CHAPTER 2

SCIENCE OF LAW

LAW = SYSTEM OF RULES WHICH APPLY IN COMMUNITY

RIGHT = ANY RIGHT WHICH LEGAL SUBJECTS HAS REGARDING SPECIFIC LEGAL OBJECTS & WHICH IS PROTECTED BY LAW

PUBLIC LAW - LEGAL RULES CONTROL RELATIONSHIPS BETWEEN STATE & CITIZENS

PRIVATE LAW - LEGAL RULES RELATIONSHIPS BETWEEN CITIZENS

PUBLIC LAW SUBDIVISIONS: INTERNATIONAL LAW, CONSTITUTIONAL LAW, ADMINISTRATIVE LAW, CRIMINAL LAW & LAW OF PROCEDURE

PRIVATE LAW SUBDIVISIONS: LAW OF PERSONS, FAMILY LAW, LAW OF PERSONALITY & PATRIMONIAL LAW

FURTHER CATEGORY: COMMERCIAL / MERCANTILE LAW

COMMERCIAL LAW - RELATED TO BUSINESS ACTIVITY

COMMERCIAL LAW: CONTRACTS OF SALE, LEASE & CREDIT AGREEMENTS, NEGOTIABLE INSTRUMENTS, INSOLVENCY, COMPANIES, PARTNERSHIP, CC'S, AGENCY, SECURITY, INSURANCE, CONTRACTS OF TRANSPORTATION, LABOUR LAW, INTELLECTUAL PROPERTY LAW, COMPETITION LAW, CONSUMER LAW, TAX LAW
MEANING OF RIGHT

RIGHT IS ANY RIGHT WHICH LEGAL SUBJECT HAS REGARDING SPECIFIC LEGAL OBJECT & WHICH IS PROTECTED BY LAW

SUBJECTIVE RIGHT = RELATIONSHIP BETWEEN LEGAL SUBJECT & LEGAL OBJECT & BETWEEN LEGAL SUBJECT & OTHER LEGAL SUBJECT = RIGHT

LEGAL OBJECT = OBJECT OF LEGAL SUBJECT'S CLAIM - PROPERTY, INTELECTUAL PROPERTY, ASPECTS OF PERSONALITY & PERFORMANCES

JURISTIC PERSONS = OTHER THAN HUMAN BEINGS - COMPANY, UNIVERSITY, MUNICIPALITY, STATE

LEGAL SUBJECTS = NATURAL PERSONS / JURISTIC PERSONS

NATURAL PERSONS = HUMAN BEGINS

SUCH RIGHT = SUBJECTIVE RIGHT

NATURE OF LEGAL SUBJECTS, LEGAL OBJECTS & SUBJECTIVE RIGHTS IS DETERMINED BY OBJECTIVE LAW
CATEGORIES OF JURICICAL RIGHT

(A) REAL RIGHT = LEGAL RIGHT WHICH LEGAL SUBJECT HAS TO PROPERTY

(1) OWNERSHIP

(2) SERVITUTES, SUBDIVIDED AS

(I) PRADIAL SERVITUTES - ADJACENT PROPERTY - LIMITED RIGHT TO PROPERTY OF ANOTHER

(II) PERSONAL SERVITUTES - ENJOYMENT OF PROPERTY OF ANOTHER (USUFRUCT)

