to ‘think like a lawyer’ and how to ‘work with the rules’. Thus the purpose of the book is not merely to present or state the rules. Rules are easy enough to find using the Internet ... anyone can do that. The primary purpose of a law school is not to ‘teach rules’. Instead, students come to law school to learn *how* to use the rules. One of the purposes of this book is to demonstrate why the rules and principles are useful and important, and how they can be *put to use* when solving legal problems.

Law students also learn that all rules are not equal, and all sources of rules are not equal. Rules found in the Constitution, Acts of Parliament, court judgments, or the writings of the Roman-Dutch writers are more ‘authoritative’ and important than rules found in a textbook. Constitutional rules are more important than rules found in the other authoritative sources. It is important that you understand the sources of law, and learn how to use them well. We provide examples of important legal sources and include activities intended to familiarise you with the

various types of legal literature. Again, the emphasis is on how to use the sources when solving legal problems.

The book contains several design features which make it a useful learning resource for law students: there are activity features in all the chapters and a ‘review your understanding’ section at the end of each chapter. We also list core ‘further reading’ at the end of each chapter, and the book has a full bibliography for those who wish to read beyond the ‘further reading’ lists. We use the index instead of a formal, separate glossary. Some of the terms in the index are typed in bold, and we provide the page number where you can find a full definition and explanation of the term.

We use the ‘*Obiter*’ feature for additional information and discussion. Many of the *Obiter* discussions originate from questions asked by students during our lectures. The answers we gave were not core to our lectures, but students found them interesting or useful, and we thought it would be worthwhile to include parts of those discussions in this book.

Another core aim of a law school is to invite students to think critically about the law and its rules. Everyone who works with the law should ask questions such as: ‘Is this a good rule?’; ‘Why does the rule look like this?’; ‘Is this rule unfair?’; ‘Does this rule have the desired effect?’ In Part 1 of the book, we often use the *Obiter* boxes to ask critical questions like this.

Here is an overview of the chapters in the first part of the book.

Chapter 2 has two parts. The first part discusses the question: ‘What is a person – and why does this matter?’ In the first part of Chapter 2 we define and discuss the concepts ‘person’, ‘rights’, ‘legal object’, ‘capacity’ and ‘status.’ These are foundational concepts for the law of persons.

The second part of Chapter 2 is really a reference resource. Here we discuss concepts that are not core to the law of persons as such, but which originate in other branches of law such as the law of obligations, the law of property, and the law of succession. In particular, we examine forms of civil liability, important legal remedies, and the basic rules of succession. You will need to know something about these concepts as you work through the book. In our experience, students do not always find it meaningful to read the sections on forms of liability and remedies before they start working with these concepts in the more focused contexts of the later chapters. You might find it more useful to return to these sections later when you really need an explanation. However, we have found that students find it very practical to have the forms of liability and the most important remedies grouped together in one place. This enables them to see an overall structure, and makes it easier to find (or compare) forms of liability or remedies when this is relevant while reading other chapters in the book.

Chapter 3 expands on the concept ‘person’ or ‘legal subject’. We discuss how someone becomes a ‘person’. What does the law regard as ‘live birth’ and why is this important? We learn that the unborn can never have rights, but that under some circumstances, the law will take note of the unborn and protect their potential interests. In the last part of the chapter we distinguish between people (legal subjects) and other animals (legal objects). We end the chapter by making you think hard about this distinction by considering the position of non-human animals in relation to the legal system.

Chapter 4 is the longest chapter in Part 1. Here we focus on ‘minors’ – people below the age of 18 – and explore how and why the law restricts the legal capacity of minors. How does the law protect minors from the consequences of foolish or irresponsible acts? What about the other people involved? Does the law offer them any protection when dealing with minors?

Chapter 5 looks at sex and gender. In the past, the law discriminated against women because of their sex, particularly in the context of marriage law. Nowadays men and women are equal in the eyes of the law, and the Constitution forbids any unfair discrimination against women. Interestingly, however, it does permit some discrimination that is not unfair. We will examine situations where the law treats people differently because of their sex and ask whether this

discrimination is fair or unfair. We will also explore how the law deals with gender and the issue of sexual re-alignment in those who are born with the physical signs of one sex, but who believe and feel themselves to be the opposite sex to the one they are biologically.

Chapter 6 looks at the limitations which the law places on the capacity to act of some other categories of people. Here we focus particularly on the capacity of people who are mentally ill. Can mentally ill people make valid wills? What about people who are so drunk that they don't know what they are doing? Can you get drunk and wake up legally married? We will also examine restrictions on the capacity to act of people who are insolvent or have been declared prodigals. In the last part of the chapter we look at how the law deals with people who have some physical disability that makes it difficult for them to manage their affairs.

So far we have examined how age, sex and factors such as mental illness influence a person's capacity in the law. Chapter 7 deals with a factor that also has a significant effect on a person's status in the law – his or her place of domicile. As you will see, your domicile affects such matters as your personal status, the property system under which you are married and what judicial system operates in deciding how your estate will be settled when you die.

Chapter 8 is about death and the end of legal personality. Of course, death has important legal implications. However, there is no clear and unambiguous legal definition of 'death'.

What happens if someone disappears and everyone believes that they must be dead but can't produce a corpse to prove it? How can we create legal certainty about the death – and why is this important? These are some of the questions we will examine in the section on presumption of death.

Chapter 9 looks at the law regarding the human corpse. Dead people have no rights. So why is the law so concerned about the treatment of dead bodies? In this chapter we examine organ donations and transplants, and the problem of trafficking in human tissue for commercial gain.

2

Through the looking glass: defining words and concepts in law



'I don't know what you mean by "glory"', Alice said.

Humpty Dumpty smiled contemptuously. 'Of course you don't – till I tell you. I meant: "there's a nice knock-down argument for you!"'

'But "glory" doesn't mean "a nice knock-down argument"', Alice objected.

'When I use a word,' Humpty Dumpty said in rather a scornful tone, 'it means just what I choose it to mean – neither more nor less.'¹

Words and concepts are the tools of the law. Unlike Humpty Dumpty in *Through the Looking Glass*, we are not free to decide what the words and concepts mean. In law, words and concepts have very precise meanings – and this is what they mean, 'neither more nor less' as Humpty Dumpty might say.

