

## UNIT 2

### INTRODUCTION TO THE SCIENCE OF LAW

#### THE TERM LAW

Law refers to a system of rules which applies in a community and which is binding on people. Legal rules can be enforced by force of the government if a person does not follow these set of rules he can be imprisoned.

A right is any right which a legal subject has regarding a specific legal object which is protected by the law.

#### You get 2 divisions of law public law and private law:

**Public law**- concerned with the distribution and exercise of power by the state and the legal relations btwn the state and individual.

#### Broken up further into four sections:

1. International Law
2. Constitutional Law
3. Administrative Law
4. Criminal Law

**Private Law**- concerned with legal relations btwn individuals:

#### Broken up further into four sections:

1. Law of Persons
2. Law of Personality
3. Family Law
4. Patrimonial Law

## Commercial Law

Legal rules although of different origin and nature, nevertheless have in common that they arose from the customs of merchants or relate to business activity.

Examples of things classified under commercial law:

Contracts of sale, lease and credit agreements, insolvency etc

## What is a Right???

A right any legal subject has regarding a specific legal object and which is protected by the law. Such a legally protected right is known as a subjective right.

## Legal subjects

Human being or entity subject by law or member of legal community to who law applies and for whose benefit the law exists. Legal capacity the capacity to be bearer of rights and duties.

## Two categories:

### NATURAL PERSONS

Every human being from a new born to adult is a legal subject and every human being can have rights and duties.

### Example!!!!

The law protects the physical integrity and honour of a new born child, and also determines that he or she can inherit property.

## JURISTIC PERSONS

Entities recognized as holders of rights and powers and are subject to duties. Entities elevated by Law as juristic or artificial persons. Examples are universities, company, and municipality. Juristic person always continues to exist.

### Example!!!!!!!!!!!!!!

We have Jill and Jim establish a company called JJ investments, this means legally there are three persons, if the company buys 2 computers this does not mean that Jim owns one and Jill the other both computers belong to the company. So for say if Jim wants to buy a car from the company he has to enter into an agreement with the company and a purchase price decided therefore Jill and Jim are just two persons who represent the company. If both of them were both to die the company would continue to exist therefore the company is a **legal reality**.

### Legal Object

A legal object is any entity which can be the object **of a legal subjects claim to a right**.

### Subjective right

Relationship between legal subject and a legal object, as well as between other legal subjects are called a right.

#### (a) Real rights is a right which a legal subject has to property:

1. Ownership- the most comprehensive real right of all
2. Servitude which are divided into:
  - Praedial servitudes- confer on holder in his or her own capacity as an owner of an adjacent property a limited right to the property of another- example servitude of grazing
  - Personal servitude- confer on a person his or her personal rights on a property.

**3. Mortgage and pledge- confer upon person right of security in respect of the property mortgaged.**

**(b) Intellectual property rights**

**Rights to intellectual property, examples are artist rights on their paintings etc**

**(c) Personality rights**

**Rights relating to personality example reputation of the person**

**(d) Personal rights**

**Right of performance of giving something which can be demanded by a person**

**LADIES AND GENTLEMAN JUST FOR SOME RELAXING TIME  
HOPE YOU ENJOYING THE NOTES DON'T STRESS TAKE IT  
EASY BUT REMEMBER THE KEY TO SUCCESS IN CLAW101 IS  
ALL THE EXAMPLES I GIVE YOU IS TO READ THEM AND  
UNDERSTAND THEM BECAUSE THE KEY TO GETTING  
EXCELLENT MARKS IN CLAW101 IS UNDERSTANDING SO  
UNDERSTAND WHAT IS HAPPENINGG**

**NB- THE FIGURE ON PAGE 11 OF THE STUDYGUIDE IS  
IMPORTANT READ IT AND STUDY IT**

# Private Law

## 1. Law of Persons

- Who are legal subjects
- How one becomes or ceases to be legal subject
- The various classes of legal subjects
- The legal position of each of these various classes of legal subjects

### Explanation!!!!!!-

We all already know that a human being is a legal subject but at what stage and what legal capacity does **a human being have we want to know therefore watch and learn:**

- 1. Human being** gets his legal capacity once he is born provided he is born alive.
- 2. His legal** capacity terminates when he dies however his body is still protected by the law and his assets.
- 3. Now everyone cannot** have the same rights therefore the law gives a status to every legal subject.