(B) INTELECTUAL PROPERTY

(D) PERSONAL RIGHTS - GIVING SOMETHING, DOING SOMETHING, REFRAIN FROM DOING SOMETHING

(C) PERSONALITY RIGHTS - REPUTATION

(3) MORTAGE / PLEDGE - RIGHT TO SELL PROPERTY IF DEBTOR FAILS TO SETTLE DEBT
LAW OF PERSONS

- REGULATES CONCEPTION, EXISTENCE & TERMINATION OF NATURAL PERSON AS LEGAL SUBJECT
- ALL HUMANS = LEGAL SUBJECTS
- HUMAN BEING & ITS LEGAL CAPACITY COME INTO EXISTENCE AT BIRTH
- RIGHTS OF UNBORN CHILD ARE PROTECTED, PROVIDED THAT CHILD IS BORN ALIVE
- LEGAL CAPACITY = TERMINATED BY DEATH
- LAW PROTECTS BODY & DECEASED'S FORMER ASSETS
- PROTECTION NOT IN INTEREST OF DECEASED. BODY = COMMUNITY, ASSETS = CREDITORS & HEIRS
- STATUS ACCORDED TO EVERY LEGAL SUBJECT
- ALL HUMANS = LEGAL SUBJECTS

STATUS ACCORDED TO EVERY LEGAL SUBJECT

LAW OF PERSONS
STATUS = THE AGGREGATE OF RIGHTS & DUTIES WHICH ARE ATTACHED TO A PERSON AS ONE OF A SPECIFIC CLASS.

FACTORS DETERMINE STATUS: AGE, SEX, MARITAL STATUS, SANITY & LEGITIMICY OF DESCENT

STATUS = LEGAL CONDITION = POSITION OCCUPIED BY LEGAL SUBJECT IN RELATION TO FELLOW LEGAL SUBJECTS AS MEMBER OF CLASS IN LEGAL COMMUNITY

STATUS CANNOT BE CHANGED OF OWN ACCORD, APART FROM EXCEPTIONAL CASES - IE CERTAIN STEPS - IE MARRIAGE

VOTE - PUBLIC LAW; ACQUIRE OWNERSHIP - PRIVATE LAW
FAMILY LAW

- Valid Marriage, Legal Consequences of Marriage, Grounds on Which Marriage Can Be Dissolved & Legal Relationship Between Parents & Children
- Law of Parental Authority
- Law of Husband & Wife
LAW OF PERSONALITY

- Physical Being, Dignity, Reputation
- Physical & Psychical Integrity
- Right of Privacy
- Protected by Criminal Law (Assault) & Civil Law (Damages in Delict)
- Limitations (Politician Caricatured in Cartoon)
LAW OF PROPERTY

RIGHT OF OWNERSHIP

MORGAGE & PLEDGE

SERVITUDES
LAW OF PROPERTY

RELATIONSHIPS OF PERSONS TOWARDS MATERIAL OBJECTS

GRANTING & RECOGNITION OF RIGHTS OVER PROPERTY

DEPEND ON KIND OF REAL RIGHT HELD BY PERSON

REAL RIGHT OF OWNERSHIP GIVES HOLDER WIDE POWERS TO USE, ENJOY, DESTROY, SELL

RIGHT OF PLEDGE GIVES HOLDER ONLY POSSESS TO PROPERTY

RIGHT OF OWNERSHIP = CORNERSTONE OF ALL REAL RIGHTS & MOST COMPREHENSIVE RIGHT

LAW OF PROPERTY
RIGHT OF OWNERSHIP

OWNERSHIP & POSSESSION

PROTECTION OF OWNERSHIP & POSSESSION

ACQUISITION OF OWNERSHIP
RIGHT OF OWNERSHIP

MOST COMPLETE POWER OVER PROPERTY

OWNERSHIP

OWNERSHIP DO NOT CONFER UNLIMITED / ABSOLUTE CONTROL

RESTRICTIONS OF PUBLIC LAW:
SANITARY REGULATIONS,
BUILDING REGULATIONS,
STATUTORY PROVISIONS WHICH PROHIBIT DIVISION OF LAND,
TRAFFIC RULES, ETC

OWNERSHIP = RESTRICTED IN INTEREST OF COMMUNITY

MAY BE RESTRICTED BY NEIGHBOUR'S RIGHT OF OWNERSHIP (MAY NOT EXCAVATE IN SUCH WAY THAT NEIGHBOUR'S LAND CAVES IN)

