

# **ASSIGNMENT 1**

## **FIRST SEMESTER**

**UNIQUE NUMBER 746975**

**LPL 4803**

**Student number 4297 363 5**

### **Question 1**

1.1 In terms of section 1 of the RAF amendment act a motor vehicle is a vehicle propelled or towed on a road by means of fuel electricity or gas and is assigned or adapted for use on a road. Therefore a trailer qualifies as a motor vehicle for the purpose of the RAF Act of 1996 as amended by the RAF amendment Act of 2005.

1.2 In terms of this Act driving means driving a motor vehicle which is being propelled by any mechanical, animal or human power or by force of gravity or momentum should be regarded as if it is driven by the person in control of it. Also a person who has placed or left a motor vehicle at any place shall be regarded as if he/she is driving that motor vehicle while it moves from that place as a result of gravity or a stationery vehicle at that place or while it is stationery at a place which it moved from the first place due to gravity. When a motor vehicle is place or left at any place it shall for the purpose of this Act be presumed until the contrary is proved, that such vehicle was placed or left at such place by its owner.

#### **Extended driving**

In terms of section 20 of the RAF driving includes:

Where a motor vehicle is brought in to motion by other than mechanical power means motor vehicle is set in motion due to gravity motor vehicle left at specific place. Also instances where it is not clear who was driving owing to pushing of a motor vehicle by other motor vehicle, pulling of motor vehicle by animals.

Pushing or pulling of motor vehicle by hand.

Moving downhill slope of motor vehicle with engine off.

Movement by own momentum or other mechanical means.

Runaway motor vehicle.

Parked motor vehicle when it has moved from one place to another without a driver .

Stationery vehicle left a dangerous place.

### **Unlawful act**

In terms of section 17(1) of the RAF Amendment Act:

Conduct means driving of a motor vehicle or Other Unlawful Act.

If a driver owner or employee of owner or any other person commits an other unlawful act directly linked with motor vehicle and driving thereof other than the negligent driving of a motor vehicle and such act injures a person or causes death or injury to another person, such act may qualify as conduct.

### **In Santam Versekeringsmatskpy v Kemp**

It was held that injury or death may occur even if faultless driving e.g. wheel fall due to negligence of the owner.

### **In minister of safety and security v R A F**

This case was said to be wrongly decided “

A diesel spilt on a road from a stationery truck while not driving, if he was driving he was not negligent, if no negligent driving was imputed to him then causation was irrelevant.

### **In Wells and Another v Shield Insurance**

#### **Other unlawful Act**

If the driver owner or employer or any other person;  
allows incompetent person to drive a motor vehicle ,  
allows a drunk person to drive a motor vehicle,  
or any other person to travel at the back of a truck when the conveyance of a person in this manner can be considered negligent.

Fails or neglect to maintain his vehicle properly,

Fails or neglect to install fire fighting equipment in a vehicle,

Fails to secure load properly.

### **Negligence**

A person is blamed for his negligent conduct or careless attitude.

The reasonable person test or *bonus partefamiliar* is used to determine negligence of a person.

Section 17(1) provides that there must be negligence in order to establish liability of the Road Accident Fund.

Therefore it is clear that the accident / head on collision between the trailer and Mr Selepe's vehicle was not due to driving of a motor vehicle but due to other unlawful act .

It is pretty obvious that Mr Gibson failed to attach the trailer properly which resulted in it being detached from the moving vehicle and caused accident. The court must use the reasonable man test to determine liability of the Road Accident Fund.

1.3 If the RAF could prove that there was a contributing negligence on Mr Selepe's part to the causation of the accident such fault is taken into account when damages are awarded to him. Mr Selepe will only recover damages from the RAF that was not caused by his own fault.

1.4 Negligence has to be proven on a balance of probabilities from the circumstances of the occurrence. If for instance the vehicle cannot be identified, for example in a hit and run accident ,the service of motor vehicle collision expert have to be employed in order to reconstruct the accident. The effect it can have on Mr Selepe's case is that such reconstruction can not be conclusive, but it is only the consideration that the court has to be taken into account when making a finding on a balance of probabilities.