Lawyers are deeply concerned with definitions of words and concepts. They want to know precisely what the words mean ... whole court cases sometimes hinge on the meaning of a particular word.² You will notice that Acts of Parliament often begin with a lengthy section called 'definitions'. This section explains precisely what the words mean in the context of the statute.³

The first book on Roman-Dutch law, *Introduction to the Jurisprudence of Holland* (Inleiding tot de Hollandsche Rechtsgeleertheyd) was written by Hugo Grotius. The first official publication of this book (in 1631) began with a foreword addressed to 'Dear Reader', which explained that the reason for publishing the book was that unscrupulous publishers had been printing unauthorised copies that were 'all imperfect and full of mistakes'. The reader is assured that this author 'has been careful to make definitions correspond with the words defined, a matter in which the jurists often go wrong'.⁴ So there is evidence of the need to define legal words and concepts precisely on the first page of the very first published work on Roman-Dutch law.

1 DEFINING WORDS AND CONCEPTS

In this chapter we define and explain some of the foundational concepts used in private law. We begin by asking, 'What is a person – and why does this matter?' The most important consequence

1 The quotation above is from *Through the Looking Glass*, a still popular book that was written for children in the nineteenth century. (Carroll, 1998: 186).

2 See, for example, *Minister of Home Affairs v Fourie* 2006 (1) SA 524 (CC) where the Constitutional Court considers the legal meanings of the words 'husband', 'wife', 'spouse', and 'marriage'.

3 See, for example, section 1 of the Children's Act 38 of 2005, which has several pages of definitions.

4 The quotations in this paragraph are from the Dear Reader foreword to Grotius's *Introduction to the Jurisprudence of Holland* as translated by R.W. Lee (Oxford University Press, 1926). Lee writes about the publishing history of Grotius's work in his own preface. He explains that Grotius wrote his book while imprisoned at the Castle of Loevenstein between 1619 and 1621. Grotius did not intend to publish this work: he wrote it to teach his own children about the laws of their country. However, defective copies of the book began to circulate in the 1620s, and it was in response to this that Grotius decided to authorise the first official publication of the book in 1631.

of being recognised as a ‘person’ in the eyes of the law is that a person can have legal rights and duties. We explain why this is so important to the operation of our legal system by examining the concepts ‘rights’ and ‘duties’ in some detail.

The rights and duties of a legal person depend in part on that person’s ‘status’ in law and on the ‘capacities’ that such status gives. ‘Status’ and ‘capacity’ are core concepts in the law of persons, and are the subject of the longest chapter in the book, which looks at the capacities of people who have the status of ‘minors’. This introductory chapter provides an introduction to the concepts ‘capacity’ and ‘status’ as background to this part of the book.

We also use this chapter to introduce and define words and concepts from other areas of private law. It is not possible to study the law of persons without referring to ‘liability’. All the chapters in Part 1 require the reader to have a basic knowledge of what it means to be ‘liable’, for example, ‘liable in contract’ or ‘delictually liable’. In this chapter, we provide introductory explanations for three forms of liability: (a) contractual liability, (b) delictual liability, and (c) liability for unjustified enrichment.

Many of the chapters in Part 1 refer to important legal ‘remedies’ that arise from contract, delict, or unjustified enrichment. We have grouped together some of the most important remedies at the end of this chapter, where we explain them briefly.

Finally, we provide a brief introduction to the law of succession because readers will require some knowledge of this area of law when reading later chapters.

When you have worked through this chapter, you should be able to answer the following questions:

- What is a person (legal subject)?
- What is a legal object?
- What are the various classes of rights?
- What is legal capacity?
- What are the various types of legal capacity?
- What is legal status?

The last three sections of the chapter are intended primarily for future reference. As you work through this book, you can return to these sections for introductions to:

1. Forms of liability:
 - a) contractual
 - b) delictual
 - c) unjustified enrichment
2. Useful legal remedies
3. Introductory rules for the law of succession.

2 WHAT IS A ‘PERSON’ – AND WHY DOES THIS MATTER?

The word ‘**person**’ as defined in law, does not mean exactly the same thing as ‘person’ in everyday language. The law defines a ‘person’ as someone or something that can have legal rights and duties.⁵ As Boberg puts it, ‘A person may be defined as a being, entity or association which is capable of having legal rights and duties.’⁶

This definition includes natural persons (human beings). But, as discussed in later chapters, the law also regards other kinds of entities as ‘persons’. These are called ‘artificial persons’ or ‘juristic persons’, and include entities such as commercial companies, banks and universities.⁷

5 *Wille’s Principles* (2007: 145).

6 Boberg (1999: 6). Very similar definitions appear in Hahlo and Kahn (1973: 103); and Hahlo and Kahn (1960: 345). See also Paton (1972: 391).

7 Boberg (1999: 4); *Wille’s Principles* (2007: 145); Hahlo and Kahn (1973: 104).

Some writers prefer to use the term **'legal subject'** rather than 'person'.⁸ The term 'legal subject' means exactly the same thing as 'person', as Boberg defines it. In other words, a legal subject is a being or other entity which is capable of having legal rights and duties.

You will also encounter the term **'legal personality'**. All persons have legal personality. This phrase describes the quality of being a person (as defined above). Some writers prefer the term **'legal subjectivity'**, which emphasises the legal aspects of a person's activities and existence. Legal subjectivity is a synonym for legal personality.⁹

The importance of being a 'person' in the eyes of the law is that the law recognises that you can have legal rights and duties. Only persons can have **legal rights and duties**. In law, 'this is the essential characteristic that distinguishes a person from a thing',¹⁰ or from 'legal objects' more specifically.

3 WHAT ARE RIGHTS, DUTIES AND LEGAL OBJECTS?

Private law deals with various kinds of rights, for example, real rights, personal rights and personality rights. We distinguish between the various classes of rights by looking at the legal objects to which the rights relate.¹¹

There are three¹² main types of legal objects, giving rise to the three main categories of rights:

- Physical things (for example, houses, farms, cars, cats and pencils). Where the object of the right is a physical thing, the right is a 'real right'.
- Performances (for example, babysitting, a taxi-ride, or the payment of money). Where the object of the right is a performance, the right is a 'personal right'.
- Aspects of your personality (for example, your reputation or your privacy). Where the object of the right is an aspect of your personality, the right is a 'personality right'.

All legal rights give rise to corresponding legal duties. The kind of duty or obligation to which the right gives rise depends on what kind of right is involved. This may be illustrated by using some specific examples:

3.1 Real rights

Where the object of a right is a physical thing, the right is a real right. Ownership of a physical thing is an example of a real right. The most interesting aspect of a real right is that it operates against the whole world. For example, if a person owns a thing, everybody else in the world has a corresponding duty towards him or her: they must not interfere with his or her real right of ownership.

8 See, for example, Boezaart (2010: 3); Heaton (2012: 4); Hosten (1980: 281–283) using both terms.

9 See Boezaart (2010: 5), providing the following definition: 'Legal subjectivity concerns the characteristic of being a legal subject in legal intercourse.' She contrasts this with their social or commercial activities.