PERSON WHO HAS RIGHT OF OWNERSHIP = NOT NECESSARILY POSSESSOR OF PROPERTY

BINDING ON SUBSEQUENT COURTS

OWNERSHIP & POSSESSION

2 ELEMENTS OF POSSESSION: PHYSICAL & PSYCHICAL

PHYSICAL: IN POSSESSION OF PROPERTY

PSYCHICAL: INTENTION OF POSSESSING

RETURN TO LAWS, RIGHTS, WHICH END,

OWNERSHIP & POSSESSION

PHYSICAL: IN POSSESSION OF PROPERTY

PSYCHICAL: INTENTION OF POSSESSING

BINDING ON SUBSEQUENT COURTS
ACQUISITION OF OWNERSHIP

BASIC DISTINCTION: ORIGINAL & DERIVATIVE

ORIGINAL METHOD OF ACQUIRING OWNERSHIP: OCCUPATION & PRESCRIPTION

OCCUPATION: SEIZE PROPERTY BELONGING TO NO-ONE WITH INTENTION OF BECOMING OWNER

OCCUPATION - CANNOT BECOME OWNER OF PROPERTY BELONGING TO ANOTHER

PRESCRIPTION: HAS POSSESSED OPENLY / OWNER FOR UNINTERRUPTED PERIOD OF 30 YEARS

OCCUPATION = ORIGINAL - NEW OWNER DOES NOT OBTAIN RIGHT OF OWNERSHIP FROM ANOTHER

DERIVATIVE METHOD OF ACQUIRING OWNERSHIP: MOVABLE PROPERTY & IMMOVABLE PROPERTY

IF OWNER ALLOWS POSSESSION OF PROPERTY FOR LONG PERIOD, IMPRESSION TO OUTSIDE WORLD - POSSESSOR = OWNER

REGISTRATION OF TRANSFER OF DEEDS REQUIRED TO AQUIRE OWNERSHIP OF IMMOVABLE PROPERTY

IF EITHER PARTY LACKS INTENSION, OWNERSHIP DOES NOT PASS

MOST COMMONLY - ACQUIRING OWNERSHIP - DELIVERY OF PROPERTY
Ownership is protected primarily by granting owners remedy rei vindicatio.

Owner may reclaim property from any person who is wrongfully in possession of it.

In action someone asks that possession lost be restored, court not intereses in who owner is, but if applicant was wrongfully deprived of possession.

No one may deprive someone of possession against will.

Remedy - possession restored - mandament van spolie.

Protection of ownership & possession.
SERVITUTES

RIGHT OF SERVITUTED IS LIMITED REAL RIGHT OVER PROPERTY OF ANOTHER, WHICH CONFERS ON THE HOLDER OF THE RIGHT, SPECIFIC POWERS TO USE PROPERTY IN PARTICULAR WAY

SERVITUTES DIVISION:
- PRAEDIAL SERVITUTES
- PERSONAL SERVITUDS

PRAEDIAL SERVITUDS:
- SERVITUDE RIGHT OF WAY
- SERVITUDE OF DRAWING WATER
- SERVITUDE OF GRAZING

IF OWNER OF DOMINANT TENEMENT SUFFERED LOSS, MAY CLAIM DAMAGES FROM SERVIENT TENEMENT

LAND OF OWNER WHO IS HOLDER OF SERVITUTED = DOMINANT TENEMENT & SERVITUED = SERVIENT TENEMENT

MOST COMMON METHOD OF ACQUIRING SERVITUDE IS BY REGISTRATION AT DEEDS OFFICE AGAINST TITLE DEEDS OF DOMINANT & SERVIENT PROPERTIES

ONLY COMES INTO BEING AT REGISTRATION

CAN BE OBTAINED BY PRESCRIPTION - HAS OPENLY & AS THOUGH WERE ENTITLED TO DO SO EXERCISED FOR AN UNINTERRUPTED PERIOD OF 30 YEARS RIGHTS & POWERS WHICH PERSON WHO HAS RIGHT TO SUCH SERVITUDE IS ENTITLED TO EXERCISE (SECTION 6 OF PRESCRIPTION ACT 68 OF 1969)
PERSONAL SERVITUDES