**Status-** legal condition, position of occupied by legal subjects as a member of a particular class in a community, **determines extends of rights and duties**

**Status is conferred by the law one cannot out of his own accord say** what his status is it is determined by sex, age, marital status and many other factors

Law of persons concerned specifically with the influence **exerted by all these factors on the status of a legal subject.**

## Family Law

### Two types:

- Law of husband and wife
- Law of parent and child

This law has to do with conclusion of a valid marriage, grounds on which married can be desolved, **who has right over the kids etc.**

**NB- NO RELATION BETWEEN RELATIONS BETWEEN RELATIVES**

## Law of personality

Law of personality is concerned with the protection of the **physical and psychological integrity of legal subjects.**

Important right of personality is the right of privacy everyone is entitled to privacy in their private life, therefore like **all other rights these rights have limitations.**

**NB- THE FIGURE ON PAGE 12 OF THE STUDYGUIDE IS IMPORTANT READ IT AND STUDY IT**

## Patrimonial Law

This law has to do with the person's sum of assets and liabilities

4 Types:

1. Law of property
2. Law of succession
3. Law of intellectual property
4. Law of obligation

## The Law of property

Relationships of persons towards material objects controlled by means of granting and recognition of rights of property. Different kind of real rights confer different kind of powers to holders the real right of ownership gives the owner the right to do whatever **he wants to do with his property. Right of ownership cornerstone of all rights and the most comprehensive right.**

### Example-

John may have right of ownership on a farm, James may have a mortgage over the farm and Tim mineral rights over the farm, therefore the various holders of rights have certain rights over the same property.

### RIGHT OF OWNERSHIP

Cornerstone of all real rights and at the same time most comprehensive right.

Confers comprehensive powers on the holder it is also restricted in the interest of the community. Owner's rights may also be **restricted by neighbor's right of ownership and dictates of public law.**

Therefore in conclusion the right of ownership confers **comprehensive powers on its holder, it is nevertheless always restricted.**

## Ownership and possession

### **Distinguish between ownership of property and possession of property**

**A person who has ownership over property is not necessarily the possessor of the property.**

#### **Example-**

**Bond the owner of Aston martin may lend it to James for a trip to Soweto, Bond has possession of the car but James has possession of it.**

**Possession has 2 elements physical and psychical. A person has possession of a property when he or she has physical control over it and at the same time has the required attention of possessing it. Intention of possessing it is the psychical concept required by the law. **Direct and immediate control over property is not required****

#### **Example-**

**Bond locks his car and walks he has physical control over the car although he is far away.**

**Also intention is important if I tell Nonka to hold my jacket she is holding it for has physical control but the intention to possess it is missing**



# THE ACQUISITION OF OWNERSHIP

## (a) Original method of Acquisition of ownership

### Two types

#### Occupation

If one seizes property belonging to no one with the intention of becoming the owner one acquires right of ownership over the property. By occupation one cannot become the owner of property belonging to another person.

**Example 1-** If I catch a bird I am the owner of it

**Example 2-** If I lose my pen Bond finds it he will not be able to gain occupation of the pen however if I don't want it then Siphon can gain ownership of the pen.

Occupation is called the original method of acquiring ownership because the new owner does not obtain the right of ownership from another but establishes the original right of ownership.

#### Prescription

A person can become an owner of property by means of prescription if he or she has possessed it openly as if he or she were its owners for an uninterrupted period of 30 years.

**Example-** If mandla takes possession of Dudu farm by allowing his cattle to graze on it for an uninterrupted period of 30 years then he becomes the owner of that land

The question is how can an illegal Act become a legal Act? Simple because an owner allows another to take possession of his or her property, the impression is created to the outside world is that the possessor is actually the owner, this mpression is upheld by conferring the ownership

Acquisition of ownership by prescription is an original method of acquiring ownership because the possessor does not obtain the previous owners ownership, **but establishes an original right of ownership after the original owner has lost ownership.**

## Derivative methods of acquiring ownership

### Movable property

Delivery of ownership is one of the most common ways of acquiring ownership this method is applicable to only **movable property such as motor cars, books, furniture etc.**

**Example-** Ulla and Fay agree that Ulla will buy Fay's car, Fay remains the owner of the car Ulla only obtains ownership when Fay delivers the car to her

Also the transfer must not only be physical there must be an intention to transfer the movable property

Delivery is a derivative method of acquiring right of ownership, because the transferee obtains ownership from the transferor and does not establish an original right of ownership.