10 Boberg (1999: 3).

11 This approach is clearly set out in Hosten (1980: 277–278); Boezaart (2010: 2–3); and Heaton (2012: 2–4).

12 Not all private law rights fit comfortably into these categories. Many writers also identify 'immaterial property rights' as an independent category of rights. The objects of these rights are patents, copyrights, or other forms of intellectual property protection (see, for example, Boezaart (2010: 2); Heaton (2012: 4); Hosten (1980: 278)). Whether the literary work or invention to which the copyright or patent relates is *in itself* the object of the right is an extremely complex and controversial issue. For a useful overview see Kamina (2001: 383).

Here we see a real right, its corresponding duty, and the object of the right.

We *classify* the right as a '*real right*' because the *object* of the right is a physical thing (the house).

It's John's house, so he has a real right of ownership.

Everybody else has a *duty* towards John – their duty is to respect John's right and not to interfere with it (for example, they should not enter John's house without his permission).

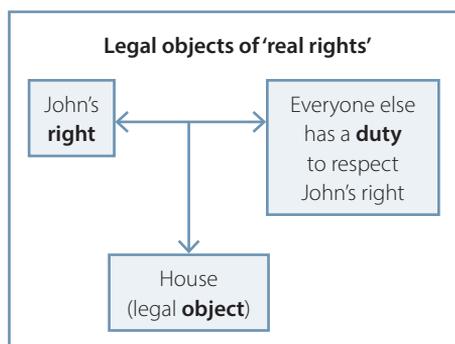


Figure 2.1: Legal objects of real rights

3.2 Personal rights

Where the object of the right is a performance, the right is a personal right. Personal rights behave differently from real rights. We saw that real rights operate against the whole world – everybody has a duty to respect a real right. Personal rights, on the other hand, operate primarily against a *particular person* – the person who owes the performance. Good examples are the performances owing in terms of a contract.

Here we see a typical contract: John and Mary have agreed that Mary will babysit John's children one Saturday afternoon and that John will pay her R200.

This agreement (contract) creates *two personal rights*: John has a personal right to the performance of babysitting (and Mary has the corresponding duty to babysit). Mary has the right to be paid R200 (and John has the corresponding duty to pay Mary R200).

We classify both these rights as personal rights because in both cases, the *object of the right is a performance*:

- performance of babysitting, and
- payment of R200.

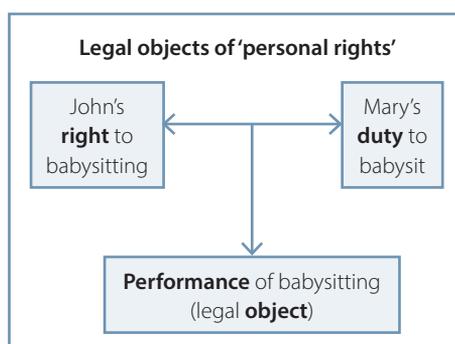


Figure 2.2: Legal objects of personal rights (a)

3.3 Personality rights

The law protects various aspects of a person's personality. Every person has the right to these aspects of personality and may claim damages if they are infringed. The personality interests protected in South African law include:

- physical integrity (the body)
- bodily freedom, for example, protection against unlawful arrest
- reputation (good name)
- dignity
- privacy.¹³

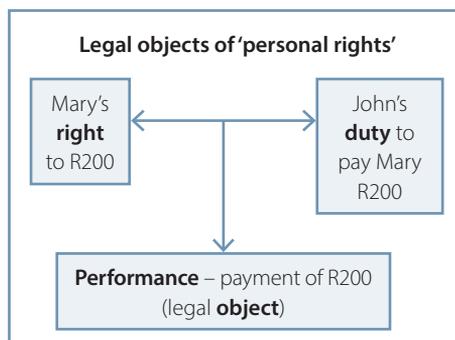


Figure 2.3: Legal objects of personal rights (b)

13 See generally Neethling (2005); Burchell (1998).

Where the object of the right is one of these aspects of personality, the right is a personality right. Personality rights operate against the whole world. Everyone else in the world has a corresponding duty to respect these rights and must not interfere with them.

3.4 Constitutional rights

The rights we have examined above (real rights, personal rights, and personality rights) are private law rights. Constitutional rights are public law rights. They are set out in the **Bill of Rights** in the South African Constitution, 1996 (sections 7–39).¹⁴

The Constitution is the supreme law of the country and, in principle, no rule of law (whether it comes from common law or from a statute) should violate any of the constitutional rights. In this book, we will discuss what happens when common law or statutory rules are ‘unconstitutional’. What happens when existing rules infringe someone’s constitutional rights?

4 WHAT IS ‘CAPACITY’?

In general terms, ‘capacity’ means ‘ability’ or ‘competence’. This is close to its legal meaning. In law, ‘**capacity**’ refers to what a person is capable of doing in terms of the law. In other words, what are the person’s legal abilities or legal competencies? Capacity is a complex legal concept and has given rise to considerable debate among legal commentators.¹⁵

Boberg has a clear and straightforward approach to capacity: first, he distinguishes between ‘passive legal capacity’ and ‘active legal capacity’. Then he divides ‘active legal capacity’ into various types or forms of active legal capacity. This chapter follows Boberg’s approach. This is the overall structure:

- passive legal capacity
- capacity to perform juristic acts (for example, enter into contracts, get married, transfer ownership of property)
- capacity to be held accountable for wrongdoing (crimes and delicts)
- capacity to litigate.

4.1 Passive legal capacity

To be ‘passive’ means to be ‘inert’ or ‘acted upon’.¹⁶ **Passive legal capacity** means the capacity merely to have legal rights and duties. No effort or positive action is necessarily required of you; sometimes the law automatically gives you rights and duties, or somebody else acquires the rights and duties on your behalf.

Boberg defines passive legal capacity as ‘the capacity merely to have rights and duties’.¹⁷ All persons have passive legal capacity. All persons can be the bearers of rights and duties. This is obvious from the very definition of a ‘person’ as ‘someone (or something) that can have legal rights and duties’.¹⁸

Even newborn babies can have rights and duties. For example, babies are born with the personality right to physical integrity – everyone else has a duty not to injure or harm the baby’s

14 Human rights are often understood to give rise to three kinds of state obligations: states have obligations to respect, protect and fulfil people’s human rights. Section 7(2) of the Constitution provides that ‘The state must protect, promote and fulfil the rights of the Bill of Rights.’ This particular approach is often called the ‘tripartite typology’. See, for example, Steiner and Alston (2000: 181). The rights in the South African Constitution also apply to relationships between private individuals (see Currie and De Waal, 2005: 50, 64).