USUFRUCT (LIFE-INTEREST)

METHOD OF OBTAINING USUFRUCT: REGISTRATION - TERMS OF TESTAMENTARY DISPOSITION

MAY TAKE ALL PRODUCE OF PROPERTY

MAY NOT BE GRANTED FOR LONGER THAN LIFETIME OF HOLDER

USUFRUCT MAY NOT BE TRANSFERRED TO ANOTHER

PROPERTY MAY NOT BE DESTROYED / SUBSTANTIALLY ALTERED
MORTGAGE & PLEDGE

LIMITED REAL RIGHTS OVER PROPERTY

OBJECT OF PLEDGE = MOVABLE PROPERTY & IS ACQUIRED THROUGH AGREEMENT & DELIVERY OF PROPERTY

OBJECT OF MORTGAGE = IMMOVABLE PROPERTY & MORTGAGE = ACQUIRED BY REGISTRATION AGAINST TITLE DEED

CONSTITUTE WAYS IN WHICH DEBTS CAN BE SECURED
LAW OF SUCCESSION

ESTATE ADMINISTERED BY EXECUTOR/S UNDER LETTERS OF EXECUTORSIP GRANTED BY MASTER

DUTY OF EXECUTOR TO PAY DEBTS OF DECEASED, REALISING ASSETS OF ESTATE IF NECESSARY

AFTER PAYMENT OF DEBTS, REMAINING BALANCE DISTRIBUTED AMONGST HEIRS / BENEFICIARIES

ESTATE OF DECEASED VESTS IN EXECUTOR - BECOMES LEGAL OWNER OF ASSETS, BARE DOMINION / NAKED OWNERSHIP - NOT BENEFICIAL OWNERSHIP

HEIRS & BENEFICIARIES DEPENDS IF DECEASED LEFT VALID WILL - NO WILL - RULES OF INTESTATE SUCCESSION APPLY
ALL PRODUCTS OF HUMAN INTELLECT WHICH ARE INCORPOREAL & HAVE EXONOMIC VALUE ARE REGARDED AS INCORPOREAL THINGS IN RESPECT OF WHICH RIGHTS CAN EXIST


MOST IMPORTANT: COPYRIGHT, PATENTS, TRADE MARKS, GOODWILL & MODELS

LAW OF INTELLECTUAL PROPERTY
OBLIGATION = BOND / RELATIONSHIP BETWEEN LEGAL SUBJECTS

PERSONAL RIGHTS COME ABOUT THROUGH CONTRACT, DELICT, MOST IMPORTANT - UNJUSTIFIED ENRICHMENT

LEGAL OBJECT IN RELATION TO CONTRACT IS PERFORMANCE WHICH MUST BE DELIVERED

DELICT - PAYMENT OF COMPENSETION; UNJUSTIFIED ENRICHMENT - PAYMENT OF AMOUNT EQUAL TO AMOUNT BY WHICH PERSON HAS BEEN ENRICHED TO DETRIMENT OF ANOTHER

EXAMPLE 3: UNJUSTIFIED ENRICHMENT. PARTY 1 PAYS PARTY 2 MONEY, THINKING PARTY 1 OWES PARTY 2 MONEY (NOT TRUE) OBLIGATION ARISES - PARTY 2 TO PAY PARTY 1

EXAMPLE 2: IF BY COMMITTING DELICT, PARTY 1 CAUSES DAMAGE TO PARTY 2, OBLIGATION ARISES BETWEEN PARTIES. PARTY 1 OBLIGED TO PAY PARTY 2 DAMAGES & PARTY 2 HAS RIGHT TO CLAIM DAMAGES