### Immovable property

This is done by registration of the transfer at a deeds office is required. Registration is also a derivative method of acquiring ownership, **because the seller transfers his or her right of ownership to the buyer.**

**Example-** If Ivy buys a farm from Tim she only gains ownership when it has been registered in the deeds office although she has already paid Ivy for it

## **Protection of ownership and possession**

**Ownership is protected primarily by granting the owner remedy known as the rei vindication. With this action based on ownership the owner may reclaim his property from any person who is wrongfully in possession of it.**

**Example-** If David steals Tom's pen and sells it to Tim who thinks David is the owner Tom can reclaim the pen from Tim in spite of Tim's good faith this is an example of ownership

**Example-** If Ron borrows James car and refuses to give the car back and then Ron takes the car back by force against James will the court will protect James will and require possession be given back to him he can only repossess the car after he has proved ownership of it

**In order to prevent persons using force in taking property claimed by them, mere possession of property is protected in the sense that no one may deprive someone of possession against his or her will. The remedy which possession is restored is called mandament van spolie**

## **Servitudes**

**Limited real right over the property of another which confers on the holder of the right to use the property in a particular way.**

### **2 Types:**

## Praedial servitudes

### Example- Tom has the right to walk over John's yard

Owner of a piece of land has certain powers in regards to the adjacent land belonging to another. The land of the owner who is the holder of the servitude is called the 'dominant tenement' and that of the owner who has to permit the exercise of the powers conferred by the servitude is called the 'servient tenement'. Each owner of dominant tenement may exercise servitude and each subsequent owner has to permit the servitude.

The most common method of acquiring servitude is by registration of the servitude at a deeds office against the title deeds of the dominant and servient properties. The owner of two properties agrees on the servitude.

Another way servitude can be obtained is by prescription if he or she was openly allowed to do an exercise for an uninterrupted period of 30 years.

## Personal servitudes

Usufruct is the most important example of personal servitude. A usufructuary has the power to use and enjoy the property of another however the property may not be destroyed, transferred but it may be cultivated. Usufruct is granted for the lifetime of the holder.

**Example-** property may be cultivated or it may be let however the usufruct may not be transferred

It is obtained by registration in terms of testamentary deposition.

**Example-** Thabo a farmer may provide in his will that his wife shall have life interest that is usufruct in his farm during her lifetime and that his children shall receive ownership of the farm, in this way he makes provision for his wife to enjoy the farms yield and that the full ownership of the farm can be enjoyed by his children

## Mortgage and pledge

Constitute ways in which debts can be secured.

Mortgage acquired by registration against title deeds.

Pledge acquired through agreement and delivery of property

## NOW DO ACTIVITY ON PAGE 13 OF THE STUDYGUIDE

## The Law of Succession

Deals with the rights of legal subjects to the property of a deceased person it states that when a person dies the executors give out the estate to the heirs after paying of all the debts of the deceased person.

**If there is a will it is passed on according to the rules of testate succession and no will rule of intestate succession**

The executor pays all the debts after debts are payed the remaining balance must be distributed to the heirs in the meantime the executor is in charge off the estate until it is distributed to the heirs

## The Law of intellectual property

Copyright law, patent law, trade law and design law.

Today all products of human intellect which have economic value have rights.

## The Law of Obligations

When a personal right comes into existence btwn legal subjects, the bond or legal relationship is called an obligation

**It comes about through:**

- Contract
- Delict
- Various other causes example unjustified enrichment

## **EXAMPLES:**

- (A) If parties conclude a contract an obligation comes about- If Tom buys Jim's car for R100, Tom has the right to claim the car from Jim but at the same time has to pay Jim the R100.**
- (B) Lindiwe causes damage to Jim's gate she drives into it an obligation arises between Lindiwe and Jim in which Lindiwe has to pay Jim for the damages and Jim has to claim from Lindiwe ( delict)**
- (C) If Dudu pays Siphos R20 believing she owes him that money , Siphos has unjustly being enriched therefore Dudu can claim the R20 back and Siphos has to pay it back ( unjustified enrichment)**