15 See the discussion in Boberg (1999: 65–74).

16 This is part of the definition in the *Oxford English Dictionary*.

17 Boberg (1999: 66).

18 See the definition of ‘person’ above.

body.¹⁹ A newborn baby might even have obligations. Boberg gives the example of the child's duty to support his or her parents if he or she has the means to do so and the parents are in need of support (for example, if the child has a large inheritance).²⁰

4.2 Capacity to perform juristic acts

Juristic acts are voluntary human acts which have intended legal consequences.²¹ The **capacity to perform juristic acts** refers to a person's capacity to *actively change* his or her legal position, for example, by doing things to acquire legal rights or incur legal obligations.²² In law, juristic acts are regarded as 'expressions of will' of the person performing the acts²³ – the person concerned actively intends certain legal consequences to result from his or her acts. For this reason, the law only recognises capacity to perform juristic acts if the person is capable of understanding the legal nature and legal consequences of his or her acts.²⁴

Some people have full capacity to perform juristic acts; other people have none. If an unmarried, 45-year-old man of sound mind enters into a contract, he will be bound by that contract.²⁵ He has full capacity to act and the law will attach all the intended legal consequences to his actions. A man like this is capable of understanding the legal nature and legal consequences of his acts. On the other hand, if a six-year-old enters into a contract the contract will be void and will have no legal effect. This is because the law does not recognise the contracts of six-year-olds. In the eyes of the law, six-year-olds can never understand the legal nature and consequences of their acts. Six-year-old children have no capacity to perform juristic acts.

Boberg has a useful way of organising the various kinds of juristic acts.²⁶ He lists them as follows:

- entering into contracts
- getting married
- acquiring and alienating property
- making a will
- consenting to medical treatment
- holding office.

We will discuss whether or not various categories of people have the capacity to perform these juristic acts in the various contexts of the chapters in this book. The longest discussion in the following chapters concerns the minor's limited capacity to perform juristic acts. There, we will look particularly at the minor's capacity to incur binding contractual obligations.

19 See, for example, the discussion in *Road Accident Fund v Mtati* 2005 (6) SA 215 (SCA).

20 See Boberg (1999: 66 fn 8). See Part 2, Chapter 2 for more information on the reciprocal duties of support between parents and children.

21 See *Wille's Principles* (2007: 146) defining juristic acts as 'voluntary human acts to which the law attaches at least some of the legal consequences willed by the party or parties performing the act'.

22 See Boberg (1999: 746).

23 *Wille's Principles* (2007: 173).

24 Boberg (1999: 747).

25 As we discuss in the following chapters, age and mental disability have an enormous impact on a person's capacity to act. Marriage might impact on a person's capacity to act (we look at this in Part 2). Sex has very little impact on a person's capacity to act (we discuss this in Part 1, Chapter 5 on sex and gender). Sometimes a man like the one described here might be legally prohibited from entering into certain contracts. This might be the case if he is an interdicted prodigal or insolvent. We discuss this in Part 1, Chapter 6 on diverse factors that might influence a person's status and capacities.

26 The list is modelled on Boberg's table of contents.

4.3 Capacity to be held accountable for wrongdoing (delicts and crimes)

We will examine the capacity of various groups of people to be held accountable for their wrongdoings. When does a person have the capacity to be held liable in delict²⁷ or be found guilty of a crime?

A person can only be found guilty of a crime or liable for a delict if she or he acted with ‘fault’ (a blameworthy state of mind).²⁸ Specifically, the person must have acted with either intention or negligence.

Intention and negligence are complex concepts. They are defined simply here:

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People act with **intention** if they do something ‘on purpose’ or deliberately: they know what will happen, and they purposefully go about achieving this result. For example, person Z knows that Mr Smit’s cat will die if he shoots it, and he deliberately achieves the death of Mr Smit’s cat by shooting it.²⁹

Negligence means ‘carelessness’ of a particular kind. In law, person X will be found to have acted negligently if a reasonable person in X’s position (a) would have foreseen the possibility that his action might cause damage to someone else, and (b) would have taken steps to avoid this consequence, and (c) X failed to take such steps.³⁰

In this book, however, our concern is not so much whether people acted with intention or negligence, but whether they were even capable of having legal intention or negligence. If the person is capable of having the mental states of intention or negligence he or she can be held accountable for his or her crimes and delicts. If they are not capable of having these mental states, they can never be accountable for crimes or delicts.³¹

A person will be **accountable** (that is, capable of having ‘fault’ in the form of intention or negligence) if

- a) the person has the mental ability to distinguish between right and wrong, and
- b) the person is able to act in accordance with this understanding.³²

As you will see in the following chapters, some people are not regarded as accountable in this way (for example, very young children and people suffering from mental illness). Because these people are not accountable and cannot form the mental states of intention or negligence, they cannot be held liable in delict³³ or be found guilty of a crime. In Latin, if a person is accountable (that is, capable of fault in the form of negligence or intention) he or she is *culpa capax*.³⁴

4.4 Capacity to litigate

The capacity to litigate means the capacity to be a party to a lawsuit, either as a plaintiff (the person who brings the case) or as a defendant (the person against whom the case is brought). The

27 For more information about delictual liability see section 6.2 of this chapter.

28 Note the exception of the *actio de pauperie* and similar delicts that do not require fault. We discuss this in Part 1, Chapter 4 on minority.

29 This form of intention is defined as ‘*dolus directus*’ or ‘direct intention’.

30 See *Kruger v Coetzee* 1966 (2) SA 428 (A) at 430.

31 There are a few exceptions to this rule, such as the *actio de pauperie* which we discuss in Part 1, Chapter 4.

32 *Wille’s Principles* (2007: 1122) citing *Weber v Santam Versekeringsmaatskappy Bpk* 1983 (1) SA 381 (A) at 403.

33 With the exception of strict liability delicts. See the discussion in Part 1, Chapter 4.

34 For a general discussion on accountability as requirement for delictual liability, see Neethling (2010: 125–126). For a discussion on the requirements for criminal accountability, see Burchell (2005: 455–554); Snyman (2008: 159–162).

question is not whether the person has a good case in law – it is whether she or he can bring the case to the court.

A person might have an excellent case, for example, it might be clear that X has committed a delict against her by driving through a red robot and crashing into her car. But if she has no capacity to litigate, she will not be able to sue X in court.

In Latin, people's capacity to litigate is referred to as their *locus standi in judicio*.

5 WHAT IS 'STATUS'?

In the legal context, the word 'status' means your standing in the eyes of the law.³⁵ People's legal status determines their 'ability or capacity to relate to the legal system.'³⁶ Specifically, a person's status determines which legal capacities a person has in the eyes of the law³⁷ – how do we know if a person has the capacity to conclude contracts, get married, or litigate? This will depend on his or her 'status'.