EXAMPLE 1: 2 PARTIES CONCLUDE CONTRACT, OBLIGATION ARISES IN TERMS OF WHICH PARTY HAS RIGHT TO DEMAND THAT OTHER KEEP PROMISE (OTHER PARTY - RENDER PERFORMANCE). BOTH PARTIES SIMULTANEOUSLY OBLIGEE & OBLIGATOR

EXAMPLE 1: 2 PARTIES CONCLUDE CONTRACT, OBLIGATION ARISES IN TERMS OF WHICH PARTY HAS RIGHT TO DEMAND THAT OTHER KEEP PROMISE (OTHER PARTY - RENDER PERFORMANCE). BOTH PARTIES SIMULTANEOUSLY OBLIGEE & OBLIGATOR
LAW OF DELICT

FACTORS CAUSING DAMAGE: NATURAL DISASTERS / HUMAN ACTION

COMPENSATION FOR DAMAGE SUFFERED BY PERSON CAN BE RECOVERED FROM ANOTHER PERSON ONLY IF LEGALLY RECOGNISED GROUNDS FOR RECOVERY

LEGAL ORDER COMES TO AID OF PREJUDICED PARTY IN 2 WAYS

IN SYSTEM OF SUBJECTIVE RIGHTS REGULATED BY OBJECTIVE LAW, INTEREST OF LEGAL SUBJECTS ARE JURIDICALLY DEMARCATED

(1) PREJUDICED PARTY IS GRANTED ORDER (INTERDICT) WHICH FORBIDS OTHER PARTY TO PROCEED WITH COURSE OF ACTION

(2) WRONGDOER IS ORDERED TO COMPENSATE THE PREJUDICED PARTY FOR DAMAGE CAUSED

LAW OF DELICT LAYS DOWN WHAT IS REQUIRED FOR ACT CAUSING DAMAGE TO QUALIFY AS DELICT & WHAT REMEDIES ARE AVAILABLE TO PARTY SUFFERING DAMAGE
DEFINITION OF A DELICT

MERE FACT PERSON CAUSED ANOTHER TO SUFFER DAMAGE = INSUFFICIENT TO FOUND DELICTUAL LIABILITY

DEFINITION: DELICT IS ANY UNLAWFUL CULPABLE ACT WHEREBY A PERSON CAUSES THE OTHER PARTY DAMAGE / INJURY TO PERSONALITY, & WHEREBY HE PREJUDICED PERSON IS GRANTED RIGHT TO DAMAGES / COMPENSATION DEPENDING ON CIRCUMSTANCES

5 ELEMENTS OF DELICT (WRONGDOER'S ACTION MUST COMPLY WITH ALL)

(1) AN ACT

(2) UNLAWFULNESS

(3) FAULT

(4) CAUSATION

(5) DAMAGE / INJURY TO PERSONALITY (HARM)
ANY VOLUNTARY HUMAN CONDUCT, NEED NOT BE WILLFUL

ANY HUMAN CONDUCT WHICH AT TIME OF ACTIVITY WAS CAPABLE OF BEING EXERCISED UNDER CONTROL OF WILL

ONLY HUMAN BEING CAN ACT IN EYES OF LAW
UNLAWFULNESS

- NOT ALL ACTS THAT ARE HARMFUL TO OTHERS ARE DELICTS

- ACT IS UNLAWFUL WHEN INFRINGES THE RIGHTS OF ANOTHER (DEFAMED / ASSULT)

- ACT IS UNLAWFUL IF WRONGDOER OWED PERSON PREJUDICED DUTY TO TAK CAR & THIS DUTY IS BREACHED

- SPECIAL CIRCUMSTANCES: ACT WHICH AT FIRST GLANCE INFRINGES RIGHT OF ANOTHER PROVES ON CLOSER SCRUTINY TO BE LAWFUL WHEN DEFENDANT CAN RELY ON SOME PARTICULAR CIRCUMSTANCE WHICH JUSTIFIES ACT