## **Introduction to the laws of delict**

**The Law of delict lays down what is required for an act that causes damage to qualify as a delict and what remedies are available to the party who suffers the damage**

### **Definition:**

**A delict is any unlawful act whereby a person causes the other party damage or injury to personality, and whereby the prejudiced person is granted a right to damages or compensation, depending on circumstances.**

**(a) An act**

**Any voluntary human conduct but it needs to be a willful act.**

**(b) Unlawfulness**

**An act is unlawful when it infringes the rights of another. An act is also unlawful if the wrongdoer owed the person prejudiced a duty to take care and this duty is breached.**

**Grounds of justification are special circumstances which convert an otherwise unlawful act into a lawful act**

**Following grounds:**

- 1. Necessity-** a person through external force placed in such a position that the person's legal interests can only be protected by reasonable infringement of rights. For example if Gert damages Koos house because there is a fire and Mary is trapped Koos rights are not infringed because there is a necessity.
- 2. Self Defense-** when a person in a reasonable way, defends himself or herself against an actual or imminent unlawful attack by another to defend his or her own right.
- 3. Consent** a person legally capable of expressing his or her will gives consent to injury or harm.

**Two types:**

- **Consent to injury**
  - **Consent to risk of injury**
- 4. Statutory authority-** A person does not act unlawfully if he or she performs an act while exercising a statutory authority.
  - 5. Provocation-** when a person is provoked or incited by another's words or action to cause harm to other

**(c)- Fault**

**Wrongdoer at fault if he or she acted intentionally or negligently.  
Mental capacity counts in this branch**

### (d)- Causation

Two elements:

- Factual causation- act indispensable condition for damage to arise
- Legal Causation- close relationship btwn wrongdoers conduct and consequence

### (e) Damage or Impairment of personality

A person suffers damage if his estate becomes smaller.

When someone's personality is infringed when his rights are infringed

### Remedies

The remedies in the case of delict are an interdict and payment of damages for proved patrimonial loss, sentimental damages and compensation for pain and suffering.

The actio legis Aquiliae is aimed at recovering patrimonial damage (economic loss or loss which can be assessed in terms of money). The actio iniuriarum is aimed at recovering sentimental damages, and the action for pain and suffering is aimed at recovering compensation for injury to personality  $\text{D}$  for example for emotional shock that is wrongfully or culpably caused.

### Introduction to law of unjustified enrichment

The performance that is the object of the right in the case of unjustified enrichment is the payment of an amount equal to the amount by which one person has been enriched to the detriment of another person, or restitution.

In South Africa, an action based on unjustified enrichment can be instituted only in certain specific instances. We do not yet recognise a general enrichment action. The obligation imposed upon the enriched person therefore takes one of two forms, namely

(a) restitution

(b) payment of a sum of money



## Restitution

A person who has delivered or transferred money or property which is not due to another person, may recover that money or property from the other person.

### 1. Payment or delivery error

A person who has paid the sum of money or delivered the property to another person in mistaken belief that it was due can recover the property or money from that person provided:

1. payment or delivery made under mistake
2. the mistake was reasonable
3. payment or delivery was not made on condition that it would not be recoverable
4. payment or delivery was not made by the way of compromise

### 2. Payment or delivery under a contract which is invalid owing to illegality

Party to an illegal contract may recover what has been delivered provided such a person is not equally guilty **with the person from whom such property has been claimed**

## Compensation

An obligation to compensate a person at the expense of one whom has unjustly been enriched can occur due to

### 1. Partail performance

If one party of the contract has performed only a portion of an obligation which is indivisible the possibility of enrichment liability arises for example if Anna tells Bob to build a house for her for a fixed amount and the house is abandoned at roof height and then Anna

**cancels the contract, bob will therefore be allowed to claim the money for the work he has done**

## **2. Improvements of property**

**If a person does improvements to a property which is not his the improvements becomes the property of the owner however he is entitled to claim an amount to which the value of the property has been increased**

## **3. Negotiorum gestio**

**When a person voluntarily and without permission of another person manages the affairs of the person, if the person whose affairs have been managed excepts the negotiorum gestio he is obliged to compensate the person who managed them for all necessary expenses incurred**

**GOOD LUCK**

**Notes compiled by Muhammed Arbee**

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