A person's legal status (and his or her consequent legal capacities) is based on membership of a particular class or group.³⁸ The law is not concerned with all kinds of groups. Paton points out that it is possible to identify various groups of people – he uses the example of people with blue eyes, or people who play bridge.³⁹ But the law is not concerned with such groups.⁴⁰ As we explain in the following chapters, the law is primarily concerned with groups of people defined in terms of age and mental disability (we also look at sex and gender, intoxication, prodigality, insolvency and physical disability as factors that might affect status and capacity). Marriage also affects people's status, and might affect their legal capacities. People who marry in community of property, for example, have limited capacity to perform some juristic acts.⁴¹

On the whole, it is not possible to choose which of these groups you belong to.⁴² All 17-year-olds fall into the class 'minors' for example.⁴³ Furthermore, once the law assigns you to a class and thus gives you a particular status, you cannot change the capacities conferred by this status.⁴⁴ The various capacities associated with a status are 'conclusively fixed' by the law, not chosen by the people who have a particular status.⁴⁵ All minors have limited capacity to bind themselves in contract.⁴⁶ This is the legal consequence of their minority status.

The law decides which groups will be associated with legal status. In South African law, for example, membership of the group 'minors' affects legal status; membership of the group 'blue-eyed people' does not. South African law also decides which people fall into the various groups –

35 Boberg (1999: 68).

36 Boberg (1999: 68).

37 Boberg (1999: 68). See also Boezaart (2010: 6); Hosten (1980: 284).

38 Paton (1972: 399).

39 Paton (1972: 400).

40 Paton (1972: 400). See also Hosten (1980: 284).

41 See Part 2, Chapter 8 on marital property.

42 See Paton (1972: 400). However, there are obvious exceptions to this general rule: for example, people can choose whether to marry or not, and people who marry can decide whether or not they wish to marry in community of property. We explain this in Part 2, Chapter 8 on marital property.

43 Unless they are married.

44 Paton (1972: 399). Again, the obvious exception is marriage. It is possible to change some of the consequences of marriage (see Part 2, Chapter 8 on marital property). There are also invariable consequences of marriage that cannot be changed (see Part 2, Chapter 7 on personal consequences of marriage).

45 Paton (1972: 399).

46 We discuss this in Part 1, Chapter 4 on minority. Minors need their guardians' assistance to incur binding contractual liability. Emancipated minors have more 'general assistance', but they are subject to the limited capacities of their minority status.

how do we know that a 17-year-old is a minor? This is a rule of South African law. The Children's Act provides that the age of majority is 18.⁴⁷

In South African law, a person's status is determined by their legal domicile.⁴⁸ The law of the country of domicile determines which groups are important, and which group the person belongs to. We discuss this in the Chapter 7 on domicile.

6 FORMS OF LIABILITY

Many of the chapters in the law of persons' part of this book refer to various forms of civil liability. The most important forms of civil liability discussed in this part of the book are:

- contractual liability
- delictual liability
- liability for unjustified enrichment.

As background to the discussions in the following chapters, we set out some of the foundational principles of these forms of liability here. You might prefer to postpone reading this section on liability until you need to understand a particular form of liability in the context of another chapter.

6.1 Contractual liability

A contract is an agreement between two or more people that can be enforced by legal mechanisms if necessary. A **contract** is a juristic act through which the parties agree that one or both of them will incur legal obligations to carry out certain *performances* – for example, to give something or do something.⁴⁹ Most contracts are **reciprocal**. This means that the parties agree that their performances will be offered in exchange for the other party's performance.⁵⁰ A typical example of this is a contract of sale.

For example, Mr Lee is selling a special underwater camera in his shop for R10 000. Trixie offers to buy the camera. Trixie and Mr Lee enter into a contract in terms of which Mr Lee will deliver the camera to Trixie and Trixie will pay Mr Lee R10 000. These performances are reciprocal.

Suing someone '*ex contractu*' (that is, on the basis of contract) is a very powerful claim. In principle, you can use a contractual claim to get everything the person agreed to pay or do in terms of the contract. The court can order **specific performance** from the other contracting party. For example, the court can order that person to pay all the money he or she owes in terms of the contract; or deliver the goods he or she promised; or perform the services he or she promised.⁵¹ In our example, a court could order Mr Lee to hand over the camera, or order Trixie to pay R10 000.

Where there has been a **breach of contract**, the court can order the breaching party to pay damages. These damages can be extensive; they are aimed at putting the innocent party in the

47 Children's Act 38 of 2005, s 17. The age of majority was changed in July 2007. Before this date, the age of majority was 21, and 20-year-olds were thus minors. Since July 2007, 20-year-olds are majors in the eyes of the law.

48 *Wille's Principles* (2007: 53); Hosten (1980: 284–285).

49 See Hutchison (2012: 7).

50 Hutchison (2012: 7).

51 See *Wille's Principles* (2007: 738). Note, however, that the court will not always order a specific performance. There are 'some types of performance that the law cannot enforce, and others that it will not enforce' (see *Wille's Principles*, 2007: 738). See also Eiselen (2012: 322–324).

same position they would have been in if the terms of the contract had been fully and faultlessly performed.⁵²

Damages for breach of contract

Trixie is a professional photographer. She urgently needs a very special underwater camera when she joins a team excavating a famous wreck in the South Atlantic. If she has this camera, Trixie will be able to photograph the historic excavation and sell her unique photographs to National Geographic magazine for R100 000.

Mr Lee promises to deliver the special underwater camera before 5 January (the day the expedition team leaves). Unfortunately, he fails to do so. There is no other suitable camera available in the whole of South Africa. Trixie is unable to take the unique photographs, and she loses her opportunity to earn the R100 000.

What damages can Trixie claim from Mr Lee? How much money could she claim to put her in the position that she would have been in if there had been full and faultless performance of the contract (that is, if Mr Lee had delivered the camera in good time)?

This book focuses on people who either lack contractual capacity altogether, or who have limited capacity to contract. People who have limited capacity to contract (for example, unassisted minors between the ages of seven and 18) cannot incur binding contractual obligations. This means that the other party to the contract will be unable to sue them *ex contractu* (on the basis of contract) and will not have the benefit of the powerful contractual remedies. In some cases (for example, if the contract involves an infant under seven or a person who is mentally ill), the contract will be entirely **void** in the eyes of the law. As far as the law is concerned, there is no contract at all – nothing happened. The parties must be put back in the same position that they were immediately before the purported (apparent) contract was entered into.⁵³

6.2 Delictual liability

Delicts are civil wrongs.⁵⁴ A good example of a delict is a car accident. For example, if Sophia drives her car through a red light and crashes into Mr Larney's BMW, Mr Larney might be able to sue Sophia in delict. To bring a delictual claim against a person, you must prove all the 'elements of delict'.