- CAN INFRINGEMENT ALLEGED BY PLAINTIFF BE JUSTIFIED BY DEFENDANT'S CLAIM THAT ACT WAS NOT UNLAWFUL BECAUSE HAD RIGHT TO PERFORM ACT
NECESSITY EXISTS WHEN PERSON IS THROUGH EXTERNAL FORCES PLACED IN SUCH A POSITION THAT THE PERSON'S (/ANOTHER'S) LEGITIMATE INTERESTS CAN ONLY BE PROTECT THROUGH A REASONABLE INFRINGEMENT OF RIGHTS OF ANOTHER.

PURPOSE OF ACT OF NECESSITY = TO PROTECT INTERESTS OF PERPETRATOR / 3RD PARTY AGAINST DANGEROUS SITUATION.
SELF-DEFENCE EXISTS WHEN PERSON, IN REASONABLE WAY, DEFENDS HIMSELF AGAINST ACTUAL / IMMENTEN UNLAWFUL ATTAC BY ANOTHER TO DEFEND HIS OWN / ANOTHER'S LEGALLY ACKNOWLEDGED RIGHT

DEFENCE = AGAINST UNLAWFUL THREAT / ATTACK

MUST BE ACT DIRECTED AGAINST HUMAN ACT FOR ONLY A HUMAN CAN ACT UNLAWFULLY
CONSENT

WHERE PERSON IS LEGALLY CAPABLE OF EXPRESSING HIS WILL GIVES CONSENT TO INJURY / HARM, THE CAUSING OF SUCH HARM WILL BE LAWFUL.

CONSENT MAY BE GIVEN EXPRESSLY / TACITLY.

TWO FORMS OF CONSENT: CONSENT TO INJURY; CONSENT TO / ACCEPTANCE OF RISK OF INJURY.

NOT EVERY FACTUAL CONSENT TO INJURY IS VALID, CONSENT MUST NOT BE CONTRARY TO GOOD MORALS.

CONSENT NOT GIVEN FREELY IS INVALID.

CONSENT GIVEN WITHOUT CONSENTING PARTY'S BEING AWARE OF NATURE & SERIOUSNESS OF POSSIBLE CONSEQUENCES = INVALID.
PERSON DOES NOT ACT UNLAWFULLY IF HE PERFORMS AN ACT WHILE EXERCISING STATUTORY AUTHORITY

REQUIREMENTS: STATUTE MUST AUTHORISE INFRINGEMENTS OF PARTICULAR RIGHT CONCERNED; CONDUCT MUST NOT EXCEED BOUND OF AUTHORITY CONFERRED BY STATUTE

STATUTORY AUTHORITY
PROVOCATION

PROVOCATION EXIST
WHEN PERSON IS
PROVOKED / INCITED BY
ANOTHER'S WORD / 
ACTIONS TO CAUSE 
HARM TO THE OTHER

PROVOCATION = NOT 
COMPLETE DEFENCE 
WHEN VERBAL
PROVOCATION HAS
BEEN FOLLOWED BY
PHYSICAL ASSALT

(2) CONDUCT OF
PROVOKED PERSON MUST
CONSTITUTE IMMEDIATE & 
REASONABLE RETALIATION 
AGAINST BODY OF OTHER 
PERSON

TWO REQUIREMENTS: (1)
PROVOCATIVE CONDUCT 
MUST BE OF SUCH A 
NATURE THAT REACTION 
THERETO = REASONABLE & 
THEREFORE EXCUSABLE

DEFAMATORY / INSULTING 
ALLEGATIONS MADE DURING 
ARGUMENT IN RETALIATION TO 
PROVOCATIVE VERBAL 
CONDUCT MAY BE JUSTIFIED & 
IF PROVOCATION TAKES FORM 
OF PHYSICAL ASSUALT, MAY 
CONSTITUTE COMPLETE DEFENCE 
AGAINST ACTION ON BASIS OF 
SUBSEQUENT RETALIATORY 
PHYSICAL ASSUALT
FAULT