Essentially, you must prove:

1. *Conduct*: the person did something (or failed to do something she or he should have done); and
2. this act is deemed to be *wrongful* in the eyes of the law; and
3. the person acted with *fault* (intention or negligence);⁵⁵ and

52 The aim of these damages is to put the person in the position that he would have been in if there had been 'full and faultless performance' of the contract (Hosten, 1980: 427–428). See *Victoria Falls and Transvaal Power Co v Consolidated Langlaagte Mines Ltd* 1915 AD, holding that 'the rule to be adopted is that it should be put in as good position by the award of damages as it would have been in if the defendant company had carried out its contract' (at 46); see also *Wille's Principles* (2007: 882–883); Eiselen (2012: 329–340). We say that the person suing for breach of contract is entitled to positive interesse. See Boezaart (2010: 56 fn 76).

53 See *Wille's Principles* (2007: 738–739), noting that the purported contract is 'worthless and non-existent'.

54 Boberg (1989: 1).

55 As explained above, infants (for example) are not legally capable of acting with either intention or negligence. This means that this element of delict cannot be satisfied when the act of an infant causes damage to someone else.

4. her or his action *caused* ...
5. some form of *damage* to you.⁵⁶

You use specific delictual remedies to claim damages for different kinds of harm.⁵⁷ We discuss some of these delictual remedies in the section on ‘remedies’ below. In general, the law distinguishes between ‘patrimonial’ and ‘non-patrimonial’ damages. You sue for **patrimonial damages** when the defendant’s act causes you financial or monetary loss. In our example, Mr Larney can bring a delictual claim for the money he spends fixing his car; and for receiving treatment in hospital. The aim of these patrimonial damages is to put the plaintiff (Mr Larney) in the same financial position that he would have been in if the delict had not been committed.⁵⁸

You can also sue in delict for non-patrimonial damages (for non-monetary harm). For example, Mr Larney might have experienced considerable pain and suffering as a result of his accident. Mr Larney’s pain does not cause him any financial loss. However, the law will still award him delictual damages (in the form of money) as compensation for the pain caused by Sophia’s wrongful and negligent act.⁵⁹ These are non-patrimonial damages. The aim of non-patrimonial damages awarded for pain and suffering is to compensate the plaintiff: to somehow ‘make good the loss; to amend the injury.’⁶⁰ People can also sue for non-patrimonial damages if other personality interests have been infringed – for example if someone damages their reputation, invades their privacy, or harms their body. The aim of an award of damages under the *actio iniuriarum* is to ‘compensate for impairment of personality rights.’⁶¹

6.3 Unjustified enrichment

Unjustified enrichment claims are the ‘Cinderella claims’ of our legal system. In practice, these tend to be the claims you use when all else fails.⁶² Compared to the powerful contractual claims, unjustified enrichment claims are very weak. Sometimes you will see these claims referred to as ‘quasi-contractual’ claims. It is important to remember, however, that these are not contractual claims. Also, you should note that if a party does have a valid contractual claim, he or she *must* sue in contract (*ex contractu*) and cannot use an enrichment remedy.⁶³

In general,⁶⁴ an action on the grounds of unjustified enrichment arises where ‘one person’s estate is increased at the expense of another without legal cause.’⁶⁵ The basic requirements for the remedy are:

1. The defendant has been factually enriched, and the plaintiff has been factually impoverished.
2. There is a causal link between the defendant’s enrichment and the plaintiff’s impoverishment (in other words, the defendant has been enriched at the plaintiff’s expense).

56 These ‘elements of delict’ are set out in *Wille’s Principles* page 1094 and briefly discussed on pages 1094–1095. See also Boberg (1989: 24–25). The question of ‘wrongfulness’ is particularly complex and controversial. For a brief introduction and overview of wrongfulness see *Wille’s Principles* (2007: 1096–1102). See also Neethling (2010), generally.

57 See *Wille’s Principles* (2007: 1092).

58 *Wille’s Principles* (2007: 1133); Boberg (1989: 478).

59 Boberg (1989: 516); *Wille’s Principles* (2007: 1161).

60 Per Moseneke DCJ in *Van der Merwe v Road Accident Fund* 2006 (4) SA 230 (CC) at para 41.

61 Burchell (1998: 435).

62 See Visser (2008: 9), pointing out that enrichment claims are used ‘where the rules of contract, delict, and property “run out”,’ but arguing that unjustified enrichment should be seen as ‘an autonomous area of obligations.’ See also Sonnekus (2008: 29), discussing the view of enrichment remedies as offering ‘the last ray of hope.’

63 See *BK Tooling (Edms) Bpk v Scope Precision Engineering (Edms) Bpk* 1979 (1) SA 391. However, see also Visser’s discussion on unjustified enrichment claims as ‘subsidiary’ to contractual claims (2008: 56–59).

64 It appears that South African law does not have a general ‘unjustified enrichment’ claim and that strictly speaking, enrichment claims arise only in certain recognised situations (see Visser, 2008: 4–5). Sonnekus (2008: 17). These, however, are the general principles that underpin the claim in these situations.

65 Visser (2007: 1041–1043), quoting Lotz & Brand.

3. There is no valid legal reason (cause) that justifies the enrichment of the defendant at the plaintiff's expense, or that justifies the retention of the enrichment by the defendant.⁶⁶

You can already see some of the reasons why this claim is weaker than a contractual claim. If a person sues in contract, she or he can sue for the full amount owing in terms of the contract. In unjustified enrichment, however, her or his claim is limited to the amount of the plaintiff's factual impoverishment (see point 1 above).⁶⁷ Imagine, for example, that a certain Mr Lee sells an iPod to Bibi and the purchase price is R2 000. If Bibi is bound by her contract and doesn't pay, Mr Lee can sue Bibi *ex contractu* for the full amount owing. So if Bibi has not yet paid anything, Mr Lee can sue Bibi for R2 000.