UNLAWFUL ACT DOESN'T NECESSARILY ENTAIL LIABILITY FOR WRONGDOER, MUST BE AT FAULT

AT FAULT IF ACTED INTENTIONALLY/NEGLIGENTLY

SUUFFICIENT LEVEL OF MENTAL DEVELOPMENT COMPREHEND NATURE & CONSEQUENCES OF ACTIONS

CHILDREN UNDER 7 & INSANE PERSONS CAN NEVER BE LIABLE

BOYS UNDER AGE OF 14

GIRLS UNDER AGE OF 12

APPORTIONMENT OF DAMAGES ACT 34 OF 1956: DAMAGE DIVIDED IN PROPORTION TO RESPECTIVE DEGREES OF NEGLIGENCE

CONTRIBUTORY NEGLIGENCE: INJURED PERSON HAS ALSO BEEN NEGLIGENT

DOLUS EVENTUALIS: POSSIBILITY OF ANOTHER EVENT COMING ABOUT

ACTUAL INTENTION: AWARE OF UNLAWFULNESS OF ACTIONS
CAUSATION

2 ELEMENTS:

FACTUAL CAUSATION & LEGAL CAUSATION

FACTUAL: FACTUAL CAUSAL LINK EXISTS BETWEEN ACT & DAMAGE. SINGLE ACT CAN GIVE RISE TO UNLIMITED NUMBER OF HARMFUL EVENTS - DETERMINE WHICH ACTS SHOULD GIVE RISE TO LIABILITY FOR DAMAGE

LEGAL: SUFFICIENTLY CLOSE RELATIONSHIP BETWEEN CONDUCT & CONSEQUENCE - CONSEQUENCE MAY BE IMPUTED TO WRONGDOER IN VIEW OF POLICY CONSIDERATIONS BASED ON REASONABLENESS, FAIRNESS & JUSTICE

FACTUAL DETERMINED BY APPLYING CONDITIO SINE QUA NON TEST

ONLY HELD LIABLE FOR CONSEQUENCES CAUSED
DAMAGE / IMPAIRMENT OF PERSONALITY

- MUST HAVE CAUSED DAMAGE / IMPAIRMENT OF OTHER'S PERSONALITY
- IMPAIRMENT OF PERSONALITY - DIFFICULT TO ASSESS
- PATRIMONIAL DAMAGE - CONDITION OF ESTATE LESS FAVOURABLE
- (1) MAY NOT RAISE AS DEFENCE THAT OTHER'S DAMAGE HAD, ENTIRELY / IN PART, BEEN EXTINGUISHED BY 3RD PARTY (INSURANCE) FALL OUTSIDE DISPUTE NOT CONSIDERED WHEN CALCULATING DAMAGES
- (2) DUTY NOT TO ALLOW DAMAGE TO ACCUMULATE
- PRESENT CONDITION OF ESTATE COMPARED WITH WHAT WOULD HAVE BEEN
REMEDIES

PERSON RIGHTS THREATENED MAY PROTECT BY MEANS OF INTERDICT

HARM ALREADY CAUSED - CLAIM FOR COMPENSATION

SOLATIUM - SENTIMENTAL DAMAGES

PERSONALITY DAMAGE: CLAIM BASED ON ACTIO INIURIARUM (ACTION FOR PAIN & SUFFERING)

PATRIMONIAL DAMAGE: CLAIM FOR COMPENSATION BASED ON ACTIO LEGIS AQUILIAE

SOLATIUM - SENTIMENTAL DAMAGES
UNJUSTIFIED ENRICHMENT

- PATENTLY INEQUITABLE FOR 1 PERSON TO BE ENRICHED TO THE DETRIMENT OF ANOTHER
- CLAIM IS LIMITED TO AMOUNT OF ACTUAL ENRICHMENT
- NOBODY SHOULD BE ENRICHED AT EXPENSE OF ANOTHER