If Mr Lee is unable to sue Bibi on the contract (for example, if Bibi is an unassisted minor) then Mr Lee could potentially bring a claim based on unjustified enrichment. Unjustified enrichment claims are limited to the factual amount of the plaintiff's impoverishment.⁶⁸ As it happens, the real worth of the iPod is only R1 500. This means that the most Mr Lee will be able to claim is R1 500. In fact, he has only been impoverished to the amount of R1 500-worth of iPod, and the unjustified enrichment claim is based on factual impoverishment and not on the contract price (that is, the enrichment claim is not based on the purchase price of R2 000).⁶⁹

Another weakness of the unjustified enrichment remedy is that the plaintiff can sue only for the amount that the defendant in fact remains enriched by, on the day that the plaintiff institutes his or her action.⁷⁰ This could be a problem for Mr Lee. Imagine for example that Bibi drops the iPod into the ocean and it gets swept out to sea: now Bibi is no longer enriched by R1 500-worth of iPod. This is unfortunate for Mr Lee – he is using an unjustified enrichment remedy, and his claim is limited to the amount of Bibi's factual remaining enrichment. Unfortunately for Mr Lee, Bibi's remaining enrichment is now zero.⁷¹

7 USEFUL REMEDIES, DEFENCES AND DOCTRINES

In this section we provide an introduction to some of the legal remedies that we refer to in the following chapters. You might prefer to postpone reading this part of the chapter until you need to understand a particular remedy in the context of another chapter.

Many of our most important common-law remedies have Latin names because we have inherited them from Roman law. One of the reasons that these remedies have endured is that they are very useful.

The *rei vindicatio* is one of the most powerful remedies in private law. The owner of a physical thing (for example, a car or a necklace) can use this remedy to recover his or her thing from anyone who is in possession of it without cause.⁷² The *rei vindicatio* is an action '*in rem*' (a property-based remedy).

A *condictio* is used to recover money when one person has been unjustly enriched at the expense of another. There are several specific *condictiones* in our law.⁷³

The *exceptio non adimpleti contractus* is a defence that can be used when parties owe reciprocal obligations in terms of a contract. If A sues for performance without performing or

66 Visser (2007: 1041–1046). See also Visser (2008: 157). Sonnekus (2008: 1).

67 This is because of the 'double cap rule' (see, for example, Visser (2008: 8)). The plaintiff's claim is limited to the extent of his impoverishment.

68 Visser (2008: 158–159).

69 But see Part 1, Chapter 4 discussing the rule that the contract price will set a maximum cap on what can be claimed in situations where the true value of the thing is more than the contract price.

70 This is the other side of the 'double cap rule'. *Wille's Principles* (2007: 1049–1050); Visser (2008: 163).

71 We will look at other ways in which factual enrichment might be reduced or wiped out in Part 1, Chapter 4 on minority.

72 See *Wille's Principles* (2007: 539); Silberberg (2006: 242–246).

73 See generally Visser (2008); and Visser (2007: 1041–1090); Sonnekus (2008).

offering to perform, B can raise the defence of *exceptio non adimpleti contractus*. This defence gives B the right to withhold his performance until A has performed her side of the deal.⁷⁴

The **Aquilian action** (called the *actio legis Aquiliae* in Latin) is a delictual remedy. A plaintiff can use this remedy to claim damages for patrimonial loss caused by the defendant's wrongful act. The defendant must have acted with either intention or negligence.⁷⁵

The *actio iniuriarum* is a delictual remedy. A plaintiff can use this remedy to claim non-patrimonial damages when her or his personality rights have been infringed.⁷⁶ The *actio iniuriarum* requires fault in the form of intention; the plaintiff cannot use this remedy if the defendant has been merely negligent.⁷⁷

The **action for pain and suffering** is a delictual remedy. A plaintiff can use this remedy to sue for non-patrimonial damages arising from physical injury (for example, caused in a car accident). She or he can sue for pain, suffering, disfigurement, disability and loss of amenities of life, and shortened life expectancy.⁷⁸ The defendant must have acted with either intention or negligence.⁷⁹

The **doctrine of estoppel** provides that:

1. where A has lied, and
2. B has relied on A's lie to B's disadvantage, then
3. A will be prevented ('estopped') from relying on the truth in her or his defence.⁸⁰

Note that some of these remedies are 'actions'. X takes the initiative and brings the case to court using the remedy, for example, the *actio iniuriarum* or the *rei vindicatio*. The *exceptio non adimpleti contractus*, however, is only a defence (i.e., not an 'action'). B can use this *exceptio* only if and when A sues her for performance.

You should also distinguish between the property-based claim (the *rei vindicatio*) and the personal claims. The *rei vindicatio* is part of the law of property. The *rei vindicatio* is based on ownership of the thing. It can be brought against anyone who is in possession of the thing without cause. It is a claim in *rem* (*rem* means, 'thing', in Latin).⁸¹ It is based on a real right.

Claims based on contract, delict, or unjustified enrichment are part of the law of obligations. The contractual, delictual and enrichment remedies cannot be brought against just anyone – they can be brought only against a particular person. These are claims in *personam*.

74 *U-Drive Franchise Systems (Pty) Ltd v Drive Yourself (Pty) Ltd* 1976 (1) SA 137 (D) at 149D. See *Wille's Principles* (2007: 827–828). This remedy is available only if A has contracted to perform before B or at the same time as B. See *Skead v Conradie* 1995 (2) SA 111 (A) at 118I. See also Eiselen (2012: 316–321).

75 Boberg (1989: 268–269). In practice, most claims are based on negligence rather than intention (Boberg, 1989: 269). See also Neethling (2010: 8).

76 *Wille's Principles* (2007: 1166). Neethling (2010: 12).

77 Boberg (1989: 18).

78 See Boberg (1989: 516); *Wille's Principles* (2007: 1161); Neethling (2010: 15).

79 Boberg (1989: 516).

80 See, for example, the definition provided in *Miller v Dannecker* 2001 (1) SA 928 (C) at para 18. See also *Wille's Principles* (2007: 552).

81 The Latin word for 'thing' is *res*. In Latin, the form of the word changes depending on the context. *Rem* is the same word, and so is *rei*.

8 SUCCESSION

This is the area of private law governing what happens to your property when you die. You will need to have a basic knowledge of the law of succession as you work through some of the chapters in this book.⁸²

The property of the person who dies is referred to as ‘the **estate**’. Your estate means everything you own: this includes all your physical property, for example, house, farm, car, clothes, CD collection, and so on, and all the money you have in the bank.

If you die without a valid will, you die ‘**intestate**’ and your estate will be divided up according to the rules of ‘**intestate succession**’. ‘Intestate succession’ means inheritance where there is no valid will.

The basic rule of intestate succession is that the estate must be divided among the deceased’s **next of kin** (closest family).⁸³ Here are some typical examples:

In Example One, A is *unmarried* and she has *no children*. However, both her parents are still alive. In this situation, her next of kin are her *parents* and they will share her estate equally.

In Example Two, B is *married* and has *two children*. His wife and two children share the estate equally.