Nobody should be enriched at expense of another.
ORIGIN OF CLAIM FOR ENRICHMENT

CONDICTIONES = LEGAL ACTIONS

LEGAL ACTIONS ACKNOWLEDGED IN ROMAN LAW TO PROVIDE FOR CERTAIN TYPES OF ENRICHMENTS - ADOPTED BY ROMAN-DUTCH LAW - SA LAW BASED

NO GENERAL ENRICHMENT ACTION IS RECOGNISED IN SA

CONDICTIONE INDEBITI: ROMAN LAW - TRANSFEROR OF PROPERTY WHICH HAD BEEN GIVEN TO ANOTHER PERSON WITHOUT LEGAL TITLE COULD RECLAIM PROPERTY FROM OTHER PERSON
OBLIGATION IMPOSED UPON ENRICHED PERSON

2 FORMS: RESTITUTION / COMPENSATION

- RESTITUTION: PERSON WHO HAS DELIVERED / TRANSFERRED MONEY / PROPERTY WHICH IS NOT DUE TO ANOTHER PERSON MAY RECOVER THAT MONEY / PROPERTY FROM THE OTHER PERSON
- CIRCUMSTANCES - RESTITUTION: PAYMENT / DELIVERY IN ERROR; PAYMENT / DELIVERY UNDER CONTRACT WHICH IS INVALID OWING TO ILLEGALITY

PAYMENT / DELIVERY UNDER CONTRACT WHICH IS INVALID OWING TO ILLEGALITY: PARTY TO ILLEGAL CONTRACT, WHO HAS DELIVERED PROPERTY / MONEY TO ANOTHER PARTY, MAY RECOVER WHAT HAS BEEN DELIVERED, PROVIDED THAT PERSON IS NOT EQUALLY GUILTY WITH PERSON FROM WHOM PROPERTY / MONEY IS BEING CLAIMED

IF EQUALLY GUILTY, PAR DELICTUM RULE PREVENTS RECOVERY

ACTION INSTITUTED IN THIS INSTANCE: CONDICIO INDEBITI

PAYMENT / DELIVERY IN ERROR: (A) MADE UNDER A MISTAKE; (B) MISTAKE WAS REASONABLE; (C) NOT MADE ON CONDITION WOULD NOT BE RECOVERABLE; (D) WAS NOT MADE BY WAY OF COMPROMISE
OBLIGATION IMPOSED UPON ENRICHED PERSON (COMPENSATION)

CIRCUMSTANCES:
- PARTIAL PERFORMANCE
- IMPROVEMENTS TO PROPERTY
- NEGOTIORUM GESTIO

PARTIAL PERFORMANCE: 1 PARTY OF CONTRACT PERFORMED ONLY PORTION OF OBLIGATION WHICH IS INDIVISIBLE

IMPROVEMENTS TO PROPERTY: PERSON EFFECTS IMPROVEMENTS TO PROPERTY WITH INTENTION OF DOING SO FOR OWN BENEFIT & HAS NO RIGHT / TITLE TO PROPERTY, IMPROVEMENTS BECOME PROPERTY OF TRUE OWNER.

PERSON EFFECTED IMPROVEMENTS ENTITLED TO CLAIM AMOUNT BY WHICH PROPERTY HAS INCREASED FROM TRUE OWNER

MAY NOT EXCEED ACTUAL EXPENSES INCURRED

OWNER NOT ACCEPT - PERSON WHO EFFECTED MUST REMOVE & NOT DAMAGE PROPERTY

NEGOTIORUM GESTIO: 1 PERSON VOLUNTARILY & WITHOUT PERMISSION / KNOWLEDGE, MANAGE AFFAIRS OF OTHER PERSON. IF PERSON ACCEPTS - OBLIGED TO COMPENSATE PERSON WHO MANAGED