Testate succession means succession in terms of a will. The basic rule is that the wishes expressed in the will must be carried out.⁸⁴ The person who writes the will is called the **testator**. If the will fails for some reason (for example, the person who is supposed to inherit the entire estate in terms of the will is already dead), then the rules of intestate succession will apply.⁸⁵

For all forms of succession, the estate ‘vests’ (becomes due) on the day of the deceased’s death.⁸⁶

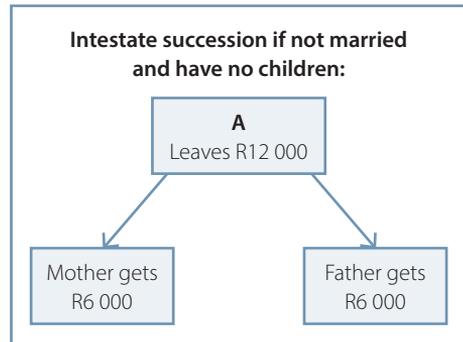


Figure 2.4: Example 1 Intestate succession

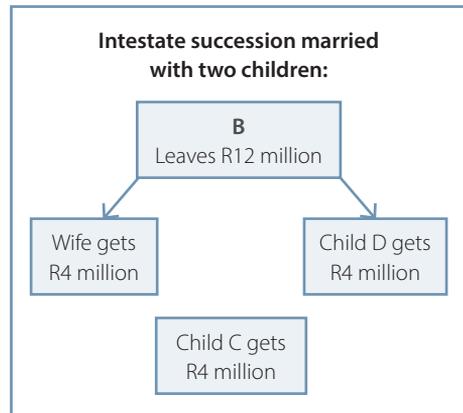


Figure 2.5: Example 2 Intestate succession

82 For more information on the law of succession see Jamneck and Rautenbach (2009), De Waal (2008) and Palekar (2007: 666–729).

83 See *Wille's Principles* (2007: 679–682) for a full explanation of who the ‘next of kin’ are in terms of South African Law of Succession.

84 See *Wille's Principles* (2007: 683–684).

85 *Wille's Principles* (2007: 679).

86 *Wille's Principles* (2007: 679).

Review your understanding

1. Jacob agrees to look after Mary's laptop while she goes to the post office. He promises not to turn it on (she is trying to save the battery). While Mary is away, Jacob turns on the laptop and reads her private email. He forwards one to his friend Demetri.
Which of Mary's rights are infringed by Jacob's actions (if any)? More than one might apply.
 - a) a real right
 - b) a personal right
 - c) a personality right.
2. Mary and Jacob enter into an agreement in terms of which Mary will babysit Jacob's children on Saturday afternoon, and Jacob will give Mary his old iPod. When Mary arrives on Jacob's doorstep at lunchtime on Saturday, which of these rights does she have (if any)? More than one might apply.
 - a) a real right to the iPod
 - b) a personal right to delivery of the iPod
 - c) a personality right to delivery of the iPod.
3. Classify the following remedies as (1) property remedies (actions in rem), (2) contractual remedies, (3) delictual remedies, or (4) remedies to recover unjustified enrichment:
 - a) specific performance
 - b) *actio iniuriarum*
 - c) *condictio indebiti*
 - d) *actio legis Aquiliae*
 - e) *rei vindicatio*
 - f) breach of contract
 - g) *condictio sine causa specialis*
 - h) action for pain and suffering.

What can you claim with each of these remedies?

Further reading and a note on sources

Boberg's Law of Persons and the Family. Many of the chapters in Part 1 of this book refer repeatedly to P. Q. R. Boberg's *Law of Persons and the Family* which was first published in 1977. The latest edition (2nd edition, Juta, 1999) was edited by B. Van Heerden, A. Cockrell, and R. Keightly and has contributions by a number of other people. On the whole, the ideas that we attribute to 'Boberg' are Professor Boberg's own ideas, and appear in identical form in the first edition. We cite the second edition for convenience.

Boberg's is an outstanding source on the law of persons, and we recommend that you consult it regularly as you work through this textbook. It is also an excellent source for recommended further reading. He cites hundreds of cases; you can read these for further elaboration on and illustration of the rules concerned. He also cites the Roman-Dutch writers, which is very useful if you want to follow up the Roman-Dutch origins of our common-law rules.

Wille's Principles of South African Law (9th edition, edited by F. Du Bois, Juta, 2007). The first edition of Wille was published in 1937. It was 426 pages long. The most recent edition is 1269 pages long. Clearly, there are a lot of new ideas in this book that cannot be attributed to Professor Wille. However, it is extremely difficult to trace the original authors of the ideas through nine editions of the work. We therefore just cite the abbreviated name of the book *Wille's Principles*.

Other useful books on the law of persons

Boezaart, T. (2010) *Law of Persons*, 4th edition, Cape Town: Juta. [This is the latest edition of the book previously written by Davel (now Boezaart) and Jordaan].

Heaton, J. (2012) *The South African Law of Persons*, 4th edition, Durban: LexisNexis

Useful introductions to other areas of law

Contract

Hutchison, D., and Pretorius C.-J. (eds) (2012) *The Law of Contract in South Africa*, 2nd edition, Cape Town: Oxford University Press.

See also the chapters on contract in *Wille's Principles*.

Unjustified enrichment

Visser, D. (2008) *Unjustified Enrichment*, Cape Town: Juta.

See also the chapters on unjustified enrichment in *Wille's Principles*.

Delict

Neethling, J., and Potgieter, J. (2010) *Law of Delict*, Durban: LexisNexis.

See also the chapters on delict in *Wille's Principles*.

Criminal law

Burchell, J. (2008) *Principles of Criminal Law*, 3rd edition, Cape Town: Juta.

Snyman, C. (2008) *Criminal Law*, 5th edition, Durban: LexisNexis.

Property law

Mostert, H., and Pope, A. (eds) (2010) *The Principles of the Law of Property in South Africa*, Cape Town: Oxford University Press.

See also the chapters on property law in *Wille's Principles*.

Succession

Jamneck, J., and Rautenbach, C. (eds) (2009) *The Law of Succession in South Africa*, Cape Town: Oxford University Press.

See also the chapter on succession in *Wille's Principles*.

Constitutional rights

Currie, I., and de Waal, J. (2013) *The Bill of Rights Handbook*, 6th edition, Cape Town: Juta.

Useful foundational introduction to South African law

If you are a first year law student, you might find it useful to consult:

Meintjes-Van der Walt, L. (ed) (2011) *Introduction to South African Law: Fresh Perspectives*, 2nd edition, Cape Town: Pearson Education. [This book provides a useful overall introduction to the South African legal system, and is intended particularly for first-year undergraduate law students.]